

1. **REPORT TITLE**                      **Governance arrangements in respect of employment matters**

**Submitted by:**                      **Chief Executive**

**Portfolio:**                              People, policy and partnerships

**Wards affected:**                      All

**Purpose of the Report**

To enable the Council to consider proposals concerning the future of the Staffing Committee and Employee Consultative Committee further to the resolution made by the Council on 2016 , *“That the recommendation in relation to the Staffing Committee and Employee Consultative Committee be deferred pending further details on the proposed Joint Negotiating and Consultation Committee and the Member Appeal Panel”*.

**Recommendations**

- (i) That the Staffing Committee and Employee Consultative Committee be disbanded to be replaced by a Staffing Committee with the delegations as set out in the report.
- (ii) That a Joint Negotiating and Consultation Committee be established with the roles as set out in the report.
- (iii) That the Council reaffirms that the formulation of operational HR policies is a delegated function of the Cabinet.
- (iv) That the necessary amendments be made to the Constitution to give effect to the recommendations.

1. **Background**

- 1.1 At its meeting on 13 July 2016 the Council considered a recommendation to disband the Staffing Committee and Employees’ Consultative Committee and create a Joint Negotiating and Consultation Committee to fulfil the functions set out in the Joint Recognition Agreement. The Council resolved to defer this matter pending further details of the proposed Joint Negotiating and Consultation Committee and the Member Appeal Panel. The Constitution and Member Support Working Group was asked to consider this proposal in more detail and make recommendations on this matter to a future meeting of the Council.
- 1.2 Since the Council meeting in July 2016 the Constitution and Member Support Working Group has given further consideration to these matters and wishes to recommend to Council the proposals set out in this report.

**2. Council employment functions**

2.1 Certain functions relating to employment matters are by law the remit of the Council as a body, these are:

- Functions relating to Health and Safety at work – Part I of the Health and Safety At Work etc Act 1974
- Functions relating to local government pensions – Regulations under the Superannuation Act 1972
- Appointment / dismissal the Head of Paid Service, appoint/dismiss the Monitoring Officer and Chief Finance Officer (S151 Officer), designate an officer to act as Monitoring Officer and an officer to act as Chief Finance Officer

**3. Current Arrangements**

3.1 At present the Council has a rather complex set of arrangements for dealing with employment matters.

3.2 The Staffing Committee is responsible for the Council's functions as an employer including the Local Government Pension Scheme which are not delegated to officers or are by law required to be referred to full Council. The Committee has a remit to adopt and amend all employment policies. It also has the remit to make arrangements for members of the Committee to determine appeals of employees in accordance with the appropriate policies.

3.3 The Constitution also makes provision for a Chief Officers Appointments, Review and Appeals Committee to be established to deal with disciplinary matters, capability or sickness and employment appeals for senior officers.

3.4 The current arrangements are a mixture of statutory and operational roles. In other councils the role of the equivalent committee is concerned with advising Council on those matters which are required by law to be full council decisions and is delegate to deal with those matters where the Council as a body acts as the employer, specifically in relation to appointments and dismissals in relation to statutory and senior posts; having oversight of restructuring and other processes which may be controversial or have costs relating to them which would require a Council decision and of dealing with employee appeals.

3.5 Matters relating to the adoption and amendment of employment policies is more conventionally discharged by the Cabinet.

3.6 It is good employment practice to have a forum for discussions between Trade Unions and their employer. Under the current arrangements this is performed by the Employees' Consultative Committee which has a remit to act as a consultative body on matters affecting the working practices of all employees. Best practice is to have

a Joint Negotiating and Consultation Committee. Such a committee consists of representatives of elected Members, Trades Unions and management.

