

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

29TH NOVEMBER 2010

1. TRADE UNION REQUEST FOR THE RE-INTRODUCTION OF ELECTED MEMBER APPEAL PANELS

Joint report of the Chief Fire Officer and the Clerk.

RECOMMENDED

THAT the Authority agrees the recommendation made by the Joint Consultative Panel:

- 1.1 THAT no action be taken with regard to the submission of the representative bodies proposing that a further appeal be allowed to the Appeals Committee at the exhaustion of the current internal appeals process.
- 1.2 THAT the Lead Member for Human Resources submits to the JCP a regular monitoring and scrutiny report regarding the application of the disciplinary and grievance procedures.

2. PURPOSE OF REPORT

This report is submitted to bring to the Authority's attention a recommendation of the Joint Consultative Panel, with regard to the request of the Trade Unions for the re-introduction of Member-led appeals; and to outline subsequent work that has taken place to progress this matter.

3. BACKGROUND

- 3.1 Following consultation at the Joint Consultative Committee at its meeting on 13 April 2010, it was resolved to refer to the Joint Consultative Panel a proposal submitted by three of the recognised trade unions: Fire Brigades' Union; Fire Officers Association and Unison, to reintroduce Elected Member grievance, discipline and dismissal appeal panels.

- 3.2 This matter was referred to the Joint Consultative Panel at its meeting on 12th July 2010 when Members requested additional information and it was agreed to reconsider the case at the October meeting of the Panel.
- 3.3 The Elected Members of the Joint Consultative Panel on 11th October 2010, agreed to recommend that no action be taken with regard to the submission of the representative bodies proposing that a further appeal be allowed to the Appeals Committee at the exhaustion of the current internal appeals process.
- 3.4 However, in the light of the concerns expressed by the three unions, the Joint Consultative Panel resolved that it would be recommending to the Authority that the disciplinary, grievance and dismissal process be subject to monitoring and scrutiny by Elected Members. The Director Human Resources was asked to draft an appropriate process.
- 3.5 The Joint Consultative Panel report presented on 11th October 2010, is attached at Appendix 1. This report includes the Trade Unions' initial request and the management response which was considered at Joint Consultative Committee in April 2010 and subsequently at the Joint Consultative Panel on 12th July 2010.
- 3.6 At the Joint Consultative Panel on 12th July 2010, Elected Members asked for clarity on what matters the Trade Unions envisaged being submitted to an Elected Member appeal. This is clarified within the report at paragraphs 3.5.1 to 3.5.3, attached as Appendix 1.

4. **EQUALITY IMPACT ASSESSMENT**

A full Equality Impact Assessment has been completed for the Employee Relations Framework and Terms of Reference for Joint Consultative Committee and Panel.

5. **LEGAL IMPLICATIONS**

- 5.1 The Information and Consultation of Employees Regulations 2005 clarifies the duties of Organisations to consult with their work force.

- 5.2 The Local Authorities (Standing Orders) (England) Regulations 2001 SI No.3384 relate to the appointment, discipline and dismissal of senior staff.

6. **TRADE UNION CONSULTATION**

The trade unions have submitted their proposals to the Joint Consultative Panel held on 11th October 2010.

7. **FINANCIAL IMPLICATIONS**

- 7.1 There are no direct financial implications arising from this report, although there could be indirect costs associated with the implementation of Elected Members Appeals Panels.
- 7.2 The Members' Allowances Scheme currently provides for a special responsibility allowance of £4,900 and £2,450 respectively to be paid to the Chair and Vice Chair of the Appeals Committee but this is paid pro rata based on the number of meetings of the Committee. The Appeals Committee only currently deals with disputes under national conditions of service and appeals under the pension schemes and meets infrequently.

BACKGROUND PAPERS

Employee Relations Framework
ACAS Code of Practice
NJC National Terms and Conditions Green and Grey Books.

VIJ RANDENIYA
CHIEF FIRE OFFICER

SUE PHELPS
CLERK

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

JOINT CONSULTATIVE PANEL

11 OCTOBER 2010

1. ELECTED MEMBER APPEAL PANELS

Joint report of the Chief Fire Officer and the Clerk

RECOMMENDED

- 1.1 THAT the Elected Members of Joint Consultative Panel consider the representations of the Trade Unions and the Service and make a recommendation to the Authority as to whether or not:

- a) a further appeal be allowed to the Appeals Committee at the exhaustion of the current internal appeals process as defined in Brigade Standing Orders; and/or
- b) the Lead Member for Human Resources take responsibility for monitoring the operation of the disciplinary and grievance process in pursuance of his current responsibilities to support continuous improvement and the implementation of best practice.

