

**WEST MIDLANDS POLICE
AND CRIME
COMMISSIONER**

**NON-CONFIDENTIAL
NOTICE OF DECISION
010/2013**

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Procedure for Hearing Dismissal Appeals from Police Staff

EXECUTIVE SUMMARY

This paper sets out a proposed procedure for hearing appeals against dismissal from police staff together with a recommended membership for the appeals panels. The paper also recommends that the Chief Executive be given delegated authority to appoint the Appeals Panel.

DECISION

- (a) That the procedure for hearing appeals against dismissal from Police staff as set out in the Appendix be approved
- (b) That each Appeals Panel comprise three members drawn from the Strategic Policing and Crime Board and Joint Audit Committee.
- (c) That if sufficient members are not available from these sources, members may then be drawn from a reserve list held by the Chief Executive. The reserve list will comprise persons from the list already maintained by the Chief Executive to serve on misconduct hearings.
- (d) That the policy and procedure for hearing an appeal against dismissal attached at the appendix to this report be approved.
- (e) That the Chief Executive be authorised to appoint the members of an Appeals Panel.

West Midlands Police and Crime Commissioner

I confirm that I do not have any disclosable pecuniary interests in this decision and take the decision in compliance with the Code of Conduct for the West Midlands Office for Policing and Crime. Any interests are indicated below.

Signature.....Bob Jones.....

Date.....28 February 2013.....

INTRODUCTION AND BACKGROUND

1. The purpose of this paper is to consider options for the PCC in dealing with appeals against dismissal by police staff.
2. Under the Police Authority procedures an appeal panel of three members was appointed to deal with appeals by police staff against dismissal.
3. Police staff are under the direction and control of the Chief Constable. The function of exercising direction and control includes the all the powers of employer including the power to dismiss staff.
4. It has been the practice of the employing body to hear and determine appeals against dismissal of police staff. There is an expectation that the employer will hear these appeals although there is no legal obligation on the PCC to do so. If the PCC did not hear appeals the Chief Constable would need to set up separate appeal arrangements.
5. The decision of the appeal panel is a final determination although employees may also have the right to make a claim for unfair dismissal in the Employment Tribunal.
6. The purpose of the Appeal Panel is to determine whether the sanction of dismissal is upheld. If the decision taken by the Chief Constable is confirmed, the original dismissal decision takes effect. If the decision is not confirmed, the employee would be re-instated.
7. It is assumed for the purpose of this note that the PCC agrees to continue the practice of hearing appeals.

Options

8. The following options are suggested:-
 - a) PCC and/or DPCC hear appeals either sitting alone or together.
 - b) Panel of three appointed by the Chief Executive comprising
 - (1) PCC or DPCC plus
 - (2) one or two Strategic Policing and Crime Board members and/or
 - (3) one or two other person from a 'reserve panel'
 - c) Panel of three appointed by the Chief Executive comprising
 - (1) a Strategic Board member and
 - (2) two other persons drawn from a reserve panel.
 - d) Panel of three appointed by the Chief Executive comprising
 - (1) One, two or all from the reserve panel; and
 - (2) the remainder, if any, from the Strategic Board.
 - e) Panel of three appointed by the Chief Executive comprising entirely or partly from the reserve panel or entirely or partly from the Strategic Board (or from both) the PCC or DPCC being able if they so wish to sit on the panel.
9. The reserve panel could be drawn from the list of members kept by the OPC for the purposes of appointment to misconduct hearings. These persons would be experienced in hearing cases of a similar nature and assessing evidence and decision making. They would

be paid the daily rate applicable to misconduct hearings (this is the same rate previously paid to police authority members sitting on panels).

10. There are some disadvantages in option 1, time constraint for instance and the risk that the decision maker may then have to be called to give evidence at an employment tribunal.

11. It is suggested that the Chief Executive has delegated power to appoint the panel and the panel chair. (Where the PCC or DPCC is a member of the panel they would normally take the chair).

