

Notes of Joint Consultative Panel

**21 September 2015
at Fire Service Headquarters, Vauxhall Road, Birmingham**

Present: **Members of the Authority**
Councillor Clinton (Chair);
Councillor Dehar (Vice Chair),
Councillors Afzal, Douglas-Maul,
Shackleton and Singh

Apologies:
Alan Tranter, FOA
Andrew Scattergood, FBU

Employees Side:

Fire Brigades Union (FBU)
Steve Price-Hunt

Unison
John Routley

Officers
Sarah Warnes
Helen Sherlock
Karen Gowreesunker
Satinder Sahota

Observer: Councillor Tranter

8/15 **Notes**

The notes of the meeting held on 13 April 2015 were received.

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9/15

Trade Union Request for the Re-Introduction of Elected Member Appeal Panels

The Panel were asked to consider the request of the Trade Unions to re-introduce an elected member's appeals panel for service employee appeals and to also consider the legal status of this process and the potential implications for individual elected members and the Service.

The request had been referred to the Joint Consultative Panel following a meeting of the Joint Consultative Committee on the 7 July 2015. The Trade Union proposal was attached to the report and Sarah Warnes outlined the employer's response including clarity on the potential personal risks to Elected Members of this proposal.

It was felt that the current Appeals Process was fit for purpose and should continue. To fulfil the Authority's obligations as the supervisory body, with the responsibility of ensuring a balanced budget, good governance and providing strategic and political leadership; Elected members do have responsibility to hear employee appeals for Brigade Managers as currently set out in the Constitution. However, for other employees the hearing of appeals is a day to day organisation matter dealt with by officers as per the grey book Scheme and Conditions of Employment and Standing Orders. Changing the process would increase the risks to Elected Members and they would have to make themselves available to attend Employment Tribunals and any subsequent hearings as witnesses. The full impact and role of Elected Members in the process was outlined to Members.

In September 2014, three of the Services recognised Trade Unions/Representative Bodies again requested the re-introduction of Elected Member Appeal Panels for consideration of dismissal cases only.

The requested had been considered carefully and the following area were taken into account:

1. The Legislative requirements
2. Terms and Conditions of employment

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3. The impact on the Service:-
- Equality and Diversity
 - Other Fire and Rescue Service Practice
 - Previous Case History and other comparable FRSs
 - Use of Resources
 - Value for Money
 - The role of and impact on Elected Members

The Legislation and ACAS Code of Practice were outlined together with the Terms and Conditions of Employment and it was stated that the proposed Appeals Panel fell outside of ACAS Code of Practice and the National Joint Council for Local Authority Fire and Rescue services Scheme of Conditions of Service Sixth Edition 2004 (updated 2009) (Grey) Book.

The Brigade have their own framework for Appeals and these are heard by a higher manager than the line manager. People Service Services and the Trade Unions were working together to reduce the timescales involved in the appeals process.

It was stated that for Grey Book employees appeal hearings would be heard by a higher level manager and for Green Book employees disciplinary procedures should be in line with ACAS guidance and grey book conditions.

Further investigation had been carried out in the processes used at other Fire and Rescue Services, out of the 18 Services that responded to the query only 4 had elected member appeal panels for grey book employees, of those who did not have elected member appeal panel several were achieving levels in their Equality Standard Assessments.

Having listened to the trade unions, the Service had looked at discipline and appeal cases and had identified:

- That many dismissal cases do not progress to a Tribunal, or
- Employees approach the Service to settle out of court
- Most cases that have progressed to an Employment Tribunal have not related to dismissal and cases have been successfully defended.

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- The Tribunals have awarded compensation for errors in the process but have agreed with the decision made.

Ongoing training is being provided for Managers and positive work is being undertaken with the FBU in supporting managers to make the right decisions and that the decisions are proportional. Issues are being tackled upstream with the support of professional advisers from People Support Services together with training on equality and diversity issues.

The Core Values are being further embedded, underpinned by the Individual Performance Development Review (IPDR) with objectives and behaviours being set by managers or further training arranged.

Managers are also being trained well and if members were to be trained to undertake the appeals process it would not provide value for money and would not be a good use of resources.

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

If the elected member appeals system were to be reintroduced it would elongate the dispute process and both the Union and Service recognise that extended timescales are not helpful to employee wellbeing, the service or the community. The current process was fair and equitable and the decisions made stood up to scrutiny.

The impact and role of Elected Members was discussed and the advantages outlined by the FBU were outweighed by the risk to the Community and Elected Members. Elected Members would not be covered under the legal principle of 'vicarious liability'.

The Service would be at risk in the event Elected Members take part in and make decisions at any appeal stage which are later regarded as discriminatory by a Tribunal. Also, any Employment Tribunal award would be made against that Elected Member personally.

