

# Brighton & Hove City Council

## Strategy Finance and City Re-generation Committee

## Agenda Item 133

**Subject:** Dismissal and Disputes Appeals Procedures

**Date of meeting:** 25 April 2024

**Report of:** Abraham Ghebre-Ghiorghis

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**Ward(s) affected:** All

**For general release**

### 1. Purpose of the report and policy context

- 1.1 On 25<sup>th</sup> January 2024, Strategy, Finance and City Regeneration (SFCR) Committee gave delegated authority to officers to make the changes necessary to cease involvement of members in employment matters for all staff (except some issues related specifically to Chief Officers). This decision followed the publication of a [KC report](#) into serious allegations of behaviour and activities within the Council's waste service. The KC report outlined concerns about the effectiveness of the council's policies to address poor behaviour, and as a result included a recommendation to remove member Personnel Appeal Panels.
- 1.2 Notice has been given for the termination of Personnel Appeal Panels on 2<sup>nd</sup> August 2024, and this report provides the detail of changes to the council's dismissal and dispute procedures to implement a new dismissal appeal process that is both robust and fair, and in line with best practice and [ACAS guidance](#) (Appendix 1).

### 2. Recommendations

- 2.1 That Committee notes ongoing work that continues to improve the employment offer to staff at the council.
- 2.2 That Committee agrees to the proposed changes to the dismissal appeal process outlined in paragraph 3.10 below.
- 2.3 That Committee agrees to the proposed changes to the dispute procedure outlined in paragraph 3.11 below.
- 2.4 That Committee delegates authority to make the changes to individual policies to the Director of Human Resources and Organisational Development, to ensure the appeal procedure in all dismissal and dispute procedures are in line with the changes proposed in 3.10 - 3.11 below.

### **3. Context and background information**

- 3.1 As one of the largest employers in Brighton & Hove, we know our hard-working staff are at the heart of everything the council delivers. In keeping with our People Promise to staff our ambition is to have an exemplar framework for all employment matters that enables our excellent staff to do the best for the city we serve. This policy framework includes how we support, motivate and reward staff as well as a suite of best practice employment policies that ensures the most effective processes to resolve any issues that may arise.
- 3.2 In October 2024, SFCR Committee approved the Council's people strategy and a programme of work to ensure that the council can attract the best talent to serve the city, and further develop our offer for staff as an employer of choice that values the contribution and excellent service performed by staff across the Council.
- 3.3 Since October, significant work has been undertaken to continue the delivery of the People Strategy, including:
- Refreshing and updating policies for fixed term and temporary workers to increase employment stability for non-permanent staff.
  - Refreshing our approach to industrial relations, building on the ambition to work in partnership with our Trade Unions, and to involve colleagues in discussions about the strategic direction of the council.
  - Implementation of the 24/25 budget proposals, with full consultation and consideration of ideas from TU's and staff and by managing change processes to maximise redeployment.
  - Refreshing our Fair and Inclusive Action plan and implementing new approaches to taking positive action in recruitment to further drive forward our aspiration to be a council that fully reflects the communities we serve.
  - Launching our new diverse future leaders programme, supporting colleagues from minoritised backgrounds to progress into more senior positions.
  - Acting on the 2023 staff survey results and implementing an organisational redesign to improve collaboration and teamwork across the council.
  - Reviewing our ways of working to support colleagues in working together face to face, and ensuring work arrangements best serve the needs of our customers.
  - Re-launching our wellbeing offer, working in partnership with stakeholders to launch several initiatives, including workplace health champions.
  - Revising our exit interview questionnaire to gather information about what it is like to work at the council and putting in place plans to act on the information gathered.
  - Continuing to support the development of our staff forums, and using the insight provided to tackle issues of discrimination, and to continue our work to become a fair and inclusive employer.
  - A review of our Bullying and Harassment policy, and a decision to implement an anonymous reporting tool to support those employees who

currently may feel unable to report issues of bullying, harassment or discrimination.

- 3.4 In addition to the above, work has been underway to ensure our dispute and dismissal appeal procedures are effective and support the provision of robust policies that operate in line with best practice and ACAS guidelines. The changes proposed to our dismissal procedures will ensure behaviours and other disciplinary matters can be effectively addressed and that we maintain the highest standards as a fair and inclusive employer, with compassion, kindness, dignity, and respect shown to and between all staff.
- 3.5 Currently all dismissal and dispute appeals are heard by elected members at a Personnel Appeal Panel (a sub-committee of SRCR Committee). Personnel Appeal Panels are made up of 3 elected members and have been in place since the formation of Brighton & Hove City Council in 1998. The panels hear all appeals against dismissal, and the second stage of collective disputes registered by any recognised Trade Union. A recent review of appeal panels in other local authorities demonstrated that many have removed members from involvement in formal employment procedures.
- 3.6 The removal of elected members from decision making in the disciplinary and dispute procedure provides for greater clarity of roles between members and officers of the council. It is the role of members to set the strategic direction and policy framework for the council, and this will include ensuring the right policy framework is in place to manage employment issues. Any changes to the main employment procedures are approved by the SFCR Committee.
- 3.7 The Head of Paid service is a statutory role and is responsible for ensuring the council's functions are properly coordinated. This includes ensuring the right staff are in place, how staff are organised, led, managed, and developed. The involvement of members in disciplinary and dispute processes (aside from specific statutory responsibilities related to some chief officers) blurs the clarity of responsibilities derived from respective roles.
- 3.8 Following the recommendation of committee on 25<sup>th</sup> January 2024, consultation has taken place with the recognised Trade Unions (see section 4 below), and the following changes are now proposed for committee approval.
- 3.9 It is proposed that changes, in line with the process outlined in 3.10 are made to consider any dismissal (whether in relation to conduct, capability, ill-health, redundancy or some other substantial reason) and that appropriate changes in line with para 3.11 are made to consider stage 2 dispute hearings. Changes in line with the wording below will be made to the:
  - Disciplinary Procedure
  - Attendance Management Policy and Procedure
  - Capability Procedure
  - Policy for Handling Redundancy
  - Disputes Procedure

## **Dismissal Appeals**

3.10 Appeals against dismissals will be heard in accordance with the format attached at appendix 2, and by a hearing appeal manager who:

- will be a Corporate Director or Assistant Director,
- was not involved in the original dismissal decision,
- is senior to the manager who made the dismissal decision,
- is supported and advised at the hearing by a senior member of the HR team,
- is provided with appropriate legal advice,
- is from a different council directorate to the dismissing manager, and
- has been appropriately trained to hear such cases.