2. PURPOSE OF REPORT

The Panel at its last meeting considered a submission from the Joint Consultative Committee related to Elected Member appeals panels. Elected Members deferred consideration of this matter for further information.

This report is submitted to the Joint Consultative Panel (JCP) to confirm:

- Which matters the Trade Unions request be considered for Elected Members appeal panels.

- To confirm the legal status and implication of Elected Members appeals.
- To identify the training to be provided to the Elected Members who would be considering the appeals.

If appeals to Elected Members were reinstated this would represent a change to Authority policy and would require constitutional amendments together with amendment of the disciplinary and grievance procedures approved by the Authority in 2004.

3. **BACKGROUND**

3.1 Following consultation at the Joint Consultative Committee at its meeting on 13 April 2010 it was resolved to refer to the Joint Consultative Panel a proposal submitted by three of the recognised Trade Unions: Fire Brigades' Union; Fire Officers' Association to reintroduce Elected Member grievance, discipline and dismissal appeal panels.

3.2 The Trade Union proposal is attached at Appendix 1.

3.3 The management response is attached at Appendix 2.

3.4 The report considered at Joint Consultative Panel in July 2010 is attached at Appendix 3.

3.5 At the JCP on 12th July, Elected Members asked for clarity on what matters the Trade Unions envisaged having the opportunity of an Elected Member appeal.

3.5.1 UNISON has requested that the following matters are considered for Elected Members appeals:

- all gross misconduct cases
- discipline or grievances where there are organisation wide implications
- where there is a perceived conflict of interest if the final stage of appeal is to management
- on matters of public interest

3.5.2 The Fire Brigades' Union request in addition to the above is:

- Member led appeals as a further appeal after the appeal stage of both discipline and grievance have been heard by management not as a replacement for such.

3.5.3 The Fire Officers' Association request that the following matters are considered for Elected Member appeals:

- All gross misconduct cases – however as an outcome of the management appeal should the case be upheld a findings report would be submitted to Elected Members for review and scrutiny.
- Discipline and grievance cases to go through an Elected Member review and scrutiny process.
- If there is a real conflict of interest with high level implications such as Principal Officers or third tier manager when there is a challenge of fraud, theft, etc.
- Not for matters of public interest.

3.5.4 The Service would recommend to Members that, to fulfil the Authority's obligations as the supervisory body which ensures that West Midlands Fire Service performs efficiently and in the best interest of the public and community it services, the involvement in appeals should be from a scrutiny and performance management perspective.

3.6 This role would include the review of statistical information, relating to numbers of hearings, outcomes of hearings, timescales taken to conclude process and the reasons for any issues/delays. The Lead Member for Human Resources has within his portfolio responsibility to:

support continuous improvement in service delivery and the implementation of best practice through the application of Authority policy and all relevant legislation, regulations, directives and statutory requirements affecting the work of the Authority

and these responsibilities would be a good fit with his portfolio.

- 3.7 The legal considerations and implications for the Authority are:
- 3.7.1 West Midlands Fire and Rescue Authority is the employer for West Midlands Fire Service (WMFS).
 - 3.7.2 The Fire Authority at its meeting on 22 November 2004 approved, on the recommendation of the Joint Consultative Panel, revised disciplinary and grievance procedures to be effective from 1 January, 2005.
 - 3.7.3 The Authority's Appeals Committee was empowered to deal with appeals registered under the former grievance and disciplinary process. These functions were removed from its terms of reference at the Annual Meeting of the Authority on 27 June, 2005.
 - 3.7.4 Paragraph 27 of the Authority's Standing Orders state that the 'dismissal and taking of disciplinary action against any other employee *[apart from the Chief Fire Officer, Clerk, Monitoring Officer and Treasurer]* must be carried out by the Chief Fire Officer or by an officer who can lawfully be nominated by him/her'. This reflects the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001.
 - 3.7.5 The WMFS current disciplinary and grievance procedure are as agreed in the NJC Scheme of Conditions and Service (Grey Book) Sixth Edition which is in line with the ACAS Code. Employment tribunals will take the Code into account when considering relevant cases.
 - 3.7.6 The new procedures harmonised the grievance, disciplinary and dismissal process for uniformed and non-uniformed staff and were based on ACAS guidelines as set out in the 'Grey Book' and the 'Green Book'. Grievance, disciplinary matters, dismissals and any subsequent are dealt with by officers. If the member of staff is dissatisfied at the end of the internal process he/she can appeal to an Employment Tribunal.

