

**Minutes of the Future Council Scrutiny Committee  
Wednesday, 12<sup>th</sup> October, 2022 at 6.00 pm  
In Committee Room 2, The Council House, Priory Road, Dudley**

**Present:**

Councillor E Lawrence (Chair)

Councillors S Ali, C Barnett, R Collins, T Creed, J Foster, M Howard, I Kettle, A Lees, M Rogers, T Russon and P Sahota.

**Officers:**

K O'Keefe (Chief Executive), J Branch (Assistant Director of People and Inclusion), N Bridger (Senior Manager Human Resources Delivery and Intelligence), K Jesson (Human Resources Delivery Manager - Business Partnering and Intelligence), J Martin (Human Resources Delivery Manager - Employee Relations) and K Taylor (Democratic Services Officer).

**Also in attendance:**

Councillor S Keasey – Cabinet Member for Commercialisation and Human Resources;

G Gibbs – GMB Union Representative.

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**18 Apologies for Absence**

Apologies for absence were received on behalf of Councillors A Davies and P Dobb.

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**19 Appointment of Substitute Members**

It was noted that Councillors M Rogers and R Collins had been appointed as substitute Members for Councillors A Davies and P Dobb, respectively, for this meeting of the Committee only.

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20 **Declarations of Interest**

For transparency purposes, Councillors S Ali, C Barnett, J Foster and P Sahota declared a non-pecuniary interest as current Members of Trade Unions.

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21 **Minutes**

**Resolved**

That the minutes of the meeting held on 7<sup>th</sup> September, 2022 be approved as a correct record and signed.

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22 **Public Forum**

No issues were raised under this agenda item.

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23 **Call-In of Decision Sheet – Changes to the Council’s Disciplinary Policy and Procedure to cease elected Member involvement in Disciplinary Appeals**

A report of the Monitoring Officer was submitted to respond to the call-in of the decision of the Cabinet Member for Commercialisation and Human Resources concerning changes to the Council’s Disciplinary Policy and Procedure to cease elected Member involvement in Disciplinary Appeals. The decision had been called-in at the request of five Members of the Future Council Scrutiny Committee in accordance with the Scrutiny Committee Procedure Rules, as set out in the Council’s Constitution. A copy of the decision sheet relating to this item was circulated, together with the procedure to be followed at the meeting, as outlined by the Chair.

The Chair invited the Cabinet Member for Commercialisation and Human Resources to make representations concerning the decision and in doing so referred to the importance of maintaining a clear demarcation between the role of elected Members and officers. It was emphasised that the proposed change did not diminish the role of Members, but emphasised their decision-making role on strategic policies, whereas Officers were responsible for management and operation in accordance with approved policies and procedures.

It was reported that Members of the Appointments Committee were responsible for the appointment of the Deputy Chief Executive and Directors and recommending to Full Council the appointment of the Chief Executive and designation of statutory officers.

It was noted that all other employment matters were delegated to the Chief Executive in his capacity as Head of Paid Service, and officers in discharging their managerial and operational responsibilities in accordance with Human Resources policies. Many appeals against dismissals, including those with grounds of ill health and performance capability, redundancy, and stage three absence dismissals, had been considered by senior officers for a number of years.

The Cabinet Member for Commercialisation and Human Resources confirmed that appeals heard by Elected Members were in relation to employee dismissals on the grounds of gross or further misconduct only. The proposed amendments would ensure a consistent approach in dealing with employee dismissals across the Council, by bringing the process within the Disciplinary Policy in line with all other dismissal appeal processes used by the Council as the Employer.

The complexity of employee relations cases, in particular those on the grounds of gross misconduct, occupied a significant amount of time and resources. In addition, in recognising the potential challenges to Elected Members, if called to give evidence as a witness on behalf of the Council, in the event of an Employment Tribunal, it further endorsed the need in reviewing the Council's Disciplinary appeal arrangements.

Recent benchmarking investigations identified that a number of Local Authorities in the region had also decided to cease elected Member involvement in employee dismissal appeals.

