

Decision Sheet

Reference:	CEX/06/2022
Key Decision:	No
Decision Sheet Re:	Changes to the Council's Disciplinary Policy and Procedure to cease elected member involvement in Disciplinary Appeals
Decision Maker:	Councillor Shaun Keasey, Cabinet Member for Commercialisation and Human Resources
Wards affected:	All
Contains exempt information:	No

1. Decision

- To cease the involvement of elected members in the chairing and hearing of dismissal appeal cases, in order to bring the Disciplinary policy and procedures in line with the appeal process used in other Council HR policies
- The Assistant Director for People and Inclusion is authorised to amend the Disciplinary Policy and procedures accordingly.

2. Background

Dudley Council's Disciplinary Policy and Procedure provides the right of appeal to any employee who has been subject to the sanction of dismissal and have had their employment terminated. Currently, appeals against dismissal on the grounds of gross misconduct are considered by the Appeals Committee comprised of Elected Members. Appeals against all other dismissals are heard by senior officers, including misconduct, performance capability, health capability and redundancy.

Many Local Authorities have reviewed their disciplinary appeals arrangements, with many ceasing the involvement of elected members in appeals panels for a number of reasons including the following

- The increasing level of complexity in employee relations cases requiring increased need for elected members to be upskilled to operate effectively in this capacity.
- The potential for a lack of consistency in application of decisions
- Competing demands on Members' time e.g. many elected members being employed full-time resulting in additional demands on their workload.
- Members being called to give evidence if an employee submits an employment tribunal claim. In relation to the issue of elected members being called as a witness at Employment Tribunal, the Chair of the Appeals Panel is required to give evidence on behalf of the Council should the case be the subject of an employment tribunal.

Local benchmarking within the West Midlands region indicates that in most Local Authorities elected members are not involved in employee appeal hearings, as per the summary provided below :

Staffordshire : No appeals are heard by Elected Members.
Coventry : Elected Members hear Gross Misconduct (Dismissals)
Stoke : Only for Chief Officer Dismissals
Birmingham : No appeals are heard by Elected Members
Telford & Wrekin : Director and above only for dismissals.
Wolverhampton : No appeals are heard by Elected Members

The amendment to the Council's Disciplinary policy & procedure will bring it in line with the employee appeal process contained in other HR policies e.g., grievance, performance and

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attendance management, where senior officers have the responsibility for hearing appeals. It will also ensure a consistency of approach and application of our policies.

3. Financial Implications

The changes being made will not have a direct impact on the budget, other than that additional time which will be required for Directors and Heads of service to sit and chair dismissal panels.

4. Legal Implications

The law seeks to ensure that any dismissal which an employer carries out which ends up bringing an employee's contract to an end is done fairly. It's important that an employer uses a fair and reasonable procedure to decide whether to dismiss someone.

Before an employer dismisses an employee, they should:

- believe they have a valid fair reason for dismissing them in accordance with the Employment Rights Act 1996.
- The potential reasons to dismiss someone fairly include conduct, capability, redundancy, a legal reason or some other substantial reason
- follow a full and fair procedure in line with the acas code of practice on disciplinary and follow employment legislation to carry out a fair, independent process.
- Allow the employee the opportunity to appeal

If they do not, an employee could make a claim for unfair dismissal, even if the reason for dismissing them was valid.

Both the reason and procedure an employer follows will be taken into account if an employee claims for unfair dismissal and the case reaches an employment tribunal. The tribunal will decide whether the dismissal was within the "range of reasonable responses" open to the employer.

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5. Equality Impact

An equality impact assessment will be undertaken to ensure that consideration is given alongside the findings of the BRAP report, to

- ensure that the Disciplinary process remains independent
- the changes do not impact on the process, in line with employment legislation
- any changes made to the Disciplinary policy keep the decision making fair and transparent.

6. Risk Management

No material risks have been identified

7. Human Resources/Organisational Development

Benchmarking has been completed based on responses received from 6 local authorities in the region and consideration has been given to the best way of managing any change in relation to the Disciplinary policy. Formal consultation will be required with Trade Unions to explain the amendment to the policy and to allow for formal feedback into the proposals. The changes to the process and amendments to the policy will be communicated out to the workforce.

8. Commercial/Procurement

There are no commercial or procurement implications identified

9. Council Priorities and Projects

Achievement of the key priorities of the council's people strategy is dependent on vital changes to our ways of working and modernising our people processes, policies and practices. The changes that will be introduced to the disciplinary policy and procedure are in line with the current practice of most local authorities.

6. Authorisation

Councillor Shaun Keasey, Cabinet Member for Commercialisation and Human Resources

Signed:

In consultation with:

Kevin O'Keefe, Chief Executive

Signed:

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Decision date: Tuesday, 6 September, 2022

Prepared by: Julie Dunn

Associated documents and images

No documents have been associated with this decision

No images have been associated with this decision