

Member Participation in Employee Discipline Procedure

Report of the Chief Fire Officer

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1 Purpose of Report

This report reminds Members of the current process for considering appeals from staff against disciplinary sanctions awarded at Stage 3 of the Disciplinary Procedure (usually dismissal) and requests Members to decide whether or not they wish to retain their involvement in the process. To assist in this consideration information is provided about unavoidable delays recently incurred as a result of difficulties in convening an appeal meeting and about policy conventions across the West Midlands (WM) Region.

2 Recommendations

That Members consider whether to retain their involvement in hearing appeals against sanctions awarded at Stage 3 of the Disciplinary Procedure in light of current practice across the WM Region and potential delays resulting from the current process and decide either:

a) To retain Member involvement

OR

b) To delegate responsibility to the Chief Fire Officer

3 Background

SFRS current Disciplinary policy was introduced in 2005 and based on the ACAS code of practice following consultation with representative bodies, Policy Group and approval by Members.

A new Code of practice was introduced by ACAS in April 2009 and the HR Manager is currently working on a revised policy to reflect this and issues identified as the original policy bedded in. In disciplinary processes it is important to deal with all matters without unreasonable delay. The revised policy is being developed in discussion with other FRS across the WM Region and one of the areas for discussion is the level at which Appeals against dismissal are heard. In all other Services across the region, with the exception of Warwickshire which is part of the County Council, appeals are heard by Senior Officers within FRSs, normally the Chief Fire Officer.

In July 2005 a paper was taken to the then Personnel Committee asking Members to consider their involvement in the Disciplinary Procedure in light of existing arrangements and new national guidance, and decide whether Members or Principal Officers should be responsible for hearing appeals against decisions taken at formal stage three of the revised Disciplinary Procedure. Members were advised that generally Fire and Rescue Authorities were moving away from Member involvement in the disciplinary process, but not all had done so. Members agreed that it was important to consider what was best for this Authority and they felt that Member involvement should be retained. With all Members in agreement it was resolved that:

- a) Members should be responsible for hearing appeals against decisions taken at formal stage three of the revised Disciplinary Procedure;
- b) The Disciplinary Appeals Tribunal should be responsible for hearing the appeals; and
- c) Training for Members should be undertaken as and when required, prior to any appeals being heard.

The representative bodies position in July 2005 on this matter was that they wished such appeals to be heard by Members of the Fire Authority, as would have been the case in the past.

4 Proposal and rationale

Within SFRS and under the current policy, appeals against stage 3 disciplinarys i.e. usually dismissal, are heard by Members sitting on the Disciplinary Appeals tribunal.

This policy has recently caused officers some concern in relation to dealing with matters without incurring considerable delay.

Whilst the Disciplinary Appeals Tribunal has not met since 2006, we currently have a number of cases awaiting a hearing and in the worst case we have experienced delay of almost 5 months before a hearing could be successfully convened. This has been a result of firstly the May elections coinciding with an issue arising, meaning that the then current membership was dissolved and that new membership could not be agreed until the full Fire Authority meeting on 3 July 2009 and secondly that the new group then had to be trained and convened. Unfortunately although we were able to schedule a meeting in Members diaries in late July, not all other necessary parties could make the date and then the holiday season led to further delay before being able to identify further dates in September which have still not been confirmed by other parties at the time of writing.

As outlined in Paper 11, Officers therefore propose that HR Committee consider dissolving the Disciplinary Appeals Tribunal and delegating appeals against sanction at stage 3 of the disciplinary procedure to the Chief Fire Officer. There is no doubt that if such a change were made to the policy a similar delay in future would be extremely unlikely.

5 Employee consultation

If such a change were agreed it would then be incorporated into the revision of the policy which is currently underway. The revised policy would then be consulted with the representative bodies in the usual way.

However, in drafting this paper this proposal has been discussed informally with the representative bodies. It is important at this stage to note that given that we have cases that have already be subject to unavoidable delay we have also had informal complaints from or the individuals concerned who are members of more than one of the representative bodies that we recognise.

The current view of the representative bodies, whilst recognising the concerns of those currently affected, is that their position is unchanged to that of 2005. They wish to retain the option for their members to appeal to a committee of Members of the Fire Authority should they wish to do so in cases of dismissal. They also suggested that for other sanctions (not including dismissal) we should consider introducing the ability for appeal to be heard by a Brigade Manager from another FRS and this is something Officers will consider incorporating into the policy review.

6 Financial Implications

There are no direct financial implications arising from this report.

7 Legal Comment

There is no legal requirement for Member involvement in the Employee Discipline Procedure. Employment tribunals are legally required to take the Acas Code of Practice into account when considering relevant cases and the law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues and any appeal should be heard by someone senior to the person who took the initial disciplinary decision.

8 Equality Impact Assessment

An Equality Impact Assessment has not been carried out at this stage, however once the review is complete, the new policy will require an Equality Impact Assessment.

9 Appendices

There are no appendices attached to this report.

10 Background Papers

- Personnel Committee Paper July 2005

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial		Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*