12. The advantage of option 5 is that it provides complete flexibility as in practice one of the difficulties in setting up a panel is finding a date which is convenient to all parties.

Procedure

13. It is suggested that as the PCC probably cannot delegate to a sub-committee there is a nominated decision maker (the panel chair) who would be assisted by the other members of the Panel. The decision maker would be required to take into account the views of the other panel members in arriving at a decision. The decision of the panel would be final (subject to any available challenge in a tribunal).

14. A possible alternative might be for the Panel to make a recommendation to the PCC but this is not recommended as it would place the PCC in having to arrive at a decision determining an employee's future without having heard and assessed the evidence at first hand.

15. Attached is a copy of the suggested procedure which shows the procedure used under the Police Authority with suggested amendments.

16. Panel hearings will be attended by legal and HR advisers.

FINANCIAL IMPLICATIONS

17. Attendance at a Panel would attract a daily allowance of £215. This can be accommodated within the existing WMOPC budget. No payment would be made to the PCC and DPCC if they are a member of the Panel.

LEGAL IMPLICATIONS

18. There are no legal implications directly arising from this report.

EQUALITY IMPLICATIONS

19. The membership of Appeals Panels will be monitored against diversity characteristics and the results of this monitoring shall be reported to the Commissioner on a regular basis.

Schedule of Background Papers

Nil

Public Access to Information

Information contained in this decision is subject to the Freedom of Information Act 2000 and other legislation. This decision will be made available on the Commissioner's website.

West Midlands Office for Policing Policy and Procedure for hearing an appeal against dismissal (conduct related and redundancy)

West Midlands Office for Policing and Crime (WMOPC) is committed to the principles of equality and diversity. No member of the public, member of staff, volunteer or job applicant shall be discriminated against on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

1. GENERAL

- (a) An appeal against dismissal must be made by written notice to the Chief Executive to be received no later than 10 working days following the date of the letter of dismissal. The notice of appeal must set out the grounds on which the employee is appealing.
- (b) The Chief Constable shall no later than 15 working days following receipt of the employee's notice of appeal submit to the Chief Executive his written statement of case.
- (c) The appeal hearing shall take place as soon as possible after receipt of the written notice of appeal setting out the grounds of the appeal, at a time and location notified to the employee, at least 7 working days in advance. Where the appellant indicates that they cannot attend at the specified time, then provided that the explanation is reasonable, alternative arrangements may be made for them to attend. Where it is considered that the explanation is not acceptable, the appeal may proceed in the absence of the appellant.
- (d) Members of the Panel shall, at least 7 working days before the hearing, be supplied by the Chief Executive with a copy of the:-
 - Written notice of appeal setting out the grounds of the appeal
 - Statement of facts agreed by the appellant or their representative(s) and the Chief Constable's representative. In the event that a statement of facts cannot be agreed, one should be produced by the Chief Constable's representative. Any objections to this shall be put in writing by the appellant or their representative, and circulated along with the statement of facts.
 - Appellant's statement of case, including relevant supporting documents
 - Chief Constable's statement of case, including relevant supporting documents

- Written note of the disciplinary hearing (if applicable).

The above documents shall also be forwarded to the appellant and their representative, the Chief Constable's representative and the advisers to the Panel.

- (e) Any facts not presented at the disciplinary hearing must be disclosed by the parties at least five working days before the appeal. The Panel reserves the right not to accept any evidence that was available at the time of the disciplinary hearing but not used by the party seeking to rely upon it at the hearing of the appeal.
- (f) The Panel may, if they wish, adjourn the hearing at any stage, for such period, as they deem reasonable.
- (g) Where the appeal is only against the sanction applied, the appeal will not re-examine the facts of the case.

