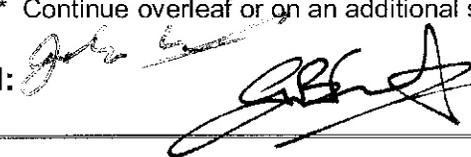


## ED2. EXECUTIVE DECISIONS BY A CABINET MEMBER OR AN OFFICER

<b>A. Report Title:</b> HUMAN RESOURCES POLICY AND PROCEDURAL FRAMEWORK – AMENDMENT TO DISCIPLINARY POLICY	
<b>B. Report Author(s):</b> Julie Harris	<b>Tel:</b> 01375 652347 <b>E-mail:</b> juharris@thurrock.gov.uk
<b>C. Decision Maker:</b> Graham Farrant & Cllr John Kent	
<b>D. Position held:</b> Chief Executive or Leader of the Council	
<b>E. Key decision:</b> YES/NO	<b>F. Delegation ref:</b>
<b>G. Is the decision urgent?</b> YES/NO	
<b>H. If yes, state why.</b> This amendment will impact on how redundancy appeals should be heard so the decision is needed urgently because the Council currently has over 200 people at risk of redundancy who need to be informed of the processes to be followed.	

<b>I. DECISION (strike out whichever does not apply) :</b>	
1. I agree the recommendations (Option 1/ <del>Option 2 – delete as appropriate</del> ) in the attached report for the reasons given in the report; <b>OR</b>	
2. *My decision is: with the slight amendment of a minimum quorum of 2 – 1 member & 1 officer (conduct appeals). Initial review early May 2011 & then after 12 months from implementation.	
*The reason for my decision is: months from implementation.	
* Continue overleaf or on an additional sheet if necessary.	
<b>Signed:</b> 	<b>Date:</b> 04/11/2011

### URGENCY

Democratic Services will arrange for the completion of the following:	
<b>J. I confirm that in my opinion a decision on this matter is urgent and cannot reasonably be delayed:</b>	
<b>Signed:</b>	<b>Date:</b>

*To be completed by Democratic Services*

<b>Date decision received by Dem. Services:</b>	<b>Date decision published:</b>
<b>Implementation date:</b>	

**Report for:** Chief Executive's & Leader's Consideration and Approval under the Scheme of Delegations to Officers.

**HUMAN RESOURCES POLICY AND PROCEDURAL FRAMEWORK – AMENDMENT TO DISCIPLINARY POLICY**

**Report of:** Julie Harris – Senior Human Resources Adviser

**Accountable Head of Service:** Jackie Hinchliffe

**Date:** 8 November 2010

**Purpose of Report:** To seek approval from the Chief Executive and the Leader to amend the Council's Disciplinary Policy in relation to dismissal appeals. This is in line with Chapter 6 Part 1 Scheme of Delegations to Officers The Chief Executive (Paragraph 7, Point F) and The Leader (Chapter 3, Part 4).

**EXECUTIVE SUMMARY**

This report outlines a recommended policy amendment for the Chief Executive and the Leader to consider in relation to the make-up of panels hearing dismissal appeals. The purpose of the report is to enable the Council to have a process that allows dismissal appeals to be heard in a speedier timescale. The current process of having a Members-only panel has incurred significant delays so it is recommended to move to a part-Member, part-Officer panel.

**1. RECOMMENDATIONS:**

- 1.1 That the Chief Executive and Leader endorse the change to the Council's Disciplinary Policy as contained in Appendix A. This is Option 1 and it will amend the dismissal appeal process so that conduct-related appeals are heard by a panel of up to two Members and two Officers with a quorum of two. Dismissals appeals not relating to conduct will be heard by a Senior Officer. This is the recommended option because during consultation both Members and the Trade Unions indicated their agreement to it (with the exception of UNITE who would wish to retain Member involvement with capability appeals and UNISON who would wish to retain Member involvement in all appeals except probation related dismissals).
- 1.2 That the Chief Executive and Leader give approval for all elected Members to be offered training in the disciplinary appeal process.
- 1.3 Alternatively Option 2 could be adopted which would remove Members from the appeal process for heads of service and below altogether. The Disciplinary Policy will be amended to reflect this decision. This would be the preferred Option for the Head of HR, OD and Customer Strategy and Head of Legal Services as it would ensure that appeals are heard in the speediest timeframe possible and it would protect elected Members from

being called to defend their decisions at possible future Employment Tribunals. This has not been listed as the recommended option because it may be resisted by the Trade Unions and some of the Members.