The Chief Executive was then invited to make his representations, and in doing so emphasised his priority in serving all Councillors and referred to the Scheme of Delegation, set out in the Council's Constitution, outlining the responsibility of the Chief Executive, as Head of Paid Service, in the coordination of appropriate resources and recruitment of employees. Directors and Managers also had delegated authority in dealing with employment matters.

It was noted that statutory officers, including the Head of Paid Service, Monitoring Officer and Section 151 Officer may be suspended by the Appointments Committee whilst an investigation was undertaken into alleged misconduct. In the event of a recommendation of dismissal of those officers was considered an appropriate action, that final decision would be undertaken by full Council only.

The Chief Executive further emphasised that the purpose of the amendment was not to limit the legal rights of employees but to streamline the process and ensure consistency. It was further reiterated that the proposals only related to employee dismissals on the grounds of gross or further misconduct.

The Assistant Director of People and Inclusion was then invited to make her representations and in doing so referred to the increasing complexity and variety of cases that were investigated for alleged gross misconduct including professional breaches in codes of practice and safeguarding and/or criminal matters. In some cases, subject matter experts were appointed to provide specialist advice, particularly when dealing with cases relating to Children and Adult Services due to the requirements associated within professional Codes of Practice and legislative regulations.

It was evident that the increasing level of complexity in such cases was one of the reasons other Local Authorities reviewed their own disciplinary appeal arrangements resulting in the cessation of elected Members in appeals panels.

Members were then given the opportunity to ask questions and make comments and responses were given where appropriate as follows: -

- a) As an Elected Member having previously attended the Appeals Committee, Councillor R Collins acknowledged the complexity of the cases, and referred to her experience. Without the appropriate training or qualifications she considered herself unqualified to make an appropriate decision. She agreed that consistency was needed in this area and that Elected Members should not be involved with employment matters.
- b) Councillor P Sahota expressed concern of the lack of information contained within the Decision Sheet relating to Equality Impact and queried whether an Equality Impact Assessment had been undertaken. He also indicated that the decision sheet did not summarise the background of how the decision was considered and made.

- c) Although Councillor P Sahota acknowledged the Council's intentions in moving forward, as a non-Human Resources person, he had concerns about the proposed cessation of elected Member involvement and the decision-making process that had been undertaken, which he considered undermined the ability to scrutinise this area. He referred to the Equality and Diversity Strategy implemented by the Local Authority that aimed to protect employees, and as Human Resources were supporting the Cabinet Member's decision, it appeared that this was a backward step in providing support to employees in this area.
- d) Councillor P Sahota sought clarification on the measures implemented by neighbouring Local Authorities in protecting and supporting their employees in relation to disciplinary matters.

In responding to comments made, the Chief Executive assured the Committee of his dedication and ethos of ensuring equality, diversity, and inclusion support for employees, and shared examples of measures implemented by the Local Authority including the independent external review by BRAP (Birmingham Race Action Partnership) during 2021 into race equality in employment across the Council. He also emphasised that the purpose of the decision sheet was to streamline the process and referred Members to the equality impact implications, as outlined in page 24 of the report submitted.

The Assistant Director of People and Inclusion gave assurances that the amendment would not withdraw employees right to appeal against dismissal or any formal disciplinary action taken. Reference was made to the Disciplinary Policy and Procedure, which was clear on ensuring that all employees were treated fairly, and she reiterated that the revised process would not cause this to be undermined. It was noted that a summary of the disciplinary procedure outlining the Chairs and Advisors to each disciplinary hearing was circulated to Members prior to the meeting. A review of the existing policy would be undertaken, and Members were advised that discussions had commenced on the monitoring of disciplinary matters.

- e) Councillor P Sahota acknowledged comments made, however, considered that it was the Council's responsibility to ensure that Elected Members received the requisite training as appropriate and stated that this was an opportunity to strengthen the process, empower Members in their ability to make decisions, and provide reassurance to employees.

At this juncture, the Human Resources Delivery Manager - Employee Relations provided an overview of the complexities associated with disciplinary cases over the last two years. In cases where professional breaches in codes of conduct/practice had been made, it was recommended that those considering the appeal should have knowledge of the associated legislation. It was reported that legislative training had not been provided to Elected Members due to the extensive scope of matters that could constitute gross or further misconduct.