## **Stage 2 Dispute Hearings**

3.11 Stage 2 dispute hearings will be heard in accordance with the format attached at appendix 3, and by a hearing appeal manager who:

- will be a Corporate Director or Assistant Director,
- was not involved in the stage one dispute,
- is the same level or senior to the manager who made the stage one decision,
- is supported and advised at the hearing by a senior member of the HR team,
- is provided with appropriate legal advice,
- is from a different council directorate to the stage one manager, and
- has been appropriately trained to hear such cases.

## **4. Consultation and consideration of alternative options**

4.1 Since the publication of the KC report in October 2023, consultation has taken place with our recognised Trade Unions both in meetings with HR, and with members at Joint Staff Consultation Forum. They have consistently requested the retention of member appeal panels as it is felt that there is a level of independence in retaining the panels, and that it will be a detriment to employees for these panels to be removed. These discussions have been constructive and useful, and several changes have been made to the proposals in response to Trade Union comments, including:

- It is agreed that appeals will only be heard by Assistant Directors or Corporate Directors (previously proposed to include Heads of Service).
- It is agreed that appeals will only be heard by a leader from outside the area where the original dispute or dismissal occurred.
- It is agreed that all hearing managers will be appropriately trained, and decisions will have oversight from legal services as needed.
- It is agreed that a review will be carried out by August 2025 to consider how the processes are functioning, and any changes that may be required.

- 4.2 Research was carried out into appeals processes in place at other local authorities. Whilst some local authorities continue to use members for appeals, the majority in the survey of our neighbouring authorities and other unitary and London local authorities shows the majority (60%) have ceased the practice of member appeal panels.
- 4.3 For those not using members there are different models operating, with many councils' using a similar model to the one being proposed in this report ensuring that the final stage of dismissal and dispute decisions are made by senior leaders, who have been fully trained to manage appeals fairly, robustly and in line with the expectations laid out in employment law.
- 4.4 Consideration has been given to the involvement of an independent person (i.e. someone not employed by the council). Having carefully analysed the potential for this option, it is felt that senior leaders employed outside the relevant service, will have the appropriate objectivity to hear cases, along with an understanding of the council's policies, procedures and expectations around performance and behaviours. The provision of HR and employment law advice will ensure that appropriate consideration is taken of legal matters, as well as ensuring the consistent and fair application of policies and procedures across the council. The council will also seek to use mediation where possible to resolve employment situations, and if necessary independent mediation will be sought.
- 4.5 With regard to disputes, it is open to the council to seek independent support, such as from ACAS or other independent mediation, as necessary.
- 4.6 The ACAS Code of Conduct states that an appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case. It is therefore felt that the proposed arrangements are in line with best practice and statutory guidance.
- 4.7 In addition, managers who currently hear appeals in various procedures are able to do so independently, and with an objective assessment of the evidence presented, with decisions not being upheld where it is felt an alternative decision is required.

## **5. Conclusion**

- 5.1 Following the decision to cease operating personnel appeal panels it is necessary to replace the appeals process in relevant procedures and process before 2 August 2024.
- 5.2 It is considered that the proposals set out in this report are an appropriate alternative to personnel appeal panels.
- 5.3 A review of arrangements will take place by August 2025.

## **6. Financial implications**

- 6.1 There are no financial implications arising from the recommendations of this report. All proposed changes to procedures will be met from existing budgets.

Name of finance officer consulted: James Hengeveld

Date consulted: 16/04/2024

## **7. Legal implications**

- 7.1 The report sets out how appeals against dismissal will be heard. Specific legal advice in relation to each case will be available as required.

- 7.2 There must be full compliance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the Code). The Code provides practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace, including the appeal process. Failure to adhere to the Code will not make the Council or any of its officers liable to proceedings, however employment tribunals will take the Code into account when considering relevant cases. Tribunals currently are able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

- 7.3 The council as a public authority is under a legal duty to ensure compliance with the Public Sector Equality Duty in its adoption of and adherence to the proposed dismissal appeal process:

As part of the Public Sector Equality Duty under the Equality Act 2010, the council must seek to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

- 7.4 To ensure consistency and adherence to the Equality Act 2010 consideration of seeking legal advice before matters are referred to the hearing appeal hearing manager should be obtained.

Name of lawyer consulted: Carol Haynes Date consulted: 16/04/24

## **8. Equalities implications**

- 8.1 An Equalities Impact Assessment will be carried out on the current procedures before 2<sup>nd</sup> August 24. The information from the EIA will be used to inform how employees and managers are supported throughout any employment processes.

- 8.2 Arrangements are in place to ensure that adjustments are made to support employees with disabilities with meeting arrangements and different approaches are used as needed to remove barriers.

## **Supporting Documentation**

### **1. Appendices**

- 1.1 ACAS Guide on Appeals
- 1.2 Format of an appeal hearing
- 1.3 Format of a disputes Stage 2 hearing