## **2. INTRODUCTIONS AND BACKGROUND:**

2.1 Dismissal Appeal Hearings have historically been heard by a panel of elected Members. This was in line with the constitution and the various Disciplinary Procedures in place throughout the years.

It was suggested by the former interim Chief Executive that the authority should cease member involvement in disciplinary appeal panels. This stemmed from the fact that there had been significant delays in hearing appeals (see 2.2 below).

The delays have been attributed to various factors as outlined below:

- Appeal Hearings need to be attended by various parties; the appellant and their representative, the dismissing officer and supporting Human Resources Adviser and any relevant witnesses. A Human Resources Adviser and Legal Adviser must also be in attendance to support the panel. Human Resources determine a list of suitable dates for all of these parties and then instruct Democratic Services to organise a member panel. Democratic Services have indicated that the main reason for the delays is finding enough available Members to sit on the panel on the specified dates. If Democratic Services cannot secure a member panel for those dates, the whole process needs to be started again with Human Resources needing to go back to all of the relevant parties to agree new dates. Democratic Services then need to consult Members again with the new proposed dates which can be very time consuming.
- An appeal panel currently needs to comprise of up to 5 Members (however usually 3 Members sit on each panel). Prior to 1 April 2010, there was an Appeals Committee of 15 Members who were eligible to hear appeals. This ended up being reduced to 11 Members. Only the Appeal Committee Members could be used on an appeal panel and it was a small pool of people to contact. However the Constitutional Working Group allowed for the terms of reference of the Appeals Committee to be removed from the 2010 Constitution and therefore from 1 April 2010 any Member can be called to be on an appeal panel.
- Dismissal appeals need to be held during the core hours of the working day. This had proved to be a problem for some elected Members who have outside commitments during the daytime and are therefore usually only available for evening meetings.

This limits the pool of Members that Democratic Services can call upon.

- Because previously there was a pool of only 15 Members eligible to hear appeals, there is a lack of Members who have been trained in undertaking appeals. A brief 30-minute refresher training session is given before each appeal commences. However due to the serious implications of the decisions made at appeals, it is felt that Members must be equipped with a more in-depth knowledge of the Disciplinary process and therefore a more detailed training session is required. The lack of training has meant that some Members have quite rightly refused to undertake appeals until they have been trained. This has further limited the number of Members to call on when a panel is required.

2.2 In an average case the length of time between a dismissal and the appeal being heard was 131 days. This is based on 16 of the appeals heard in the last 2 years. It should be noted that a request for one postponement from the employee should not be unreasonably refused provided adequate notice is given (with the exception of the employee being taken ill on the day) and justified reasons are given. However because of the length of time it takes to rearrange dates with the panel, this can lead to inordinate delays. Three case examples are detailed below:

#### Case 1

The employee was dismissed on 4 November 2009 and the appeal was received on 10 November 2009. Democratic Services contacted Appeals Committee on 11 November 2009. The appeal was booked for 25 January 2010 (76 days from receipt of appeal). This date had to be cancelled because the panel was not quorate. The next available date was the 7 April 2010 (148 days from receipt of appeal). This date was cancelled at the employee's request. The next available date was 6 August 2010. The appeal went ahead on this date but it was a total of 269 days from when the appeal had been received.

#### Case 2

The employee was dismissed on 11 September 2009 and the appeal was received on 17 September 2009. Democratic Services contacted Appeals Committee and the nearest date when a panel could be available was 28 January 2010. This was a total of 133 days from when the appeal had been received.

#### Case 3

The Disciplinary Hearing was held on 1 and 2 September 2009. The dismissal outcome letter was sent on 12 October 2009. An appeal was received 21 October 2009 and Democratic Services contacted the Appeals Committee on 16 November 2010. The appeal was booked for 29 January 2010 (100 days from receipt of appeal). This date was

cancelled because the presenting manager and their witness could not attend. The next available date was the 5 March 2010 (135 days from receipt of appeal). This date was cancelled at the employee's request. The next available date was 21 May 2010. The appeal went ahead on this date but it was a total of 212 days from when the appeal had been received.

- 2.3 The significant length of time taken to arrange the appeals leaves the authority open to challenge at any future Employment Tribunals. The ACAS Guidance on Disciplinary and Grievance matters states that appeals should be held without unreasonable delay and ideally at an agreed time and place. It stipulates that appeals for dismissals must be dealt with speedily. The authority is not complying with these requirements, which leaves it at risk.