- f) In responding to comments made by Councillor S Ali where he considered that there was no evidence to indicate that an Equality Impact Assessment had been carried out during the decision-making process, the Senior Manager Human Resources Delivery and Intelligence assured Members that Equality Impact Assessments were undertaken by Officers and referred to the work with the Equality, Diversity and Inclusion Manager on reviewing wording, accessibility and ensuring that protected characteristics were considered.
- g) Councillor S Ali requested an overview of how the process had worked up until now and sought clarification on the definition of a Key Decision, as it was suggested that financial implications should be considered in view of the potential increase of Employment Tribunals resulting in additional legal costs for the Council.

In responding, the Chief Executive outlined the definition of a Key Decision as described in the Constitution and stated that in view of the qualified Directors and Officers employed in the Council that were considering complex disciplinary cases, evidence would be needed to persuade him that the amendment would increase the number of court cases resulting in expenditure above £250,000 as defined in the Constitution.

- h) Councillor C Barnett sought clarification on the reasons why Elected Members had been involved in employee dismissals on the grounds of gross or further misconduct, given the complex nature of the cases. He also stated that it appeared that Members were present as witnesses only during the decision-making process.

In responding, the Chief Executive confirmed that Elected Members were appointed to the Appeals Committee as decision makers and were responsible for considering each case based on the evidence presented. It was noted that in the case of Employment Tribunals, Elected Members could be invited as witnesses and would be accountable, and potentially cross-examined, on the decision made.

- i) In responding to a question raised by Councillor C Barnett, the Chief Executive confirmed that an Independent Person or Expert would not be employed by the Local Authority for consideration of disciplinary cases.
- j) Councillor J Foster echoed comments made by Councillor C Barnett and queried why the proposals were only considered now given that several legislation changes had been implemented in previous years. It was considered that the decision sheet did not outline any issues that had occurred with the existing process or that there had been any consultation with Elected Members including the Chair of the Appeals Committee. It was reported that had detailed evidence and information been included with the decision sheet, the request for the Scrutiny Call-In may have been avoided.

In responding, the Chief Executive emphasised the importance and priority in maintaining a safe operating environment for Members and reiterated the challenges faced by Members and possible exposure to public media, should they be requested to attend Employment Tribunals as witnesses.

In referring to the lack of consultation, the Assistant Director of People and Inclusion confirmed that she had discussed the proposals with Councillor J Foster and the Chair of the Appeals Committee. In responding, Councillor J Foster considered that all Members should have been consulted and that Members' qualifications and expertise could have been considered for appointments to the Appeals Committee.

- k) Councillor A Lees shared his concern that Elected Members were involved in such complex cases and considered the role of Members as non-executive with responsibility in setting policy and budget setting, with officers accountable to implementing policy and decisions accordingly. He further supported comments made by the Cabinet Member on the need for the demarcation between the role of Elected Members and Officers.
- l) In responding to comments made by Councillor T Russon, the Senior Manager Human Resources Delivery and Intelligence concurred that the protection of Members was a predominant consideration for the Local Authority and referred to the potential impact to individuals and their professional career in the long-term in the event that a recommendation for dismissal of those officers was considered an appropriate action.

- m) In responding to a question raised by Councillor T Creed, the Chief Executive confirmed that the Appeals Committee could either uphold the decision of the Local Authority for dismissal on the grounds of gross or further misconduct, reduce the penalty given or uphold the appellants case, and referred to his experience in chairing disciplinary hearings in his capacity as a Director in his previous employment.
- n) In responding to a question raised by Councillor I Kettle, it was confirmed that eight appeals against dismissal on the grounds of gross or further misconduct had been considered over the last two years by the Appeals Committee. In responding, Councillor I Kettle expressed caution of the complete detachment of Elected Members and suggested that one Elected Member should remain on appeals against dismissal hearings.

The Senior Manager Human Resources Delivery and Intelligence confirmed that in total approximately 150-185 disciplinary investigations were undertaken each year and that the number of Employment Tribunal claims submitted was comparatively small. It was noted that the Audit and Standards Committee was informed of the number of employees that were suspended pending an investigation into an allegation of gross misconduct each year.

