

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Strategic Director (Transformation)

To

Cabinet

On

17 January 2019

Report prepared by: Liz Farrell, HR Service Manager

Dismissal Appeal Process

Relevant Scrutiny Committees – Policy & Resources Scrutiny Committee
Cabinet Member: Councillor Lamb
Part 1 Public Agenda Item

1. Purpose of Report

To recommend amendments to the Constitution and the Council's employment policies in respect of the dismissal appeal process.

2. Recommendations

2.1 To approve amendments to the Constitution and the Council's employment policies so that appeals against dismissal by employees below Director level will be dealt with by the Chief Executive or a Deputy Chief Executive.

2.2 To approve amendments to the following provisions of the Constitution as set out in **Appendix 1**:

- Terms of Reference of the Appointments & Disciplinary Committee (Part 3, Schedule 2)
- Terms of Reference of Appeals Committees A & B (Part 3, Schedule 2)
- Delegations to Chief Officers (Part 3, Schedule 3)

2.3 To approve amendments to the appeal process within the following Council employment policies as shown in **Appendix 2**:

- Disciplinary & Dismissal Policy
- Redundancy Policy
- Sickness Absence Policy
- Capability Policy

3. Background

- 3.1 The Appointments and Disciplinary Committee deals with appointments and disciplinary action in respect of Chief Officers (i.e. Directors and above) and not by other employees. The relevant legal provisions are incorporated in the Committee's terms of reference and the Officer Employment Procedure Rules in Part 4h of the Constitution.
- 3.2 Appeals Committees A & B deal with appeals by Chief Officers and also appeals by all other employees, but in respect of dismissal decisions only.
- 3.3 The Appeals Committees are advised by a representative of HR Services when dealing with an employee appeal.
- 3.4 For the reasons set out below, it is recommended that the current arrangements for dealing with employee appeals against dismissal are simplified and standardised.
It is recommended that appeals by all employees below Director level against dismissal will be dealt with by the Chief Executive or a Deputy Chief Executive, rather than by Appeals Committee A or B.
The recommended changes to the Constitution and the Council's employment policies to make this change are set out in **Appendices 1 and 2** respectively.
- 3.5 The recommended change will ensure that a consistent and clear process is followed when dealing with employee appeals against dismissal and that regardless of the nature of the matter, all employees below Director level will have the same appeal rights.
- 3.6 Currently the time to set up an Appeals Committee can be lengthy, particularly during election periods. By removing the requirement for appeals to be heard by an Appeals Committee can ensure that the appeal process is dealt with in a quicker and efficient manner.
The current process is time consuming and costly given that 15 hearing packs have to be produced and sent out to Councillors. This results in significant staffing resource costs to produce the packs and organise the appeal hearing.
- 3.7 It is important to note that Employment Tribunals expect organisations to deal with appeals in a reasonable time frame. Where a significant length of time has passed before an organisation has reached a conclusion, the ET could deem that the Council has acted unreasonably and it may lead to potential findings of unfair dismissal, breach of contract and discrimination.
- 3.8 Furthermore it is important to recognise the impact that such formal processes have on employees. Delays in appeals often result in stress, dips in performance, non-attendance at work, or personal injury claims against the Council.
- 3.9 Following the dismissal of an employee, the recruitment process commences and is not put on hold pending the outcome of an appeal. This practice does not contravene any employment law, however ideally the Appeal hearing should have taken place before the recruitment process is complete. This is not possible under the Council's current arrangements due to the protracted nature

of the appeals process. Adopting the recommended amendments would enable the Council to comply with best practice.

- 3.10 The East of England Regional Assembly conducted a short survey with regards to the dismissal appeal process. Out of 20 authorities that responded, 13 authorities no longer used Councillors in hearing employment related appeals including dismissal appeals. One of the remaining 7 authorities confirmed that they were looking to amend the appeal process so Directors hear appeals, and the other authorities had a mixture whereby appeals against ill health or redundancy were not heard by a Councillor panel. Therefore the recommendation is in line with action other local authorities are taking in respect of the appeal process.
- 3.11 It is also important to note that the recommendation will be compliant with employment legislation in that the Chief Executive or a Deputy Chief Executive will hear the appeal against dismissal as an independent person with no prior involvement in the case. The Chief Executive or Deputy Chief Executive will be supported by a representative of HR services.
- 3.12 In 2014 the Appeals Committees ceased to have a role in hearing appeals against Grievance or Dignity at work cases. Whilst the unions raised some initial concerns during the consultation process, the change has not resulted in any employment tribunal claims, or an increase in grievances or appeals being lodged.
- 3.13 In the last two years 5 dismissal appeals were heard by the Appeals Committees.

4. Other Options

To retain the status quo. However this would not address the issues set out in section 3 above.

5. Reasons for Recommendations

To ensure that the Council has an efficient and effective employment appeal process.

6. Corporate Implications

- 6.1 Contribution to the Southend 2050 Road Map
These changes support 'simple and effective governance' which is one of the conditions that have been identified for successful transformation needed to deliver the Southend 2050 ambition.
- 6.2 Financial Implications
Failure to deal with appeals in a timely and proper way can lead to increased claims and associated costs. Preparation for, and servicing of the Appeals Committees is also more costly than appeals heard by the Chief Executive / Deputy Chief Executive.

- 6.3 **Legal Implications**
There is significant and complex employment legislation that has to be adhered to when handling appeals against dismissals. Failure to do so could result in costly litigation claims.
- 6.4 **People Implications**
There is a requirement to have robust policy and procedure to enable the Council to deal effectively with appeals and employee relation issues.
- 6.5 **Consultation**
A 2 week formal consultation with Unison and GMB has been undertaken. GMB have not provided any comments or feedback. Unison have raised concerns regarding the proposed changes to the policy. They have stated that the dismissal appeal process should remain with councillors to ensure neutrality, and fairness. They believe that the current process provides a robust process and the proposed change will be seen by their members as being unfair and the appeal process loaded against them.
- 6.6 **Equalities and Diversity Implications**
None identified. However in order to monitor appeal outcomes and to ensure there are no equality or diversity implications the Appointments and Disciplinary Committee will receive an annual report providing an overview of disciplinary action across the Council including dismissal appeals.
- 6.7 **Risk Assessment**
The risk of continuing with the current appeal process is that the Council will continue to be at risk of challenge in respect of the length of time taken to deal with an appeal process.

7. Appendices

Appendix 1 – Changes to Constitution

Appendix 2 - Changes to Disciplinary & Dismissal Policy, Absence Policy (Appeal Process Section), Capability Policy (Appeal Process Section) and Redundancy Policy (Appeal Process Section).