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Tribunal awards for discrimination are 'uncapped' with average awards for provide allegations of discrimination within a range of £6,000 - £15,000 and linked to this is the issue of 'leverage' also known as 'targeting' where Elected Members are targeted by ex-employees as has been regularly used by opposing Solicitors within Tribunal proceedings.

Allied to this Elected Members would be seen as the sole 'decision' maker and solely responsible for any appeal decision taken and would be held to account at a Tribunal.

In answer to a question from the Chair, it was confirmed that a Panel would only be able to decrease any sanction awarded as stated in Disciplinary Procedures.

In response to the Trade Unions initial concerns and on balance the proposal does not fall within the role and responsibility of the Authority and poses significant risk to the Service and Elected Members. The approach taken over the previous 12 months had seen a decrease in cases outlined in the dispute resolution process.

The Case Management Details from 2013- 2015 were highlighted. From January to June 2015 against January to June 2014 there had been a significant reduction in:

- Investigations from 21 to 4
- Hearings from 9 to 2
- Grievances 13 to 4

There had been one appeal, where the decision had been overturned by the Assistant Chief Officer and the individual had been reinstated. This was an example of the fair and balanced process being used and that Managers will overturn decisions.

Steve Price-Hunt outlined the case for re-introducing Elected Member Dismissal Appeals Panels, stating:

- that current procedure relied upon one person making a final decision,
- that there is hierarchical approach and a command and culture

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which could be perceived as a risk. He questioned the safety and effectiveness of individual officers making balanced decisions.

- that the Strategic Enabling Team is made up of eight white males, one white female and two females of other ethnic origin, three white male brigades managers meaning a 70% chance that an appeal would be heard by a single white male and does not allow for a fair representation of the organisation.

Officers were confident that SET was a fair representation of the organisation with the skill base and ability to undertake Appeals and lessons had been learned from investigations in the past. The appropriate person was allocated to an investigation or appeal and this was also monitored.

It was explained that individual could request another person to hear their appeal if there was good reason, but a balanced approach would be taken.

Steve Price-Hunt outlined the opportunities that were available under the Revised Arrangements:

- that Elected Members were independent,
- responsibility of finally dismissing an employee should remain at the highest level within the employer structure
- there is a potential for a decision to be made by a group of people drawn from a wider variety of backgrounds, ethnicity and gender
- there is an opportunity, due to the community role of the elected member, for a better understanding of the impact of the decision on the wider community and in the public interest.

The high number of investigations and grievances shown in the Dispute Resolution Report had raised serious concerns and he thanked the Elected Members and the management for working constructively to improve the figures.

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He also stated that all three representative bodies believed that the Panel should re-introduce Elected Members Appeals Procedure for the most severe cases, which were occasional.

Other Brigades had been asked about their procedures and of the 15 Brigades contacted, 9 still had Elected Members using the system previously used and saw no reason to change and were opposed to the current system used by the Authority. It was felt that a Panel would come to a fairer and more balanced decision than one person.

He urged Members to consider the re-introduction of the Elected Members Appeals Procedure.

John Routledge the UNISON representative stated that they were in support of the FBU position and recognised that the position should be re-considered.

Karen Gowreesunker, Clerk to the Authority, stated that the Authority's Constitution did not provide for Elected Members to hear dismissal appeals and from an organisational point of view this was now the role of Officers.

Councillor Shackleton felt that improvements had been made and felt that more time should be taken to see how the changes would impact and also wondered how impartial members would be as they would receive briefings from officers.

The Chair stated that the legal aspects of a possible change would need to be considered as Members could be seen to be guided in making a decision.

Any tribunal would look at consistency and if they law had been followed. And she didn't think it would be appropriate to receive advice from the Authority's legal team.

Satinder Sahota confirmed that there was potential to create confusion in terms of taking advice from outside the Brigade.

In response to a question from Councillor Douglas-Maul, the Clerk confirmed that comparisons had been made with other Authorities.

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Some Authorities did have Elected Members on their Appeals Committee whilst other didn't, but the Panel were being asked to consider what was best for the Fire Authority, taking the Constitution in to account together with the ACAS and Grey Book legislation.

The Chair stated that in Birmingham City Council, Members were not held personally responsible, but this was within the Constitution of the Council and they were regarded as representatives of the Council.

Currently West Midlands Fire and Rescue Authority Members would be held personally responsible and the Clerk reiterated to obtain the services of legal representatives and provide additional training to members would not provide value for money if the recommendation was not approved.

The meeting adjourned for 30 minutes.

The Chair welcomed everyone back to the meeting and stated that a full and frank discussion had taken place and the issues raised and the concerns of the Representative Bodies had been recognised. However, it was not felt appropriate this time to change the current process and a line should be drawn under this matter. The Legal Officer, Satinder Sahota, was asked to produce a decision document, which would be circulated with the minutes.

The Chair thanked everyone for attending.

The meeting closed at 1400 hours.

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| Contact Officer: Julie Connor Strategic Hub West Midlands Fire Service 0121 380 6906 |
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