- 3.8 Information obtained from the Authority's legal services provider demonstrates how many complaints were lodged but not all went to a tribunal:

| | |
|---------------------------|------------|
| 2004/5 | 8 cases |
| 2005/6 | 7 cases |
| 2006/7 | 8 cases |
| 2007/8 | 7 cases |
| 2008/9 | 3 cases |
| 2009/10 | 1 case |
| 2010/11 April - September | 1 pending. |

Since the appointment of the Director Human Resources in 2007 and the implementation of the new Human Resources structure in 2008 there has been a substantial reduction in cases being heard at an Employment Tribunal. Since May 2007 the Fire Service has had 4 cases go to an Employment Tribunal and all were successfully defended.

Additional information relating to cases can be seen at Appendix 4.

- 3.9 If the Authority makes a decision to allow appeals on disciplinary and grievance matters to return to the Appeals Committee the, Committee's terms of reference and the Authority's procedural standing orders and delegations to officers would need to be amended to reflect this change. The Authority would also need to approve the revised Disciplinary and Grievance Procedures.
- 3.10 Additional research into the practice of other Fire and Rescue Authorities [including metropolitan fire authorities] with regard to Elected Member Appeal Panels has been undertaken. The picture that emerges is that:
- Members continue to be involved in the appeal process against disciplinary action or dismissals at the level of Chief Fire Officers, Deputy Chief Fire Officers and Directors as is the case in this Authority;
 - Some Fire Authorities with previous Member involvement at all levels are changing their Standing Orders and Constitutions so that Elected Members only become involved for grievance and disciplinary matters for principal officers as above.

- The rationale behind this decision for Derbyshire FRA and possibly others is to release Elected Members from the day-to-day business of the Authority to allow their strategic role.

3.12 Elected Members involved in disciplinary and grievance matters would need to receive training/briefings on:

- equality and diversity
- fair hearing training
- litigation process

Members, and particularly the Chair of the Panel, would need to be comfortable and confident in their role as within the current legal framework:

- an Employment Tribunal would require the decision makers of the final appeal hearing to attend the Employment Tribunal and answer for their decision.

Within tribunals the claimant may name the employer and the person(s) making the decision as respondents. This is the situation with a current ongoing case.

4. **EQUALITY IMPACT ASSESSMENT**

A full Equality Impact Assessment has been completed for the Employee Relations Framework and Terms of Reference for Joint Consultative Committee and Panel.

5. **LEGAL IMPLICATIONS**

- 5.1 The Information and Consultation of Employees Regulations 2005 clarifies the duties of Organisations to consult with their work force.
- 5.2 The Local Authorities (Standing Orders) (England) Regulations 2001 SI No.3384 relate to the appointment, discipline and dismissal of senior staff.
- 5.3 The Monitoring Officer has investigated the legal position with regard to the Authority's Constitution and there is nothing preventing the Authority reinstating an Elected Member appeal process if it so wishes.

6. **TRADE UNION CONSULTATION**

The Trade Union has submitted the information contained within this report.

7. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report, although there could be indirect costs associated with the implementation of Elected Members Appeals Panels.

The Members' Allowances Scheme currently provides for a special responsibility allowance of £4,900 and £2,450 respectively to be paid to the Chair and Vice Chair of the Appeals Committee but this is paid pro rata based on the number of meetings of the Committee. The Appeals Committee only currently deals with disputes under national conditions of service and appeals under the pension schemes and meets infrequently.

BACKGROUND PAPERS

Employee Relations Framework
Grey Book (6th Edition) 2006
Green Book (2005)
Disciplinary Standing Order 02/01
Grievance Standing Order 02/02
Local Government Act 2004

VIJ RANDENIYA
CHIEF FIRE OFFICER

SUE PHELPS
CLERK

Appendix 1

JCC DRAFT

CONFIDENTIAL

Grievance, Discipline and Dismissal Appeals

Proposal

This paper outlines the case for re introducing Elected Member Discipline and Dismissal Appeals Panels.