2. PROCEDURE

- (a) The appeal will be considered by an Appeals Panel comprising three persons selected by the Chief Executive from a panel of members approved by the PCC. A person shall not be a member of the Panel if they have been previously involved in the case. The Chief Constable's representative and their assistant, the Chief Executive representative and advisers to the Panel (the Legal and Personnel Advisers to the PCC) will also be present at the hearing. The appellant will have the right to attend with their representative(s).
- (b) The Panel meeting shall be held in private.
- (c) The appellant or their representative(s) shall put their case and may call witnesses. In the event of a conduct related dismissal where the appellant does not dispute the finding of misconduct and is appealing only against the severity of the sanction imposed, the appellant or their representative(s) may at this stage present any plea in mitigation and call witnesses to present information on their character and background.
- (d) The members of the Panel and their advisers shall have the opportunity to ask questions of the appellant, their representative(s) and witnesses.
- (e) The Chief Constable's representative shall have the opportunity to ask questions of the appellant, their representative(s) and witnesses.
- (f) The Chief Constable's representative shall put their case and may call witnesses. If in the case of a conduct related dismissal the appellant is appealing only against the severity of the sanction imposed, the Chief Constable's representative will have the opportunity at this stage to state the facts of the case, including the appellant's record of service, and to give evidence and to call witnesses as to the appellant's character and background.
- (g) The members of the Panel and their advisers shall have the opportunity to ask questions of the Chief Constable's representative and witnesses.

- (h) The appellant or their representative(s) shall have the opportunity to ask questions of the Chief Constable's representative and witnesses.
- (i) The appellant or their representative(s) shall have the opportunity to sum up the appellant's case.
- (j) The Chief Constable's representative shall have the opportunity to sum up their case.
- (k) The appellant, their representative(s), the Chief Constable's representative and their assistant, and all witnesses shall withdraw. The advisers to the Panel and the Chief Executive shall remain. The decision of the disciplinary hearing may be confirmed, increased or reduced.
- (l) When a decision has been reached, the appellant, their representative(s) and the Chief Constable's representative and their assistant, shall be recalled and informed by the Chair of the Panel of the decision.
- (m) If in the case of a conduct related dismissal the appeal is upheld, the disciplinary sanctions imposed shall be withdrawn. No notice of the appeal should be placed on the appellant's personal file, and existing notes from the disciplinary hearing shall be removed and destroyed.
- (n) If in the case of a redundancy dismissal the appeal is upheld the redundancy dismissal shall not take effect and if the dismissal has taken effect as at the date the appeal is determined the appellant shall be re-instated with effect from the date of dismissal.
- (o) In the event of a conduct related dismissal where the appellant is appealing only against the severity of the sanctions imposed, written confirmation of the decision shall be conveyed to them within two working days. If it has been decided that disciplinary action is appropriate, then details of this will be kept on the appellant's personal file. Any limitation on retention shall apply.

Conduct related dismissals – procedure following a decision not to uphold an appeal

- (p) In a case where the appellant is appealing against a finding of misconduct, if the Panel uphold any part of such finding, the appellant's record of service shall be read by the Chief Constable's representative.
- (q) The appellant or their representative(s) shall have the opportunity to present any plea in mitigation and witnesses as to their character and background. Members of the Panel their advisers and the Chief Constable's representative, shall have the opportunity to ask questions of the appellant, their representative(s) and witnesses.
- (r) The appellant, their representative(s), the Chief Constable's representative and their assistant, and all witnesses shall withdraw.
- (s) The advisers to the Panel and the Chief Executive's representative shall remain.

- (t) The Panel shall consider the appellant's record of service and the statements made by them, their representative(s) and/or witnesses. The original action taken may be confirmed, increased or reduced.
- (u) When a decision has been reached, the appellant, their representative(s) and the Chief Constable's representative and their assistant, shall be recalled and informed by the Chair of the Panel of the decision. .
- (v) The decision of the Panel shall be confirmed in writing by the Chief Executive within two working days. In the event of the finding of misconduct not being upheld by the Panel, no copy of the Chief Executive's letter shall be placed on the appellant's personal file. Any limitation on retention shall apply.