

Report No.

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: General Purposes and Licensing Committee
Date: 22 March 2016
Decision Type: Non-Urgent Non-Executive Non-Key
Title: Review of Appeal Processes
Contact Officer: Angela Huggett, Head of HR Strategy and Education
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Chief Officer: Charles Obazuaye, Director Human Resources
Ward: N/A

1. REASON FOR REPORT

- 1.1 As an employer Bromley Council is required by Law to have in place a range of policies and procedures to ensure that employee staffing matters are handled in a fair, reasonable and transparent way. These policies and procedures recognise an employee's statutory rights and afford an opportunity for them to make representation against decisions that directly affect them particularly those decisions which may give rise to the termination of their employment through an appeal process. Although the law requires there to be an opportunity for an employee facing dismissal to be able to make representation it does not prescribe how many opportunities that employee should have nor who should hear such representation, this is for an employer to determine.
- 1.2 The current framework for appeal procedures is inconsistent with other decision making frameworks within the Council. Some appeal processes directly involve members whereas others delegate appeal to Chief Officers and in addition some procedures provide for 3 stage processes providing a further right of appeal. This report sets out the current framework and proposes options for consideration.
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2. RECOMMENDATIONS

- 2.1 **That Members:**
- 2.2 **Note and comment on the report and determine whether they wish Officers to undertake further work in streamlining procedures as set out in this report and detailed in the options below;**
- 2.3 **Option 1 Make no changes to the current arrangements for appeal procedures.**

- 2.4 **Option 2 Retain Member involvement in Appeal Procedures and compress/realign the number of appeal stages to ensure consistency across all procedures.**
- 2.5 **Option 3 Same as Option 2 above but remove the requirement for Members to be involved in Appeals and delegate responsibility to the Head of Paid Service (Chief Executive) or his representative.**
- 2.6 **In the event that either option 2 or 3 above is agreed, authorise Officers to formally consult with Trade Unions and Staff on proposed changes to appeal procedures.**

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: Not Applicable
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: N/A
 5. Source of funding: N/A
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Staff

1. Number of staff (current and additional): All Staff
 2. If from existing staff resources, number of staff hours: N/A.
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1 Although the law requires there to be an opportunity for an employee facing dismissal to be able to make representation it does not prescribe how many opportunities that employee should have nor who should hear such representation, this is for an employer to determine. That said, the key levels to any fair process are as follows:

- Investigation
- Right to be heard/Right to be accompanied/represented
- Independent hearing by a person(s)
- Independent appeal by a person(s) preferably at the same or higher level to the hearing officer above.

These principles have been developed through case law and are also reiterated in the ACAS Code of Practice on Disciplinary and Grievance Procedures.

3.2 An employee also has the ultimate right to progress matters to an employment tribunal if they believe that they have been dismissed or treated unfairly and the Employment Tribunal's judgement would be binding on the Council. However, since 2013 it is a legal requirement for litigants to use the ACAS conciliatory service first before registering their claim with the employment tribunal.

3.3 Bromley Council Position

3.3.1 For key employment matters such as sickness, disciplinary, capability and grievance the Council follows a formal procedure which has been consulted on with the Trade Unions. These procedures include a right of appeal. There are also informal arrangements in place for each of the aforementioned employment processes.

3.3.2 Currently some appeal processes directly involve members whereas others delegate appeal to Chief Officers and in addition some procedures provide for 3 stage processes providing a further right of appeal. This approach is inconsistent with other decision making frameworks within the Council i.e. recruitment below Chief Officer is currently delegated to the Head of Paid Service. It is also inconsistent in the case of dismissal.

The table at Appendix A indicates the current situation within Bromley in relation to employment procedures and the relevant right of appeal.

3.4 Issues for Consideration

3.4.1 There are 2 key issues for consideration:

- Members continuing involvement in Appeal Processes
- Compression/realignment of appeal procedures to provide for one stage of appeal only

3.4.2 In the past the Trade Unions and departmental staff representatives have strongly commented in favour of Member involvement in appeals. It allows them to present their case to people who are independent from management. From Members perspective it allows them to

maintain a degree of scrutiny on Officer actions and keeps them abreast of current employment related issues within the organisation, although this objective can be achieved in another way without Members direct participation in appeal cases. For example, regular reports on employment processes based on robust KPIs can be presented to and scrutinised by the E&R PDS, GP&LC or the Audit Committee.

3.4.3 A survey of other London Borough's has revealed that several do not involve members in all appeal processes although like Bromley they also have various stages of appeal. Appendix B details the findings of the survey in relation to key employment procedures.

3.4.4 The Council's REAL leadership values promote empowerment for managers. The current model for appeal processes is cumbersome and does not fully support this. One potential way forward could be to delegate all appeals to the Head of Paid Service who would then be able to determine appeal arrangements maximising the use of staffing resources available at that time.