- o) Arising from comments made regarding the complex nature of the cases and training for Elected Members, Councillor S Ali referred to Member appointments to the Council's regulatory/quasi-judicial Committees and suggested that the existing practice should be retained with Elected Members receiving appropriate training and advice by Legal Services and Human Resources to assist with decision making.
- p) In considering the benchmarking information contained within the Decision Sheet, Councillor S Ali commented that only three Local Authorities did not involve elected Members in employee appeal hearings and that information on neighbouring authorities such as Sandwell and Walsall had not been included, and therefore considered the evidence to be inconclusive.
- q) The Cabinet Member for Commercialisation and Human Resources confirmed that he had listened to all comments made, however, although dedicated training could be provided to nominated Elected Members, in considering local elections, this would not provide the stability that was required in the long term, which could limit availability for future membership of the Appeals Committee.



- r) It was noted that the average time in considering appeals against dismissals was three months and that employment tribunal claims should be made within three months from the date of the confirmation of termination of employment.
- s) Councillor P Sahota expressed concern in relation to the proposed amendment to the Policy given that there had been no issues previously and queried whether the Local Government Association had issued best practice guidance on disciplinary matters.

In responding, the Assistant Director People and Inclusion reminded Members that the purpose of the review was to ensure consistency throughout the Local Authority and that all employee dismissals were considered by Senior Officers with the exception of dismissals relating to gross or further misconduct. It was further noted that the Council's Disciplinary Policy and Procedure incorporated the guiding principles of the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice and Guide.

At this juncture the Chair invited G Gibbs, GMB Union Representative to make representations on behalf of Trade Unions. Mr Gibbs confirmed that he had attended appeals hearings and that he understood Elected Members' role as considering each appeal based on the evidence presented in order to formulate an informed decision following advice from Legal and Human Resources representatives. It was noted that Legal representatives were no longer attending misconduct and further misconduct or serious misconduct hearings. In concluding, he requested that the Committee consider the impact and perspective of employees by removing their right for their case to be considered by Elected Members.

Councillor R Collins again referred to the potential challenges for Elected Members attending Employment Tribunals as witnesses and being requested to justify the decision made without the requisite training or qualification. It was also considered unreasonable for Elected Members with work commitments to attend Court for a period of time.

In acknowledging comments made, G Gibbs reiterated that it was the perception of staff that Elected Members considered all information presented impartially, individually and were supported by both Legal and Human Resources representatives to enable them to make an informed decision.

The Chief Executive commented positively on the scrutiny process undertaken and referred to the good working relationship between the Local Authority and Trade Union representatives.

Following all questions and contributions, the Chair asked for any final statements before the Committee proceeded to consider the matter.

During deliberations, Councillor S Ali considered that there were disparities in the process undertaken, together with insufficient information and inaccurate statements presented in relation to benchmarking information. He therefore asked that the Scrutiny Committee recommend the Cabinet Member to reconsider the decision, taking into account comments made at the meeting. He considered that there was merit for Elected Members to remain involved with the process with the appropriate training, support and guidance from Legal Services and Human Resources representatives, to give them the ability to make informed and impartial decisions.

### **Resolved**

That the Future Council Scrutiny Committee recommends that no objection be raised to the decision in which case no further action is necessary and that the decision of the Cabinet Member for Commercialisation and Human Resources be implemented with immediate effect.

The meeting ended at 7.45pm

The Members who did not vote in favour of the resolution above reserved their right, following the meeting and with agreement by the Chair, to make a minority report pursuant to the Scrutiny Procedure Rules in the Council's Constitution. The minority report is set out in the Appendix to these minutes.

CHAIR

**Minority Report**

**Changes to the Council's Disciplinary Policy and Procedure to cease elected Member involvement in Disciplinary Appeals**

This minority report is submitted by the following Members of the Future Council Scrutiny Committee who served at the meeting on 12<sup>th</sup> October, 2022.

