

**OFFICE OF THE POLICE AND CRIME COMMISSIONER
FOR HUMBERSIDE
DECISION RECORD**

Decision Record Number: **7/2013**

Title: **Support staff appeals against dismissal**

Executive Summary:

There is a need to establish a mechanism to hear appeals by staff, whether they be under the direction and control of the Chief Executive or the Chief Constable. The arrangements under the Police Authority were found to be fit for purpose and can easily be replicated by using the Chief Executive, Independent Personnel Adviser and member(s) of the Joint Independent Audit panel to form a panel to hear appeals.

Commissioner Comments:

The Commissioner expressed his support for the proposals but indicated that he wanted the trade unions to be consulted prior to him signing the Decision Record.

The Trade Unions were consulted and notified their agreement of the proposed appeals procedure on 1 May 2013.

Decision:

That the proposal to establish an appeals panel consisting of three members, to operate in accordance with the terms of reference and procedure attached to this paper be approved.

Background Report: Open

Police and Crime Commissioner for Humberside

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with my code of conduct.

Any such interests are recorded below.

The above decision has my approval.

Signature

Matthew Grove

Date 10.05.13

**POLICE AND CRIME COMMISSIONER
FOR HUMBERSIDE**

DECISION RECORD: SUPPORTING REPORT FOR DECISION

Title: Support staff appeal against dismissal

Date: 22 February 2013

1. Purpose

1.1 To consider the proposal for a panel to hear appeals on your behalf, in certain circumstances.

2. Issue:

2.1 The Police Authority always had a committee to hear appeals in relation to a number of human resource issues, such as dismissal. Following your direction at the last submissions meeting, you are now asked to approve the arrangements for such a panel to operate on your behalf.

3. Recommendations:

3.1 That you approve the proposal to establish an appeals panel consisting of three members, to operate in accordance with the terms of reference and procedure attached to this paper.

4. Background:

4.1 Under ACAS guidelines all staff should have the right of appeal in certain circumstances, including dismissal.

4.2 Following your direction at last week's submission meeting, you agreed that for police staff that are under the direction and control of the Chief Constable, their right of appeal against dismissal would be determined by a panel from the Office of Police and Crime Commissioner.

4.3 For those staff under my direction and control, they also need a right of appeal under the grievance, discipline, capability or re-grading process. Prior to your election this was through an appeals committee, which was proven to be fit for purpose, the details of which can be found at appendix 1.

4.4 It is proposed that your appeals panel would consist of three people who would normally be your Chief Executive, the independent personnel adviser and a member of the Joint Independent Audit Committee.

4.5 However, where the Chief Executive is conflicted in a particular circumstance e.g. the decision maker, it is proposed that either you or the Chair of the joint Independent Audit panel would be the replacement.

4.6 It is normal practice that in particularly complicated cases a legal adviser may also be required to support the panel.

4.7 The terms of reference and procedure for the appeals panel are attached at appendix 2.

5. Risks/Implications:

5.1 It is essential that an appeals mechanism exists. For police support staff, it could operate under the Chief Constable. However, you have already determined that for dismissals it will remain within your Office.

5.2 You do have the option of constituting the panel differently to that proposed. You could take an active part on the panel, you could exclusively use members of the audit committee or you could use a panel from another local authority.

5.3 However, on balance having due regard to the role of the panel and the relevant skills and experience of those who sit on it, it is suggested that the proposed membership is eminently sensible and appropriate.

6. Financial Comments:

6.1 This paper has minimal financial implications.

7. Legal Comments:

7.1 The proposal is made having considered the legal position surrounding employment relations issues.

8. Equality Comments:

8.1 There are no equality issues in the context of this report.

9. Next steps

9.1 Once you have determined the make up of the appeals panel, I will consult with the staff associations.

10. Background/Supporting Papers:

Kevin Sharp
Chief Executive
Office of Police & Crime Commissioner

Humberside Police Authority

Agenda Item 9

Human Resources Committee

Report of the Chief Executive
and Independent Personnel
Advisor

21 April 2009

EMPLOYMENT ISSUES - POLICE AUTHORITY SECRETARIAT

INTRODUCTION

1. The purpose of the report is to formalise the role and responsibilities of the Police Authority and the Chief Executive in respect of grievances, discipline, capability and re-grading for staff within the Secretariat. Furthermore it seeks to formalise the role of the Police Authority in respect of the Chief Executive.

BACKGROUND

2. There are a number of reasons why it is necessary to formalise and reaffirm the roles and responsibilities:
to enable the Authority to discharge its duty under Section 15 of the Police Act 1996, staff within the secretariat are under the direction and control of the Chief Executive and therefore are employed directly by the Police Authority, in the absence of Police Authority specific policies and practices, secretariat staff default to Force Practice Directions. Due to the proposed amendments under the Force RADAW procedure, it would no longer be appropriate for members of the secretariat to be subject to that policy and therefore a Police Authority based policy and practice is required, the contract of employment for the Chief Executive outlines broad processes for employment issues. However, they have never been formally adopted, revised ACAS best practice guidelines on disciplinary and grievance procedures became effective from the 6th April 2009.