- 3.7 One of the limitations in the current Employees' Consultative Committee arrangement is that as this is a committee of the Council its membership is made up of elected Members. Trade union and management representatives participate at the request of the committee. In its current form therefore this committee is not constituted to perform the role of a joint negotiating and consultation committee.
- 3.8 Recent experience in seeking to negotiate changes to employee terms and conditions has demonstrated the limitations of not having an appropriate body constituted for this purpose.
- 3.9 The council currently does not have a forum for Member, Trade Union and management representatives to meet to discuss matters of employment policy. The Head of HR has recently undertaken a piece of work with the Trade Unions to formulate a formal recognition agreement a key element of which would be to establish a Joint Negotiating and Consultation Committee which would provide a forum to discuss matters relating to employment policy and conditions of service.
- 3.10 It is suggested that the current constitutional provisions could be amended to clarify roles and responsibilities along the lines set out above. Such amendments could also ensure that elected Members have full oversight of matters concerning their role as the employer. Any amended arrangements would need to be compliant with the statutory framework determining functions which need to be discharged by a particular decision making body, i.e. full Council, Committee or Cabinet.
- 3.11 In summary the proposals would be to:
- Create an Employment Committee which can have the delegated power to determine employment functions of Council which can be so delegated for decision. To constitute the Employment Committee to advise council on matters which are the remit of full council so that members can have the opportunity through a committee process to scrutinise such matters in appropriate detail before referring the matter to full council for a decision.
  - Confirm that matters of operational HR policy including developing, monitoring and reviewing any council corporate HR policies are discharged by the Cabinet.
  - To create a Joint Negotiating and Consultation Committee with membership consisting of elected Members, Trade Union Representatives and management with a remit to consider and negotiate on matters relating to employee terms and conditions and related issues. That this be constituted as a member / officer working group and any matters requiring a formal decision be referred to the appropriate decision making body, Council, Committee or Cabinet.

4. **Employment Committee – Committee of Council**

4.1 It is standard practice for Council to delegate certain functional statutory duties to a Committee. This is most evident in the case of planning, regulatory and licensing functions which are by statute Council decisions. In relation to employment matters practice in most councils is for these to be referred to as an employment committee. Set out below are indicative terms of reference for such a Committee.

- To establish and appoint members to an Appointments sub-committee to act as an appointment panel for Executive Directors and Heads of Service
- Subject to any statutory requirements, to advise Council on the appointment of Statutory Officers and to make arrangements to establish and appoint members to an Appointments sub-committee to act as an interview panel for Statutory Officer appointments
- To oversee matters of discipline or competence in respect of the Head of Paid Service, the Monitoring Officer and the Section 151 Officer (the Statutory Officers) \*
- To establish and appoint members to a sub-Committee as an Investigation and Disciplinary Panel (IDP), comprising three members, to hear disciplinary and conduct issues relating to a Statutory Officer in accordance with relevant HR Procedures. The Chairman of the IDP shall have authority to issue a notice of dismissal in the event of a decision by full Council to dismiss the Statutory Officer \*
- To establish and appoint members to a sub-Committee as an Appeals Panel, comprising three members, to hear an appeal by a Statutory Office against a decision of the IDP falling short of a recommendation to dismiss, in accordance with relevant HR procedures
- Other than those matters delegated to the Section 151 Officer, to discharge the Council's responsibilities in relation to local government pensions matters
- To review organisational structure where the changes involve compulsory redundancies that do not have the agreement of existing staff and/or where any such changes require additional budget, which require approval of Cabinet and/or full Council;
- To determine appeals (excluding any Statutory Officers) in relation to:
  - Dismissals whether arising by virtue of misconduct or otherwise
  - Disciplinary action
  - Grievances
  - Selection for redundancy
  - Grading

*Note: When discharging the functions marked \* above, the Committee must include a member of The Cabinet.*

4.2 It is recommended that appropriate training be mandatory for all members of the Employment Committee and that any Members nominated to serve on a sub-

Committee to deal with disciplinary or appeals matters be required to have appropriate training for this role.

**5. Joint Negotiating and Consultation Committee – Member/officer working group**

5.1 The point has been made above that the current Employees' Consultative Committee arrangements are out of kilter with modern industrial relations practices. It is recommended that the current Employees' Consultative Committee be replaced with a Joint Negotiating and Consultation Committee. The terms of reference for this would be:

- To consider, negotiate and agree within approved budgets any matters relating to:
  - Terms and conditions of employment
  - Hours of work
  - Holiday and sickness arrangements

5.2 Given this remit and that the Joint Negotiating and Consultation Committee would draw membership from elected Members, Trade Unions and management it would be more appropriate for this to be formally constituted as a working group rather than as a committee of Council. The reason for this being to enable the Members, Trade Unions and management to discuss and agree matters for which there is delegate authority (i.e. routine and operational matters) and for matters requiring a formal decision to be referred to the appropriate decision making body, Council, Committee or Cabinet.

