

<p>Non-Executive Report of the:</p> <p>General Purposes Committee</p> <p>13 October 2022</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Musrat Zaman, Director HR, OD and Business Support</p>	<p>Classification: Internal</p>
<p>Title: Recommendations on the Composition of Dismissal Appeals Panel</p>	

Originating Officer(s)	Musrat Zaman , Director HR, OD and Business Support
Wards affected	N/A

1. EXECUTIVE SUMMARY

- 1.1 GPC previously considered reports on alternative models for an Employee Appeals Sub-Committee on 23 February 2021, 24 June 2021, and 5 October 2021.
- 1.2 Approval was given to discontinue the Employee Appeals Sub-Committee and to replace it with a Dismissal Appeals Panel chaired by a Corporate Director. This decision was reached on the 5 October 2021. A new Dismissal Appeals Process and Guidance was developed and is enclosed as Appendix 1.
- 1.3 At the GPC meeting on the 21 June 2022, Members asked for a further report to be presented setting out other options on the composition of Dismissal Appeals Panel. This paper sets out those options.

2. RECOMMENDATIONS

The General Purposes Committee is recommended to:

- 2.1 Continue with the current arrangements for a Dismissal Appeals Panel which was agreed by GPC on 5 October 2021 as it is too early to comment on the panel composition and its effectiveness.
- 2.2 To continue with the current arrangement as it still provides for an Elected Member to be a part of the panel.
- 2.3 Agree that the arrangements will be monitored through the regular HR updates brought to GPC.
- 2.4 This recommendation is in line with the legal advice.

3. **REASONS FOR THE DECISIONS**

- 3.1 Any changes to the Constitution, policies, and procedures would require a further period of consultation with the Trade Unions before being brought back to GPC/Full Council for agreement.
- 3.2 Management of staff is the responsibility of managers employed by the council. A key function of the role of a manager is to lead and manage groups of staff. On rare occasions this may lead to dealing with an issue that could lead to a dismissal. This gives the member of staff a right to appeal against the dismissal decision.
- 3.3 It is important to note that managers are familiar with the performance management framework and are trained to handle any issues. Where needed, they are guided by HR through all stages that may lead to dismissal. Furthermore, staff have a right of representation at all formal stages of the process and any concerns can be addressed during this period.
- 3.4 The number of appeals dealt with is low in the organisation demonstrating that to pursue this course of action requires a strong evidence base and for the employment relationship to have been breached fundamentally to warrant such action. A decision to dismiss is taken with due process having been exhausted. The number of dismissals, excluding redundancies is shown below.

Year	Number of Dismissals	Number of Appeals
2021/22	16	2
2020/21	4	1
2019/20	9	3
2018/19	14	6
2017/18	21	16

- 3.5 We must also be aware that the requirement in law is to ensure that all processes are conducted fairly and objectively. Investigations are conducted impartially; panel members are not aware of the issues before they hear a case and all panel members are appropriately trained. All records must be kept including notes of meetings. These will then be relied upon if any claim is made at an Employment Tribunal. Those that made the decision would be required to attend to give evidence in support of the employer's decision to dismiss. Since 2017, there have been 15 claims to the Employment Tribunal following an appeal against dismissal that was not upheld by the appeals panel (53%).
- 3.6 The decision to change the Dismissal Appeals process was confirmed at the GPC meeting on the 5 October 2021 following much discussion at previous GPC meetings. This item was debated, and it was agreed that officers should retain the decision to dismiss as the performance management framework and day to day management rests with the Head of Paid Services and officers of the council. Elected Members should not be drawn into staffing matters, their role is to set the outcomes and direction for the organisation. Elected Members would rarely deal with dismissal matters and any training could become outdated quite quickly. Elected Members would also be called upon at Employment Tribunals to present evidence and to give a full account of the reasons for their decision. It was felt by Elected Members that this responsibility better sat with officers as they are best

placed to deal with these matters and would be in a much better position to handle any Employment Tribunal claims that can become complex and protracted and involve a great deal of time. In the revised process, Elected Members retain their role in the overview and scrutiny of the decisions made by officers and have the opportunity to contribute to those decisions, whilst remaining independent of the employment matters.