### 3. ISSUES AND/OR OPTIONS

A summary of the below options and their pros and cons is included as Appendix B.

#### OPTION 1 - RECOMMENDED

- 3.1 Members have previously indicated that they wish to retain their involvement in the appeal process and therefore it is not suggested to remove Members completely although this could be an option if desired. Therefore in order to achieve the desired speedier process, it has been suggested that future panels should be made up of Officers as well as Members and training should be made available to all 49 Members to provide a greater source for attendance and improve availability.
- 3.2 Chapter 10 Paragraph 7.1 of the Constitution states: *'Members will not be involved in disciplinary action against any Officer other than a Chief Executive except where such involvement is necessary for any investigation or inquiry into alleged misconduct, although the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Members in respect of Disciplinary Action.'* Therefore there will be no impact on the Constitution as it is not prescriptive, it is led by the relevant Disciplinary Procedure in place at the time.
- 3.3 Research has been conducted to ascertain the process followed by other local authorities. The findings from the responding local authorities are summarised in the below table and they indicate that the majority of Council's no longer use elected Members in their appeals process.

Authority	Panel Make-Up	Member Involvement?
Uttlesford District Council	Heard by a Director supported by HR	No
Southend-on Sea Borough Council	Up to 6 elected members	Yes
Havering Council	Member of CMT, HR Adviser and an	No

	independent person (usually from Solace)	
Chelmsford Borough Council	Heard by the next most senior manager accompanied by a HR Business Partner	No
Rochford District Council	Heard by the Chief Executive	No
Basildon District Council	Heard by the Head of Service and HR Officer	No
London Borough of Barking and Dagenham	Heard by 3 members and HR Advisor.	Yes
Castle Point Council	Chief Exec, Heads of Service, Legal and Democratic Services also have the powers to dismiss.	No
Brentwood Borough Council	Executive Director	No
Epping Council	Staff appeal panel with 5 elected members.	Yes
Colchester Borough Council	Disciplinary related cases go to Members (panel of 3). Other types of dismissals such as sickness, capability and redundancy are heard by the Head of Service supported by a HR Adviser.	Yes and No

3.4 The recommended option is for panels to comprise of up of two Members and two Officers with a quorum of two. There will therefore be flexibility to proceed without a full panel if there are availability problems so long as there is a minimum of two persons on the panel. The Council's Disciplinary Policy has been amended at Appendix A in order to reflect this recommendation.

3.5 This recommendation would enable appeals to be heard in a speedier timeframe as we would not require as many Members to be available. It is acknowledged that Members have outside commitments, which makes it difficult to attend daytime meetings. Therefore by requiring fewer Members on each panel, it should be easier to find Members with availability.

3.6 Members and Officers will be provided with the necessary training in relation to the format of the appeal and the process to be followed.

3.7 One of the amendments to the Disciplinary Policy is in line with the process adopted at Colchester Borough Council. Elected members are involved in hearing dismissal appeals relating to conduct matters only. Other dismissals such as for redundancy or capability processes will be heard by a senior officer. This will allow for the maximum speed possible and will also prevent the cost of needing to train the Members in policies and procedures other than the Disciplinary Policy. The other policies in question will not need to be amended as they simply make reference to the Disciplinary Policy which will clearly indicate that the appeals should be heard by a senior manager (Point 4 on Appendix A). The exception to this is the Redundancy Policy which currently states at paragraph 5.4: 'If the decision is to continue with the redundancy process, the employee will

have the right of appeal, which will be heard by a members panel in line with the dismissal procedure.’ This will be amended to ‘...which will be heard in line with the dismissal procedure outlined in the Disciplinary Procedure.’ The rationale and benefits of this approach are outlined below:

- Unlike officers, Members are not trained in all HR policies of the Council nor do they deal with staff management issues on a daily basis. It has already been acknowledged that training must be provided on the Disciplinary Procedure so that Members are making informed and correct decisions. It would not be feasible to train Members in all of the different procedures that involve dismissal due to time and cost constraints. Officers are trained and therefore are best placed to hear these appeals.
- The report highlights the difficulties experienced in organising appeals within a timely manner. It is even more crucial for appeals for matters such as redundancy and sickness to be heard in a timely manner. For example redundancy appeals will impact on whether or not an employee can gain other employment with another organisation covered by the Modification Order. Employees must have at least a 4 week gap before starting alternative employment otherwise they could face paying back their redundancy money. A delay in hearing the appeal would complicate matters as it would prevent them knowing whether or not they should be looking for other employment. Delays in sickness related appeals could cause damage to the employee’s health.
- Processes such as sickness and capability involve extensive review periods and the employees have the right to be represented during at least 3 formal meetings. Therefore the employee and representative will have had every opportunity to raise their concerns through a lengthy process. This differs from disciplinary cases where an act of gross misconduct can lead straight to dismissal after investigation in quite a quick timescale.
- Redundancy dismissals will only have been made as a last resort and will have already been subject to consultation and sign off by the Chief Executive and the Leader of the Council. Redeployment would have already been explored. Therefore it would not be deemed necessary to have a Member panel. An independent senior officer is more likely to be able to identify alternatives to the dismissal for example they would be more likely to know if there were opportunities for redeployment that were missed or not fully explored.

3.8 It should be noted that the suggested amendments to the policy are undertaken in partnership with the Trade Unions who are fully consulted. It is not going to be possible for the Human Resources Team to incorporate all of the issues raised by the Trade Unions but wherever possible their views and proposed changes are incorporated. Ultimately, it is the role of Human Resources to ensure that the Council’s interests as the employer are both protected and furthered by the policies/procedures adopted.

3.9 The Chief Executive and the Leader are asked to endorse the amendments to the Disciplinary Policy. A decision is also required on

whether or not all 49 Members should receive training or just a selected core group. It is recommended that all Members be offered the training to allow for maximum flexibility.

- 3.10 A review period of 12 months will be put in place to assess whether the new process has assisted in reducing the delays.

## **OPTION 2**

3.10 An alternative option would be to remove Member's from the process altogether. The majority of other Council's no longer have Member-involvement in appeal processes. Removing Member's altogether would save on the cost of providing Member training and ensure that the process is as speedy as possible. It would also protect Members from potentially being called to attend future Employment Tribunals to defend their decisions. However the Trade Unions and the Members present at the Constitutional Working Groups have both indicated that they would prefer Members to retain their involvement so if this Option is selected, the decision will need to be carefully communicated. The Disciplinary Policy (Appendix A, Authority to Act) will be amended if this Option is selected.

## **OPTION 3**

3.11 The third option would be to leave the process as it is (Member panels required for all types of dismissal appeals with the exception of probationary review hearings). This is the preferred option of UNISON.

## **4. CONSULTATION**

- 4.1 Members were first consulted at the Constitutional Working Group on the 14<sup>th</sup> December 2009 about the proposal to have Officers hear dismissal appeals as opposed to Members. The Head of Legal Services advised the Group that most authorities had ceased to involve Members in appeal panels considering staffing/disciplinary matters. Members formed the view that they would be very reluctant to have no involvement in staffing/disciplinary appeals. It was suggested that a compromise was to have one Member and an officer from a different directorate than the appellant to hear any appeal lodged. Members indicated their agreement to this suggestion.
- 4.2 At the Constitutional Working Group on the 2<sup>nd</sup> March 2010, Members were informed that the Appeals Committee had been removed from the Constitution and that the issue of Members and their involvement in staff appeals would be dealt with under HR procedures. Members understood the difficulties involved in appeals work but felt that it was important for Members to be involved in the final stage of the disciplinary process and with that in mind, some reference to this in the constitution was desirable. It was accepted that Members wanted some involvement of Members towards the conclusion of the disciplinary process but Members did not always have the time to sit on

the Appeals Committees. In addition, it was recognised that, by its very nature, involvement in them was very demanding of Councillors. Councillors suggested that all 49 Members should be called upon to make themselves available to be involved in this process, much like Jury Service.