3.4.5 Whilst there is no legal requirement to make any changes to the Council's appeal procedures there is a strong argument to align/compress appeal processes. In Law a dismissal is a dismissal and as such the approach to appeal processes should be consistent i.e. at the moment our sickness procedure provides for one stage of appeal whilst our disciplinary procedure provides for 2 appeal stages.

3.4.6 An average appeal is normally heard in a day however some cases are particularly complex and an appeal can last for longer than this. Officers try to resolve matters at an earlier stage and therefore member appeals particularly are a pre cursor to an employee enforcing their statutory right to progress a case to Employment Tribunal. In addition to the appeal hearing itself there is also significant preparation required. It is difficult to quantify the exact cost of an appeal but an average estimated cost taking into account 1 day for the hearing, all the staff involved and 1 day preparation would be £ 2,276. (This figure is conservative and does not include the cost of the employee and their representative attending the hearing nor the member time and obvious opportunity costs for both Officers and Members).

3.4.7 Attached at Appendix B is a summary of appeals held in the past 3 years and the resultant outcome. The number and complexity of HR issues in tougher times is likely to impact on the level of grievances, capability and disciplinary interventions including appeals. Although the current low level of Member appeals is a good testimony: it means that officer decisions are sound and reasonable and therefore not routinely appealed by affected staff. That said the number of cases and grievances in particular is likely to increase in the current unprecedented financial climate. For example we have had more grievances in the last 12 months than in the last few years combined.

3.4.8 In the event that Members determine that they wish to have just one stage of appeal for all processes and for that appeal to be heard by members then consideration would need to be given to the best way of achieving this i.e. perhaps a pool of members with regular availability that could be drawn upon. There may also be a need to provide training for those not familiar with employment processes. The appeal stage is usually the final chance for the employer to address and correct any defects at the previous stage. So it is very important that officers or/and Members involved in appeal cases receive some training and regular updates on

significant employment law developments and case laws. The appeal process at Officer and Member level is always supported by an experienced HR professional usually the Director of HR or his immediate direct reports. To date no Member appeal outcome has been overturned by an employment tribunal. If required the HR officer will give evidence at the employment tribunal on behalf of the Member Appeal Panel unless there is a specific Witness Order (Subpoena) issued against a Member. To date no Member has been required to appear before the Employment Tribunal.

3.4.9 It is important to note that our current procedures are made reference to in our contracts of employment and were consulted upon with the Trade Unions. Any changes would therefore need to progress through a formal consultative process in order to eliminate or/and mitigate any industrial relations or/and legal risks albeit minimal.

4. CONCLUSION

4.1 The current framework for appeal procedures within the Council is inconsistent with other decision making frameworks. Streamlining of appeal procedures will allow more flexibility in the handling of appeals maximising the use of resources whilst still ensuring that statutory requirements are met. This would be consistent with the Council’s REAL leadership values and good employment practice.

5. POLICY IMPLICATIONS

5.1 The realignment of appeal processes and empowerment of managers is consistent with Building a Better Bromley and the Council’s Core Operating Principles.

6. FINANCIAL IMPLICATIONS

6.1 There no specific cost issues arising from the proposals in this report. The compression/realignment of appeal processes would reduce the number of appeal levels thereby saving time and resources which ultimately may translate into a cost saving. Details of any potential savings will be included in any subsequent report.

7. LEGAL IMPLICATIONS

7.1 The Law does not require that local authorities include an appeal to members as part of their disciplinary/grievance procedures and as long as there is compliance with the principles set out in paragraph 3.1.

8. PERSONNEL IMPLICATIONS

8.1 As set out in this report.

Non-Applicable Sections:	N/A
Background Documents: (Access via Contact Officer)	N/A

Appendix A

Procedure	1st Stage	2nd Stage	3rd Stage
Sickness	Chief Officer hearing dismissal hearing (can be delegated to AD level)	Appeal to Members	
Disciplinary	Chief Officer hearing dismissal hearing (can be delegated to AD level)	CEX appeal hearing (can be delegated to Chief Officer)	Appeal to Members
Redundancy	Director of HR dismissal	Appeal to CEX (can be delegated to Chief Officer)	
Grievance	Line Manager hearing (unless against line manager, then goes straight to second stage)	Chief Officer hearing (can be delegated to AD)	Appeal to Members
Probation	2nd or 3rd tier Manager hearing	Appeal to Chief Officer (can be delegated to AD, as long as AD did not hear/ make original decision.	

Appendix B

Comparison with other boroughs

Procedure	Member Appeal Yes	Member Appeal No	Bromley Position Member Appeal
Sickness	9	22	Yes – Ill Health Dismissals
Disciplinary	14	17	Yes
Redundancy/non- renewal of Fixed Term Contracts	2	29	No
Grievance	4	27	Yes
Probation			
Capability	11	20	Yes
Job Evaluation	1	30	Yes but via the Grievance Route