Background

Until 2005 in respect of dismissals, grievance and discipline outcomes, employees were entitled to appeal to a panel composed of Fire Authority members. On 1st January 2005, the discipline regulations applying specifically to uniformed staff were abolished. At the WM Fire Authority Appeals Committee held on 27th June 2005, a decision was made to delegate this hearing of appeals to the Chief Fire Officer and an alternative procedure was introduced. In summary this involved a more senior manager than at the original hearing, acting as the Presiding Officer, hearing and determining the outcome of the appeal, with advice provided by HR staff.

The three representative bodies are of the opinion that there is a case based on the principles of natural justice, for reverting back to Elected Member Appeals Panels. The rationale is as follows:

Issues with Current Arrangements

- The decision whether or not to uphold an appeal is determined by just one person.
- The implications of the command and control culture and how this impact on decision making i.e. the risk of decisions being made in what is perceived to be the interests of colleagues.

Opportunities under revised arrangements

- Elected members are independent of the organisation and accountable to the public.
- There is a potential for a decision to be made by a group of people drawn from a wider variety of backgrounds.
- Due to the community role of the elected member, there is an opportunity for a better understanding of the impact of a decision on the wider community, and the implications of decisions made in the public interest.

In October 2009, Shropshire Fire Authority decided to retain the existing arrangements in which members participate in the final stage of their Employee Discipline procedure, citing the maintenance of “transparency and to ensure the procedures is fair to all involved” and to “prevent resentment against individual officers and accusations of bias”.

It is worth noting that Shropshire Fire and Rescue Authority has achieved Level 4 of the Equality Standard for Local Government and the decision the Authority has made supports this level of commitment to equality.

Recommendation

It is recommended that Fire Authority be consulted on the recommendation to re-introduce Elected Members Appeals Procedure at the earliest opportunity.

Mark Fellows
FBU

Judy Foster
UNISON

Alan Tranter
FOA

WEST MIDLANDS FIRE SERVICE

Joint Consultative Committee

April 2010

1. **OUTCOME OF THE REQUEST FROM THE TRADE UNIONS TO RE-INTRODUCE ELECTED MEMBERS IN THE APPEAL PROCESS FOR GRIEVANCE, DISCIPLINE AND DISMISSALS**

Report of the HR Manager Employee Relations

RECOMMENDED

THAT Joint Consultative Committee note the content of the report.

2. **PURPOSE OF REPORT**

This report is submitted to inform Joint Consultative Committee of the Services response to the Trade Unions request to the re-introduction of elected members in the grievance, discipline and dismissal appeals process.

3. **BACKGROUND**

At the Joint Consultative Committee (JCC) meeting which took place on 2 March, 2010 three of the Authorities recognised trade unions put forward a proposal to re-introduce Elected Member Appeal Panel.

The Trade Union suggested that their proposals benefits were:

- the decision to uphold the appeal or not would be made by a panel;
- less risks of decision being made in the interests of colleagues;
- Elected members are independent of the organisation and accountable to the public;
- Decisions would be made by a group of people from a variety of backgrounds;

- Elected members would have a better understanding of the impact of the decision on the wider community and implications of the decisions made in the public interest.

Having carefully and thoughtfully reviewed this request I have considered:

- The legislative requirements
- Terms and conditions of employment
- The impact on the service
 1. Equality and Diversity
 2. Other Fire and Rescue Service practice
 3. Previous case history and other comparable FRS's
 4. Use of Resources
 5. Value for Money
 6. The role of Elected Members

Legislation

The Local Authorities (Standing Orders) (England) Regulations 2001 SI No.3384, which relates to the appointment, discipline and dismissal of employees, states that:

- All appointments and dismissal of employees below the deputy chief officer level should be conducted at officer level.

This means that the elected members are eliminated from the appointment, discipline and dismissal process.

Terms and Conditions of Employment

The National Joint Council for Local Authority Fire and Rescue Services Scheme of Conditions of Service Sixth Edition 2004 (updated 2009) (Grey Book) requires that employees who have had disciplinary action taken against them will be given the opportunity to appeal.

It goes on to state that this appeal should be heard by a higher level manager. This principle of a higher level is replicated for dismissals.

