

Appendices



NORTHAMPTON
BOROUGH COUNCIL

Item No.

CABINET REPORT

Report Title

STAFF APPEALS

PUBLIC

AGENDA STATUS:

Cabinet Meeting Date:	11 February 2008
Key Decision:	NO
Listed on Forward Plan:	NO
Within Policy:	NO
Policy Document:	NO
Directorate:	Chief Executive's
Accountable Cabinet Member:	Councillor Brian Hoare
Ward(s)	All

1. Purpose

- 1.1 To review current arrangements in relation to member involvement in staff appeals to establish streamlined and clear appeal processes and to make recommendations for constitutional change to full Council.

2. Recommendations

- 2.1 That Cabinet approves Model 4, which is an Officer only Panel for appeals against dismissal for all officers below Chief Officer and Statutory Officer levels.
- 2.2 That Cabinet recommends the above to Full Council for implementation through relevant constitutional changes.

3. Issues and Choices

3.1 Report Background

- 3.1.1 The present procedure for appeals in staff disciplinary matters was approved by the Council's Personnel Sub-Committee on 26 July 1999.
- 3.1.2 The current process in relation to appeals against dismissal lacks clarity, as the Appeals Panels are not specifically referred to in the Constitution. Whilst there is an Appointment and Appeals Committee in the Constitution, its remit is focused on the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 which deals with the appointments and appeals arising from the most senior officers, including statutory officers.
- 3.1.3 Currently the Council's disciplinary procedures give all employees a right of appeal against formal disciplinary action. Appeals against the less serious disciplinary matters that result in first, second and final warnings are to an officer nominated to hear the Appeal, who in essence will be a more senior officer than the one who imposed the disciplinary sanction. There is an Appendix to the procedure, contained in the employment handbook, which lists the officers who can hear these appeals. This is by reference to the structure as it then was and is, given changes in structures, out of date. The posts equate to operation manager upwards in the present structure
- 3.1.4 Appeals against dismissal are to an Appeals Panel made up of two elected members and a Director, advised by Human Resources.
- 3.1.5 This report is not suggesting any changes to the way appeals would be dealt with in relation to the Head of Paid Service, Chief Officers or the Statutory Officers. Appeals from these individuals will be to the Appointments and Appeals Committee. There are legal and practical reasons why a member only committee should determine such appeals.
- 3.1.6 There are various models that could, and are being used by a number of local authorities, to hear appeals against dismissal. These are considered below.

4. Options

4.1 Model 1 - Appeals Panel Officer/Member - Status Quo

- 4.1.1 This Model would maintain the status quo. There are various problems with this model as mentioned above. Further a number of Members trained to participate in Appeals are Portfolio Holders. This has not been by design but chance. This is unwise for the following reasons. Employment matters are not executive functions under the relevant Functions Order. However, members of the executive are able to sit on such panels but would not be sitting on the Panel as executive members i.e. they would not be *acting* as the executive. There is therefore possibility of role confusion.

- 4.1.2 There is also a further practical problem in that members who participate in appeals could end up having to defend their position in tribunal proceedings. Whilst that is not a problem in itself (if the decision were made properly) there is the practical difficulty of having to sit through potentially long and drawn out proceedings.
- 4.1.3 Given the above it would be legitimate for Cabinet to decide that members of the executive would no longer sit on such panels. A number of local authorities have constitutional provisions that specifically exclude executive members from sitting on Appeals.

If this option were chosen then it would be prudent to:

- Exclude members of the executive from such Panels.
- Increase the Pool of trained members from which members can be drawn.
- Clarify the governance arrangements for the panels and implement this through amendments to the constitution (as this is not a formal committee, but an unconstituted panel the decision maker on the panel would be an officer rather than members, although any decision would be based on consultation with the members on the panel).

4.2 Model 2 - Appeals Committee (Non-Executive Members only)

- 4.2.1 Many Councils use this model. This is a full member committee and it would be run like a normal committee. i.e. the proportionality rules would apply and decisions would need to be made by members (not officers). The Council could constitutionally exclude the executive from sitting on such committees.
- 4.2.2 If this option were chosen, the normal administrative rules of meetings would apply i.e. there would be a need to publish an agenda and papers would need to be available 5 clear days before the meeting (although given the nature of the matters that the Committee would be dealing with a lot of the papers would be confidential).
- 4.2.3 This model does have the benefit of clarity and simplicity in governance terms. There are also further practical advantages in that because appeals need to be heard by more senior managers than the preceding disciplinary issue. Depending on the seniority of the employee concerned one could just run out of senior managers to hear appeals. An appeals committee would resolve this particular problem.

4.3 Model 3 – Appeals Committee (all Members entitled to participate including Portfolio Holders)

- 4.3.1 This Model is almost the same as Model 2 above except, Portfolio Holders will be able to sit on the Committee.
- 4.3.2 This model is not recommended. As stated earlier, in the comments in Model 1, it would not be a good idea for Executive Members to sit on appeals because of practical reasons and because of role confusion.

4.4 Model 4 - Officers Hearing Appeals - Head of Paid service

- 4.4.1 It is possible for the appeals process to be delegated to the Head of Paid Service without member involvement subject to this not applying to Chief Officers and Statutory Officers. The scheme would not require the Head of Paid service to physically conduct the appeal as this could be delegated to another officer or even to an independent person. Of course, the Head of Paid Service's nominee would need to comply with principles of fairness and natural justice and any nominee will be chosen on that basis.
- 4.4.2 There are clear benefits to this model because of its simplicity and clarity. Also, it is likely that Officers would be able to better equipped to deal with the actual appeal and be in a better position to defend their decision in tribunal.

4.5 SUMMARY

4.5.1 Model 1 – Appeal Panels (Status Quo)

Decision Making:	Director
Participants on Panel:	Non-executive and trained Members N.B. Members involved but not in decision making.
Problems:	There is the potential of confusion of the roles of Members in this Model.

4.5.2 Model 2 – Appeals Committee (Non-Executive Members only)

Decision Making:	Member Committee
Participants on Committee:	Officers in an advisory capacity.
Problems:	Potential for this to work but there are administrative problems with servicing such committees and obtaining member representation.

4.5.3 Model 3 – As above but including Executive Members

Decision Making:	Member Committee (Executive not to sit on this Committee)
Problems:	See above.

4.5.4 Model 4 – Head of Paid Service

Decision Making:	Head of Paid Service or nominee
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Participants on Panel:

Specialist advisers (Officers or Specialist),
advising the Head of Paid Service (or his
nominee)

5. Implications (including financial implications)

5.1 Policy

Constitutional changes will be required.

5.2 Resources and Risk

Clarifying the governance arrangements for appeal processes will reduce risk.

5.3 Legal

Covered in the body of the report.

5.4 Equality

None arising directly from this report

5.5 Consultees (Internal and External)

Appropriate Consultations have taken place with Trade Unions through the MTUCM

5.6 How the Proposals deliver Priority Outcomes

Streamlined and efficient appeals processes will assist in staff management in the authority.

5.7 Other Implications

None specifically

5. Background Papers

5.1 FJF Staff Appeals file.

Report Author, Title and Extension

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