GRIEVANCE PROCEDURE

3. It is proposed for staff within the Secretariat (excluding the Chief Executive) that there will be a 3 stage process:
1st stage. The member of staff should raise any grievance with their immediate manager, on an informal basis.
2nd stage. If dissatisfied at stage 1, the member of staff will formally meet with the Chief Executive who will decide on the merit of the grievance and decide on what action (if any) is to be taken.
3rd stage. If the staff member remains dissatisfied, they would appeal to the Appeals Sub Committee comprising of members of the Human Resources Committee.

4. This is currently the appeal process that would apply.
5. In respect of the Chief Executive the 3 stage procedure would be:
 - 1st stage.** Chief Executive would hold informal discussions with Chair of the Police Authority, who would seek external expert support as appropriate,
 - 2nd stage.** If dissatisfied at stage 1 the Chief Executive would formalise the grievance, which would then be considered by the Human Resources Committee (excluding the Chair of the Authority).
 - 3rd stage.** If still dissatisfied at stage 2 the Chief Executive would appeal to the full Police Authority (excluding members who have had previous involvement).
6. The process at paragraph 5 above has not been formally reflected in standing orders/delegation of the Police Authority.

DISCIPLINARY MATTERS

7. It is proposed that for staff (excluding the Chief Executive) the process would be:

The Chief Executive having followed ACAS guidelines and best practice would, where necessary, pre cautionary suspend, ensure a full investigation, hold formal meetings, ensure rights of representation, issue warnings and dismiss.

A member of staff may then appeal against any warnings or dismissal to the Appeals Sub Committee comprising of members of the Human Resources Committee.
8. This is currently the appeal process that would apply.
9. In respect of the Chief Executive the process would be:

The Chair of the Police Authority would have the authority to suspend the Chief Executive after seeking external expert support as appropriate.

The Chair of the Authority would ensure that all disciplinary matters concerning the Chief Executive would be fully investigated, subject to formal meetings/hearings and he/she would have the right of representation. The decision to issue formal warnings and to dismiss the Chief Executive would specifically rest with the Human Resources Committee, which may use external expert support during the process.

An appeal against a warning or dismissal would be held by members of the Police Authority (excluding members who have had previous involvement) seeking expert external advice where appropriate.
10. The process at paragraph 9 has not been formally reflected in standing orders/delegation of the Police Authority.

CAPABILITY (INCLUDING SICKNESS) MATTERS.

11. It is proposed that for staff within the Secretariat (excluding the Chief Executive) the process would be:
The Chief Executive, having followed ACAS guidelines and best practice, ensuring staff were aware of the requirement for performance improvements within set reasonable time scales, could ultimately dismiss on the grounds of capability, seeking expert external advice where appropriate.
A member of staff could appeal against dismissal to the Appeals Sub Committee comprising of members of the Human Resources Committee.
12. This is currently the appeal process that would apply.
13. In respect of the Chief Executive the process would be:
The Chair of the Police Authority would identify performance/capability improvements to the Chief Executive with set periods for improvement, seeking expert external advice where appropriate,
If serious performance and capability issues continued, the matter would be considered by the Human Resources Committee (excluding the Chair of the Authority) which could dismiss on the grounds of capability, having sought expert external advice, where appropriate.
An appeal against dismissal would be decided by members of the Police Authority (excluding members with previous involvement) after having sought expert external advice.
14. The process at paragraph 13 has not been formally reflected in standing orders/delegations of the Police Authority.

RE-GRADING MATTERS

15. It is proposed for staff within the Secretariat (excluding the Chief Executive) that the procedure would be:
re-grading requests would be considered by the Chief Executive who would seek expert advice and decide on the outcome of the request.
If the staff member does not accept the decision of the Chief Executive they have the right to appeal to the Appeals Sub Committee comprising of members of the Human Resources Committee.
16. This is currently the appeal position.
17. In respect of the Chief Executive.
The Chief Executive would submit a written request to the Chair of the Authority. He/she would seek expert external advice and submit a report to the Human Resources Committee who would decide on the re-grading request.
If the Chief Executive was dissatisfied with the decision of the Human Resources Committee an appeal would be heard by members of the Police Authority (excluding members with previous involvement).
18. The process at paragraph 17 has not been formally reflected in standing orders/delegations of the Police Authority.

CONSULTATION

19. Members of the Secretariat have been consulted on their appeal rights for these processes and have not raised objections.
20. The Chief Executive is in agreement with the specific proposals affecting himself.
21. The Trade Unions have been consulted and have raised no objections to the proposals.