- 3.7 Tower Hamlets is only one of 13 London Boroughs that has Elected Members involved in dismissal appeals (two others are considering revising their process) and 20 boroughs have removed members from the appeals process.
- 3.8 It is also important to note the legal advice stated below which recommends that officers make the final decision to dismiss and the reason for that.

4. ALTERNATIVE OPTIONS

- 4.1 All appeals are heard by a Dismissal Appeals Panel which is a sub-committee of the General Purposes Committee.
- 4.2 **Option 1** - All appeals are heard by a panel consisting of two Senior Managers and one Elected Member. This is the current arrangement
- 4.3 **Option 2** - Revert to the previous model which consisted of an all-Elected Member panel.
- 4.4 **Option 3** - Adopt an officer only appeal panel.

Option	Panel	Advantages	Disadvantages
1	2 Senior Managers, 1 Elected Member	Balance of officers and Elected Member. Senior Manager is the main decision maker and would be better trained in handling of the issue. Complies with the legal advice.	Can create a difference of views and interpretation of policy by having an Elected Member on the panel that may not fully understand or be familiar with the employment framework
2	3 Elected Members	Panel seen as completely impartial as they will have not been involved in any council employment matters or acted in any management capacity	Goes against the legal advice. May lack consistency Could weaken the employer's case if the matter proceeded to Employment Tribunal. Decision makers would need to articulate the rationale for the dismissal decision and explain a thorough understanding of policies and procedures

			<p>and their application of them in day-to-day practices</p> <p>Could place Elected Members in difficult position if they are not familiar with employment practices and then are asked to make a decision on whether to uphold a dismissal decision.</p> <p>Appeal timescales are usually exceeded as, historically, it has been difficult to coordinate diary time for 3 members to meet.</p>
3	3 Senior Managers	<p>Familiar with council policies and procedures, training and knowledge will be current.</p> <p>Ensures consistency</p> <p>Likely to approach a situation in an employment context</p>	No direct overview and scrutiny for members

5. DETAILS OF THE REPORT

5.1 The current Dismissal Appeals process and guidance is attached at Appendix 1.

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, 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.

- 9.2 In order to properly defend any employment tribunal claims which may arise out of the appeal decision, the decision maker must be able to attend the Tribunal hearing and be able to explain any decision made and demonstrate a clear understanding of the Council's policies and procedures and how they have applied these while reaching their decision.

Linked Reports, Appendices and Background Documents

Linked Report

- * NONE

Appendices

- * **Appendix 1 – Dismissal Appeals Process and Guidance**

Appendix 1



Human Resources and Organisational Development

Dismissal Appeals Process and Guidance



Implemented: 1 November 2021

Dismissal Appeals – Process and Guidance

1. Introduction and Principles

- 1.1 The Council's Disciplinary Policy, Attendance Management, Standards for Managing Employee Performance, Redeployment and Redundancy procedures provide an appeal in cases of dismissal.
- 1.2 An appeal hearing is to review the decision to dismiss; rather than hold a re-hearing of the case.
- 1.3 Appeals will be heard by a Dismissal Appeal Panel. The Panel will consider the grounds of appeal and decide if the decision to dismiss was fair and reasonable.
- 1.4 The composition of the Panel and the procedural arrangements are set out below.
- 1.5 Appeals against dismissal will normally be heard within 20 working days of the appeal being received.
- 1.6 The circulation of appeal documents and notice of the date of the appeal will be at least five working days' before the appeal hearing.

2. The Appeal Panel

- 2.1 The panel will consist of **2 Senior Managers** (1 Corporate Director and 1 Director or Head of Service) and **1 Elected Member**. The Member will be selected from any Member or Substitute of the General Purposes Committee.
- 2.2 An HR adviser and a legal adviser will also be in attendance.
- 2.3 Panel members and advisers will have had no previous involvement in the case.
- 2.4 A Corporate Director will Chair the appeal panel and is the final decision maker, after considering the views of other members of the panel. There should be majority agreement, i.e., at least one other panel member agrees with the decision of the Chair.
- 2.5 All panel members will receive training on the appeals process and relevant policies and procedures before taking part in any panel.