The National Joint Council for Local Government Services, National Agreement on Pay and Conditions of Service June 2005 (Green Book) requires that the discipline procedures should be in line with the ACAS Code of Practice and guidance and that grievance

procedures should be in line with ACAS guidance.

Other Fire and Rescue Services

Having carried out investigation into the processes used at other Fire and Rescue Service, there are some Fire and Rescue Services that have chosen to include a further appeals process to elected members. These elected member appeal panels will, depending on the Service, hear either one of or a combination of appeals for:

- Discipline
- Dismissal
- Grievance

Shropshire has a further appeal to elected members for dismissal. However, it is important to note that they have not re-introduced this process they never removed it.

However, there are also many Fire and Rescue Services that do not have a further right of appeal to elected members. Within the West Midlands region Hereford and Worcester, Staffordshire and Warwickshire do not have a further level of appeal.

The Services' who do not have a further right of appeal to elected members are also achieving level three or above in the Equality Standard Assessment. For example Hereford and Worcestershire are a level 4 and London Fire Service is a level 5.

As the biggest Service outside of London and second in size to London a comparator organisation for West Midlands Fire Service could be London Fire Service who have decided to remove a second tier of appeal in all circumstances and attained Level 5 Equality Standard.

Having listened to the concerns raised by the trade unions relating to their perception of why decisions are made. A review of the outcome of Employment tribunal cases and potential Employment Tribunal cases has been undertaken. This has identified:

- That many cases do not progress to a Tribunal, or
- Employees approached the Service to settle out of court;
- Most cases that have progressed to an Employment Tribunal have been successfully defended;
- The Tribunals have awarded compensation for errors in the

process but have agreed the decision made.

The Service maintains that it provides training to its managers on managing hearing and on equality and diversity issues. The Core Values are embedded across the organisation and a team of professional advisors from HR can support managers during the grievance/discipline/grievance process.

Line managers should ensure through the Individual Performance Development Review (IPDR) that appropriate training is received by managers to maintain their competence. If there are specific issues these should be addressed through the IPDR process and not by adding a further level onto the current system.

When considering the above and the fact that the evidence indicates that our managers are trained well and supported appropriately it is not reasonable to incur additional costs and setting up a further level of appeal. This does not fit with 'Value for Money' or good use of resources.

A decision was taken in 2004 by the Authority to delegate the appointment and dismissal of employees below Deputy Chief Officer level to the Chief Fire Officer or his representative.

During the review of the appeal system – there has been no evidence provided that indicates that the Service or its community would be better serviced by elongating the appeal process and using more resources to complete a process that is meeting the needs of the Service, is fair and equitable and the training managers receive is ensuring that fair decisions are being reached that when challenged are standing up to scrutiny.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an Equality Impact Assessment has not been undertaken as this report is for information only.

5. **RISK IMPACT ASSESSMENT**

In preparing this report a Risk Impact Assessment has not been completed as this report is submitted for information purposes only.

6. **LEGAL IMPLICATIONS**

There are no legal implications arising from this report.

7. **TRADE UNION CONSULTATION**

Trade Union Consultation has been undertaken

8. **FINANCIAL IMPLICATIONS**

None.

9. **ENVIRONMENTAL IMPLICATIONS**

None.

BACKGROUND PAPERS

Grey Book (6th Edition) 2006
Green Book (2005)
Disciplinary Standing Order 02/01
Grievance Standing Order 02/02
Local Government Act 2004

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

JOINT CONSULTATIVE PANEL

12 July 2010

1. **SUBMISSION OF A MATTER REFERRED FROM JOINT CONSULTATIVE COMMITTEE RELATING TO ELECTED MEMBER APPEAL PANELS**

Report of the Chief Fire Officer and the Clerk.

RECOMMENDED

- 1.1 THAT the Joint Consultative Panel considers the request for member involvement in employment appeal matters and submits its views to the Authority for decision.

2. **PURPOSE OF REPORT**

This report is submitted to the Joint Consultative Panel (JCP) to consider a matter referred to it from Joint Consultative Committee.

This matter has been consulted on but not agreed at Joint Consultative Committee. This matter, if agreed and implemented, would represent a change to Authority policy and would require constitutional amendments. It will impact on elected members and therefore the matter has been referred to Joint Consultative Panel (JCP) for consideration.