OPTIONS/RISK

22. The option of relying upon the Force Human Resource Practice Directions is available to the Authority. However, this would result in any appeal by a member of the secretariat being ultimately heard by members of the Force as opposed to members of the Authority. This would create confusion over the responsibility for direction and control of Police Authority employees.
23. The preferred option is to adopt Authority based policies and practices which apply the ACAS best practice guidelines, thereby removing the risk of confusion for members and staff.

FINANCIAL IMPLICATIONS

24. There are no financial implications in connection with this report

LEGAL IMPLICATIONS

25. Legal implications are highly unlikely once the policy is adopted and procedures formalised.

EQUALITY AND DIVERSITY IMPLICATIONS

26. There are no equality or diversity implications providing the decision of members support the principles contained in this paper.

CHILDREN ACT 2004

27. Not applicable

CONCLUSIONS

28. The Police Authority has ultimate direction and control over staff within the secretariat. Where there are no Authority specific policies and procedures, staff are subject to the Force Practice Directions. The amendments to the Force RADAW procedures present the opportunity to develop bespoke policies and procedures for members of the secretariat in relation to grievances, discipline, capability and re-grading.
29. The employment issues relating to the Chief Executive are contained within the contract of employment and it is now necessary to formalise them within the policy and procedures for staff directly employed by the Authority.

RECOMMENDATIONS

30. It is recommended that:

- (i) That staff of the Secretariat are subject to the processes at 3, 7,11 and 15;
- (ii) That the Chief Executive is subject to the processes at 5, 9, 13 and 17;
- (iii) That the Police Authority standing orders/delegations are amended to reflect the recommendations agreed at this Committee.

David Taylor

Independent Personnel Advisor

Kevin Sharp

Chief Executive

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Background documents: ACAS Guidelines

Humberside Police Authority Scheme of Delegations

Humberside Police Practice Directions

OFFICE OF POLICE AND CRIME COMMISSIONER

Appeals Panel

The appeals panel will consist of three people, with the core membership being the Chief Executive, the human resources adviser and a member of the joint independent audit committee (selected on rotational basis). Where the Chief Executive is conflicted in the case, he will be replaced by the Commissioner or Chair of the joint independent audit committee.

The panel will be supported by a legal adviser where deemed appropriate.

The Panel will meet as and when necessary with secretarial support provided by the Governance and Administration Manager from the Office and Police and Crime Commissioner.

The quorum is three Members.

Terms of Reference

To determine appeals from members of police staff against dismissal.

To determine appeals from the Chief Executive or Deputy Police and Crime Commissioner against dismissal, discipline, grievance, capability and grading.

To determine appeals from members of the Office of Police and Crime Commissioner against dismissal, grievance, discipline, capability or re-grading, where the procedure requires such an appeal mechanism.

To have due regard, in exercising its responsibilities to equal opportunities generally and the requirements of all equalities, anti-discrimination and Human Rights legislation, including implementation of the equalities schemes of both the Police and Crime Commissioner and the Force.

APPEALS PANEL PROCEDURE FOR HEARING APPEALS

The Chief Executive, in consultation with the Commissioner, shall appoint members to the appeals panel on a case by case basis, in accordance with the terms of reference.

The appellant shall be given notice in writing at least 7 days in advance of the time and place of the hearing and shall be allowed to be represented by his/her trade union representative or work place colleague of his/her choice and shall be enabled to call witnesses and produce documents relevant to his/her defence at the hearing.

The Chief Constable's / Chief Executive's representative(s) to put the case in the presence of the appellant and his/her representative and may call witnesses.

The appellant (or his/her representative) to have the opportunity to ask questions of the Chief Constable's / Chief Executive's representative on the evidence given by him/her and any witnesses whom he/she may call.

The Panel to have the opportunity to ask questions of the Chief Constable's/ Chief Executive's representative and witnesses.

The appellant (or his/her representative) to put his/her case in the presence of the Chief Constable's/ Chief Executive's representative and to call such witnesses as he/she wishes

The Chief Constable's / Chief Executive's representative to have the opportunity to ask questions of the appellant and his/her witness.

The Panel to have the opportunity to ask questions of the appellant and his/her witnesses.

The Chief Constable's/ Chief Executive's representative followed by the appellant (or his/her representative) to have the opportunity to sum up their cases if they so wish.

The Chief Constable's / Chief Executive's representative and the appellant and his/her representative and all witnesses to withdraw.

The Panel with the officer appointed as Secretary to the Committee to deliberate in private only recalling the Chief Constable's / Chief Executive's representative and the appellant (and his/her representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point(s) giving rise to doubt.

The Panel will announce the decision to the Chief Constable's / Chief Executive's representative and appellant (and his/her representative) personally or in writing as they may determine.