Cllr J Foster – Shadow Cabinet Member for Human Resources and Member of the Future Council Scrutiny Committee

Cllr C Barnett – Member of the Future Council Scrutiny Committee

Cllr P Sahota – Member of the Future Council Scrutiny Committee

Cllr M Howard – Member of the Future Council Scrutiny Committee

Cllr S Ali – Member of the Future Council Scrutiny Committee

Whilst the Committee decided, by a majority, that no objection be raised to the decision to remove elected Member involvement in Disciplinary Appeals, the above Councillors supported the recommendation to the Cabinet Member to reconsider the decision.

1. In setting out the case for the decision, the Cabinet Member for Commercialisation and Human Resources and officers present stated that employee relations cases are complex, which presents a risk for the authority, especially if the Member has to attend a tribunal. Also, that these cases occupy a significant amount of time for elected Members. The revised arrangements would reduce that risk, Member time and ensure a consistent approach.
2. Examples were also provided of other Authorities which have ended elected Member involvement in employee dismissal appeals.
3. In response, the opposition group asserts that Members on dismissal appeals panels are given training and have access to appropriate technical/legal advice as they are in other quasi-judicial contexts. Though this is a complex area of business, it has been so for the many years that Members have served on the Appeals Committee. The report considered at the Scrutiny Committee presented no evidence to demonstrate exactly what problem needed to be 'fixed' and we heard that few cases have proceeded

to tribunal stage and those that have, were not upheld. It was also established at the Committee that there was no one change in legislation or practise that made the course of action proposed necessary or urgent now. Therefore, the current arrangements appear to be working effectively.

4. The opposition group also considers that the examples given of Authorities who had ended elected Member involvement in dismissal appeals are a selective and not comprehensive sample and provide no analysis of data that could evidence that the decision those authorities have made has reduced the number of cases going to tribunal or reduced the number of cases lost at tribunal.
5. The opposition group is also concerned that no equality impact assessment has been carried out in line with the Council's own policy and how any such assessment has been used in arriving at the decision.
6. There is also a lack of financial information on the implications of the decision, for example, the additional cost of the officer time ie: those hearing appeals.
7. The opposition group does not accept the Council's position that this is not a Key Decision, as it has the potential to affect all wards. Therefore, we are concerned about the lack of consultation with the wider Council membership about the changes.
8. The opposition group is also concerned that in spite of requests for information regarding the views of the Chair of the Appeals Panel at the meeting, no information was forthcoming.
9. Finally, one of the reasons why the process of Members determining appeals has been sustained for so many years is because of the lay perspective Members bring, which can highlight areas for improvement, as well as being independent from any culture or bias that could exist within the organisation that might undermine staff confidence. This was emphasised, particularly by staff representatives at the meeting. Furthermore, one Councillor though ultimately accepting the Cabinet Member's decision, did express caution about the complete detachment of elected Members from the process.
10. In summary, the opposition group remains of the view that there is insufficient information about the process and that this would justify referring the decision back to the Cabinet Member for further

consideration. Examples of where the information is insufficient include a lack of equality information, the views of the wider Council membership, incomplete benchmarking information, lack of financial information and lack of consideration of measures to avoid the risk of Member detachment.

11. It is recognised that this is a minority report and may not change the decision made on 12<sup>th</sup> October, 2022. The opposition group affirms its position of referral back to the Cabinet Member. The opposition group also makes the following recommendations:
  - (a) That the equality impact assessment is properly conducted on this decision and a future Committee hears a report back on the outcome including figures relating to previous cases.
  - (b) That consultation processes for decisions that impact on the wider Council membership and the workforce are reviewed and improved.
  - (c) That work on the benchmarking information is completed and presented to a future committee with proper analysis. Benchmarking activity should continue alongside the implementation of this decision to determine whether the decision has been a success in Dudley and other local authorities.
  - (d) That information is provided on the financial implications of the decision, including officer time devoted to dismissal appeals and any other relevant information.
  - (e) That in future, to drive and sustain improvement in Appeals processes, periodic dip sampling of documentation related to all completed cases is undertaken by Members of the Committee, in camera, with issues arising incorporated into periodic reports to public sessions of the Future Council Scrutiny Committee.

### **Opposition Group Members of the Future Council Scrutiny Committee**