3. **BACKGROUND**

- 3.1 The Employee Relations Framework defines the role of the Joint Consultative Committee and Panel.
- 3.2 The Joint Consultative Panel provides a means where elected members of WMFRA, Principal Officers of the Service and Trade Union representatives of West Midlands Fire Service employees come together to discuss matters of mutual concern.

- 3.3 As part of the consultative framework items may be referred to the Joint Consultative Panel from the Joint Consultative Committee, the Service or relevant employee organisation.
- 3.4 Following consultation at the Joint Consultative Committee at its meeting on 13 April 2010 it was resolved to refer to the Joint Consultative Panel a proposal submitted by the FBU/FOA/UNISON to reintroduce elected member grievance, discipline and dismissal appeal panels. The Joint Consultative Panel (JCP), should it support this proposal, is requested to make a recommendation to the Authority as to whether there should be an additional internal appeal process to elected members.
- 3.5 West Midlands Fire and Rescue Authority is the employer for West Midlands Fire Service.
- 3.6 The Fire Authority at its meeting on 22nd November, 2004 approved, on the recommendation of the Joint Consultative Panel, revised disciplinary and grievance procedures to be effective from 1st January, 2005. The new procedures harmonised the grievance, disciplinary and dismissal process for uniformed and non-uniformed staff and were based on ACAS guidelines as set out in the 'Grey' Book and the 'Green' Book. Grievance, disciplinary matters, dismissals and any subsequent appeals were dealt with by officers. If the member of staff was dis-satisfied at the end of the process he/she could appeal to an Employment Tribunal. The Authority's Appeals Committee was empowered to deal with appeals registered under the former grievance and disciplinary process. These functions were removed from its terms of reference at the Annual Meeting of the Authority on 27th June, 2005.
- 3.7 Paragraph 27 of the Authority's Standing Orders state that the 'dismissal and taking of disciplinary action against any other employee *[apart from the Chief Fire Officer, Clerk, Monitoring Officer and Treasurer]* must be carried out by the Chief Fire Officer or by an officer who can lawfully be nominated by him/her'. This reflects the provisions of the Local Authorities (Standing Orders)(England) Regulations 2001.
- 3.8 Within the current legal framework an Employment Tribunal would expect the person or persons hearing the appeal to attend the Employment Tribunal and answer for their decision.

3.9 The ACAS Code of Practice provides practical guidance to employers, workers and their representatives on:

- The statutory requirements relating to disciplinary and grievance issues;
- What constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- Producing and using disciplinary and grievance procedures; and
- A worker's right to bring a companion to grievance and disciplinary hearings.

WMFS current disciplinary and grievance procedure are as agreed in the NJC Scheme of Conditions and Service (Grey Book) Sixth Edition which is in line with the ACAS Code. A failure to follow any part of this Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases.

3.10 The Trade Unions report presented to Joint Consultative Committee is attached at Appendix 1.

3.11 The Director Human Resources or his delegated representative report presented at Joint Consultative Committee is attached at Appendix 2.

4. **EQUALITY IMPACT ASSESSMENT**

A full Equality Impact Assessment has been completed for the Employee Relations Framework and Terms of Reference for Joint Consultative Committee and Panel.

5. **LEGAL IMPLICATIONS**

The Information and Consultation of Employees Regulations 2005 clarifies the duties of Organisations to consult with their work force.

The Local Authorities (Standing Orders) (England) Regulations 2001 SI No.3384 relate to the appointment, discipline and dismissal of senior staff.

6. **TRADE UNION CONSULTATION**

The trade union has submitted the information contained within Appendix 1 of this report. The Managers response to the trade unions report is contained within Appendix 2

7. **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report. Although there could be indirect costs associated with the implementation of elected members appeals panels

BACKGROUND PAPERS

Employee Relations Framework

VIJ RANDENIYA
CHIEF FIRE OFFICER

SUE PHELPS
CLERK

Appendix 1

JCC DRAFT

CONFIDENTIAL

Grievance, Discipline and Dismissal Appeals

Proposal

This paper outlines the case for re introducing Elected Member Discipline and Dismissal Appeals Panels.

Background

Until 2005 in respect of dismissals, grievance and discipline outcomes, employees were entitled to appeal to a panel composed of Fire Authority members. On 1st January 2005, the discipline regulations applying specifically to uniformed staff were abolished. At the WM Fire Authority Appeals Committee held on 27th June 2005, a decision was made to delegate this hearing of appeals to the Chief Fire Officer and an alternative procedure was introduced. In summary this involved a more senior manager than at the original hearing, acting as the Presiding Officer, hearing and determining the outcome of the appeal, with advice provided by HR staff.