- 4.3 The recognised Trade Unions have been consulted with in relation to the amendments to the Disciplinary Policy. In addition to this the Policy itself has undergone a previous Equality Impact Assessment which includes demonstrating that a robust consultation process has been undertaken.
- 4.4 During the Trade Union meeting on 10 August 2010, the proposed amendments to the Policy were discussed. They were informed that the appeal panel would consist of up to 2 members and 2 officers however the appeal could go ahead with just officers if no members were available. They were also informed that all 49 Members would be trained to cut out delays in setting up panels. The Trade Unions raised no objections apart from the fact that there should continue to be Member involvement to ensure consistency in the panel. They also requested that a core group of Members be trained in the process as opposed to all 49 Members.
- 4.5 A draft copy of the details in this report has been shared with the Trade Unions on 19 October 2010. Their comments on the report are as follows:
  - GMB indicated that Option 1 is the preferred option. It would allow a fairer hearing for their members.
  - UNITE indicated that Option 1 is the preferred option to retain a split between members and high ranking managers. However there is a concern over capability dismissals, especially with medical dismissals, and UNITE would prefer this to remain a joint project within the framework.
  - UNISON indicated that they would wish to have a Member on each appeal panel with the exception of probation hearings. This would ensure consistency and fair treatment for all dismissed employees. UNISON would be happy to have the success of this change reviewed in 6 months. The Branch Secretary would not agree to removing Members from the process entirely at this stage and would have to discuss that proposal in detail with the GMB and UNITE representative if that is the preferred option for the Chief Executive and Leader.

## **5. CONCLUSION:**

From the consultation, it would appear that all parties would be happy with the compromise of having both Officers and Members sitting on appeal panels. This gives a larger selection pool for the panel and therefore it is recommended that the new Disciplinary Policy be adopted.

**APPENDICES TO THIS REPORT:**

A – Disciplinary Policy Amendment.

B – Option Summary (Pros & Cons)

C – ED2. To be completed to record authorisation.

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## Appendix A – Authority to Act

Only those so authorised may act in the implementation of this Procedure. Notwithstanding “Authority to Act”, the Head of Audit may initiate disciplinary action against any employee with regard to suspected fraud or financial irregularity.

Action Level	Verbal Warning	Written Warning	Final Written Warning	Dismissal
Chief Executive, Monitoring Officer, Section 151 Officer	<b>Recommendation</b> Designated Independent person  <b>Hearing</b> Investigating & Disciplinary Committee <b>Appeal</b> Appeals Committee	<b>Recommendation</b> Designated Independent person  <b>Hearing</b> Investigating & Disciplinary Committee <b>Appeal</b> Appeals Committee	<b>Recommendation</b> Designated Independent person  <b>Hearing</b> Investigating & Disciplinary Committee <b>Appeal</b> Appeals Committee	<b>Recommendation</b> Designated Independent person  <b>Hearing</b> Investigating & Disciplinary Committee make proposal to Council (includes the Appeal stage)
Corporate Directors	<b>Hearing</b> Chief Executive  <b>Appeal</b> Member Panel	<b>Hearing</b> Chief Executive  <b>Appeal</b> Member Panel	<b>Hearing</b> Chief Executive  <b>Appeal</b> Member Panel	<b>Hearing</b> Chief Executive  <b>Appeal</b> Member Panel
Heads of Service	<b>Hearing</b> Director  <b>Appeal</b> Chief Executive	<b>Hearing</b> Director  <b>Appeal</b> Chief Executive	<b>Hearing</b> Director  <b>Appeal</b> Chief Executive	<b>Hearing</b> Director  <b>Appeal</b> Panel of between 2 – 4 Members/ Senior Officers
All other employees	<b>Hearing</b> Manager  <b>Appeal</b> More Senior Manager	<b>Hearing</b> Manager  <b>Appeal</b> More Senior Manager	<b>Hearing</b> Manager  <b>Appeal</b> More Senior Manager	<b>Hearing</b> More Senior Manager with delegated authority for dismissal  <b>Appeal</b> Panel of between 2 – 4 Members/ Senior Officers

- 1) In all cases Hearings / Appeals will be conducted by an employee senior to the employee who is to be disciplined.
- 2) The Member Panel for appeals from Corporate Directors shall comprise of up to 5 Members (Councillors).
- 3) Disciplinary (Conduct) Dismissal Appeals for Heads of Service and all other Employees will be heard by a panel of up to 2 Members and 2 Officers with a quorum of two (there must be at least 1 Member and 1 Officer on each panel).
- 4) Appeals against dismissal for unsuccessful probation period, redundancy, capability, contravention of a statutory duty/restriction, or some other substantial reason will be heard by a Senior Officer. A Panel will not be required.
- 5) A member of the Human Resources Department will advise the person / panel hearing the case / appeal. A legal adviser will support the panel for dismissal appeals.
- 6) The appeal will normally be heard by a manager more senior to the manager who heard the case originally. At a minimum the appeal must be heard by a manager at the same seniority level as the original manager. If the manager who heard the case was a Director then the Chief Executive will hear the appeal or nominate another senior manager. The person / panel hearing the appeal must not have been personally involved in the investigation or disciplinary hearing process.