- 2.6 In the case of a dismissal appeal which gives rise to any issues relating to safeguarding of adults or children, panel members will receive specific training in safeguarding matters before taking part in any panel.

3. Grounds of Appeal

- 3.1 The specific grounds on which the decision to dismiss can be appealed are set out in each policy.

- 3.2 The Appeal Panel will consider the following:

THE PROCEDURE: Was the procedure followed correctly, or are there any procedural irregularities that may have prejudiced the decision.

THE FACTS: Was all the evidence considered when the decision was made, or is there new evidence that the panel should consider.

THE DECISION: Was the sanction appropriate and proportionate.

4. Procedure

4.1 People in attendance at the meeting

Panel members
HR Adviser
Legal Adviser
Clerk/Note taker
Appellant
Appellant's representative/companion
Manager who made the decision to dismiss
HR Adviser to the dismissing manager

4.2 Right to be accompanied

Appellants have the right to be accompanied at the meeting by either a trade union representative or work place colleague.

4.3 Witnesses and additional evidence

- 4.3.1 It is not usual for witnesses to appear in person at an appeal hearing, unless they have new, relevant information about the procedure or the facts, or unless new evidence is being presented. Often a written statement from a witness will be sufficient.

- 4.3.2 The Appeal Panel will consider the reasonableness of the decision to dismiss; it is not a rerun of the original hearing. It is not necessary to call witnesses from the original hearing as their evidence is included in the documents considered by the Appeal Panel.

- 4.3.3 Either side may present witness statements or call witnesses to the hearing where appropriate.

4.3.4 Additional evidence will only be considered where, had it been available or known to the disciplinary panel that made the decision to dismiss, it may have influenced or changed that decision. The Appeal Panel will consider the new evidence when deciding if the dismissal was fair and reasonable.

4.4 **Structure of the meeting**

The meeting will be conducted as follows:

1. **INTRODUCTION OF PARTIES AND PURPOSE OF THE MEETING**
2. **APPELLANT'S CASE** will be put first using supportive evidence, documentation and witnesses.
3. **PANEL MEMBERS HEARING THE APPEAL** will ask questions and clarify any points of the Appellant's case, including questions to witnesses.
4. **THE MANAGER PRESENTING THE CASE** may ask points of clarification of Appellant or witnesses.
5. **APPELLANT WITNESSES LEAVE THE MEETING**
6. **THE MANAGER** presents their case, explaining the reasons for the original decision and why this was considered appropriate.
7. **PANEL MEMBERS HEARING THE APPEAL** may ask questions of the manager and clarify any points raised.
8. **THE APPELLANT** (or representative) may ask points of clarification from the manager.
9. **APPELLANT'S CONCLUDING REMARKS** (if any).
10. **MANAGER'S CONCLUDING REMARKS** (if any).
11. **ADJOURNMENT:** The Panel will adjourn to consider presentations and documents and reach a decision. Given the complexity or nature of the case, the Panel may require further time before being able to reach a decision.
12. **OUTCOME:** If the Panel can reach a decision within a reasonable timescale, they will verbally issue the decision. The decision will be confirmed in writing within 10 working days. If the decision needs further consideration, the appellant will be informed that a decision will be provided in writing within 10 working days. If the matter will take longer to reach a decision the parties will be notified in writing. The Chair is responsible for agreeing the content and signing the outcome letter.

4.5 **Possible Outcomes:**

The Chair of the Appeal Panel will decide:

- To uphold the decision to dismiss
- To reinstate the staff member and substitute the sanction for an alternative that is short of dismissal (formal or final written warning)

This decision is the final stage of the Council's procedure and there is no further right of appeal.

4.6 **Reinstatement**

If a staff member is reinstated on appeal their continuous service is not broken and normal pay will be reinstated from the date of the dismissal.

November 2021