The three representative bodies are of the opinion that there is a case based on the principles of natural justice, for reverting back to Elected Member Appeals Panels. The rationale is as follows:

Issues with Current Arrangements

- The decision whether or not to uphold an appeal is determined by just one person.
- The implications of the command and control culture and how this impacts on decision making i.e. the risk of decisions being made in what is perceived to be the interests of colleagues.

Opportunities under revised arrangements

- Elected members are independent of the organisation and accountable to the public.
- There is a potential for a decision to be made by a group of people drawn from a wider variety of backgrounds.
- Due to the community role of the elected member, there is an opportunity for a better understanding of the impact of a decision on the wider community, and the implications of decisions made in the public interest.

In October 2009, Shropshire Fire Authority decided to retain the existing arrangements in which members participate in the final stage of their Employee Discipline procedure, citing the maintenance of “transparency and to ensure the procedures is fair to all involved” and to “prevent resentment against individual officers and accusations of bias”.

It is worth noting that Shropshire Fire and Rescue Authority has achieved Level 4 of the Equality Standard for Local Government and the decision the Authority has made supports this level of commitment to equality.

Recommendation

It is recommended that Fire Authority be consulted on the recommendation to re-introduce Elected Members Appeals Procedure at the earliest opportunity.

Mark Fellows
FBU

Judy Foster
UNISON

Alan Tranter
FOA

WEST MIDLANDS FIRE SERVICE

Joint Consultative Committee

April 2010

1. **OUTCOME OF THE REQUEST FROM THE TRADE UNIONS TO RE-INTRODUCE ELECTED MEMBERS IN THE APPEAL PROCESS FOR GRIEVANCE, DISCIPLINE AND DISMISSALS**

Report of the HR Manager Employee Relations

RECOMMENDED

THAT Joint Consultative Committee note the content of the report.

2. **PURPOSE OF REPORT**

This report is submitted to inform Joint Consultative Committee of the Services response to the Trade Unions request to the re-introduction of elected members in the grievance, discipline and dismissal appeals process.

4. **BACKGROUND**

At the Joint Consultative Committee (JCC) meeting which took place on 2 March, 2010 three of the Authorities recognised trade unions put forward a proposal to re-introduce Elected Member Appeal Panel.

The Trade Union suggested that their proposals benefits were:

- the decision to uphold the appeal or not would be made by a panel;
- less risks of decision being made in the interests of colleagues;
- Elected members are independent of the organisation and accountable to the public;
- Decisions would be made by a group of people from a variety of backgrounds;

- Elected members would have a better understanding of the impact of the decision on the wider community and implications of the decisions made in the public interest.

Having carefully and thoughtfully reviewed this request I have considered:

- The legislative requirements
- Terms and conditions of employment
- The impact on the service:
 1. Equality and Diversity
 2. Other Fire and Rescue Service practice
 3. Previous case history and other comparable FRS's
 4. Use of Resources
 5. Value for Money
 6. The role of Elected Members

Legislation

The Local Authorities (Standing Orders) (England) Regulations 2001 SI No.3384, which relates to the appointment, discipline and dismissal of employees states that:

- All appointments and dismissal of employees below the deputy chief officer level should be conducted at officer level.

This means that the elected members are eliminated from the appointment, discipline and dismissal process.

7. Terms and Conditions of Employment

- The National Joint Council for Local Authority Fire and Rescue Services Scheme of Conditions of Service Sixth Edition 2004 (updated 2009) (Grey Book) requires that employees who have had disciplinary action taken against them will be given the opportunity to appeal.
- It goes on to state that this appeal should be heard by a higher level manager. This principle of a higher level is replicated for dismissals.

- The National Joint Council for Local Government Services, National Agreement on Pay and Conditions of Service June 2005 (Green Book) requires that the discipline procedures should be in line with the ACAS Code of Practice and guidance and that grievance procedures should be in line with ACAS guidance.

8. Other Fire and Rescue Services

- Having carried out investigation into the processes used at other Fire and Rescue Service, there are some Fire and Rescue Services that have chosen to include a further appeals process to elected members. These elected member appeal panels will, depending on the Service, hear either one of or a combination of appeals for:
 - Discipline
 - Dismissal
 - Grievance
- Shropshire have a further appeal to elected members for dismissal. However, it is important to note that they have not re – introduced this process they never removed it.
- However, there are also many Fire and Rescue Services that do not have a further right of appeal to elected members. Within the West Midlands region Hereford and Worcester, Staffordshire and Warwickshire do not have a further level of appeal.
- The Services' who do not have a further right of appeal to elected members are also achieving level three or above in the Equality Standard Assessment. For example Hereford and Worcestershire are a level 4 and London Fire Service is a level 5.
- As the biggest Service outside of London and second in size to London a comparator organisation for West Midlands Fire Service could be London Fire Service who have decided to remove a second tier of appeal in all circumstances and attained Level 5 Equality Standard.

9. Having listened to the concerns raised by the trade unions relating to their perception of why decisions are made. A review of the outcome of Employment tribunal cases and potential Employment Tribunal cases has been undertaken. This has identified:
 - That many cases do not progress to a Tribunal, or
 - Employees approached the Service to settle out of court;
 - Most cases that have progressed to an Employment Tribunal have been successfully defended;
 - The Tribunals have awarded compensation for errors in the process but have agreed the decision made.
 - The Service maintains that it provides training to its managers on managing hearing and on equality and diversity issues. The Core Values are embedded across the organisation and a team of professional advisors from HR can support managers during the grievance/discipline/grievance process.
10. Line managers should ensure through the Individual Performance Development Review (IPDR) that appropriate training is received by managers to maintain their competence. If there are specific issues these should be addressed through the IPDR process and not by adding a further level onto the current system.
11. When considering the above and the fact that the evidence indicates that our managers are trained well and supported appropriately it is not reasonable to incur additional costs and setting up a further level of appeal. This does not fit with 'Value for Money' or good use of resources.
12. A decision was taken in 2004 by the Authority to delegate the appointment and dismissal of employees below Deputy Chief Officer level to the Chief Fire Officer or his representative.
13. During the review of the appeal system – there has been no evidence provided that indicates that the Service or its community would be better serviced by elongating the appeal process and using more resources to complete a process that is meeting the needs of the Service, is fair and equitable and the training managers receive is

ensuring that fair decisions are being reached that when challenged are standing up to scrutiny.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an Equality Impact Assessment has not been undertaken as this report is for information only.

5. **RISK IMPACT ASSESSMENT**

In preparing this report a Risk Impact Assessment has not been completed as this report is submitted for information purposes only.

6. **LEGAL IMPLICATIONS**

There are no legal implications arising from this report.

7. **TRADE UNION CONSULTATION**

Trade Union Consultation has been undertaken

8. **FINANCIAL IMPLICATIONS**

None.

9. **ENVIRONMENTAL IMPLICATIONS**

None.

BACKGROUND PAPERS

Grey Book (6th Edition) 2006
Green Book (2005)
Disciplinary Standing Order 02/01
Grievance Standing Order 02/02
Local Government Act 2004

CLERK

Grievance/Discipline and Dismissal Summary Information

From 2004 to date West Midlands Fire Service has had 34 cases which were referred to our legal advisers at Sandwell MBC.

The reasons for this have been categorised below. Where a claim was made under more than one area the case has been recorded in one area only.

| | |
|----------------------------------------------|----|
| ▪ Unfair Dismissal | 14 |
| ▪ Constructive Dismissal | 2 |
| ▪ Sex Discrimination | 4 |
| ▪ Race Discrimination | 2 |
| ▪ Disability Discrimination | 3 |
| ▪ Unlawful Deduction | 4 |
| ▪ Claim against Secretary Of State (ODPM) | 1 |
| ▪ Not specified | 4 |

Since February 2007:

There have been 11 potential cases, their outcomes were as follows:

- 4 withdrew prior to Tribunal
- 3 Settled prior to Tribunal
- 4 cases the ET found favour of WMFS. In three of these cases the ET judge has commented on the fairness of the process/investigation/decision.

In 2009 the Service has heard:

- Disciplinaries 20

Of which 8 resulted in dismissal

- Grievances 40

Of these we received appeals for:

- Disciplinaries 6
- Grievances 29

At the appeal stage the number of decisions over turned were:

- Disciplinaries 1; employee re-instated
- Grievances 8