5.3 The membership of the Joint Negotiating and Consultation Committee would be:

- 3 elected Members
- 3 Trade Union representatives

5.4 The Head of Paid Service and Head of HR would be represented at all meetings to advise the Committee and to keep a record of proceedings.

5.5 Where the Committee was meeting as part of a formal collective bargaining process the protocols set out in Appendix 1 would apply.

5.6 It is recommended that appropriate training be mandatory for all elected Members serving on the Joint Negotiating and Consultation Committee.

**6. Cabinet**

6.1 Matters of operational HR Policy including developing, monitoring and reviewing any personnel and human resources policies is normally a function which would rest with Cabinet with officers making recommendations to Cabinet following appropriate discussion with Trade Unions through the Joint Negotiating and Consultation Committee.

## 7. **Conclusion**

7.1 It is recommended that the following be implemented:

- Create an Employment Committee which can have the delegated power to determine employment functions of Council which can be so delegated for decision.
- Confirm that matters of operational HR policy including developing, monitoring and reviewing any council corporate HR policies are discharged by the Cabinet
- Create a Joint Negotiating and Consultation Committee with membership consisting of elected Members, Trade Union Representatives and management to consider and negotiate on matters relating to employee terms and conditions and related issues.

7.2 It is considered that if adopted these amendments would have a number of benefits:

- i. Clarify the respective roles of decision makers and decision making bodies with regard to employment matters
- ii. Ensure that the full Council continues to discharge those functions which are by statute conferred upon it
- iii. To have a specialist Committee which can have delegated authority in relation to routine employment matters which are the remit of Council and is able to advise on matters which require a full Council decision
- iv. Enable a simpler and more transparent process of routine HR policy making and review to be put into place
- v. Create an appropriately constituted Joint Negotiating and Consultation Committee to facilitate discussion between elected Members, Trades Unions and management about employment matters and for decisions about such matters to be taken by the appropriate decision maker or body in a timely manner

## **Appendix 1 Protocols for collective bargaining procedure**

### **Protocol for collective bargaining**

#### The collective bargaining process

Collective bargaining is recognised to consist of a number of distinct stages

##### *Commencement*

The Employer or Employee side may put forward a proposal in writing to the other. Any such proposal would normally be accompanied by a commentary setting out the case for the proposed change.

##### *Preparation*

Representatives of both sides prepare for the negotiation by considering the proposal which has been put forward. All those who are to be involved in the discussions should have a good knowledge and understanding of the issues to be discussed and should have conducted appropriate background research and evaluation before the first meeting takes place.

##### *Preliminaries*

Both parties agree the ground rules that will guide the negotiations and the lead negotiator for each side is identified and agreed. The Portfolio Holder for HR will Chair the negotiations. There should also be clarification of any issues identified in the preparation stage. The timescales for the negotiations should also be set out.

##### *Formulation*

At this stage the person chairing the negotiation puts forward an opening statement to summarise the matter(s) to be resolved. The lead negotiator from each side shall then set out their initial proposals. This is often called a brainstorming phase because each side puts forward their options that lead to the refinement of proposals and counter-proposals.

##### *Bargain*

The formal negotiation begins at this stage and each side will need to persuade the other of the merits of their proposal or counter-proposal. This stage may go on for a period of time and may involve a number of meetings until final agreement is reached. Where an amicable agreement cannot be reached it may be appropriate to include third party involvement to assist in arbitration.

##### *Settlement*

This is the final stage of the process where both sides agree a common solution to the matter(s) which has been negotiated. The final agreement will normally be set out in a written collective agreement document which is signed by both sides.

#### Documentation

##### *Minutes of meetings*

A record of all meetings shall be kept and shall be signed by the Chairman after confirmation by both lead negotiators that this is an accurate record of the discussion.

Records of meetings shall be confidential unless it is agreed otherwise by the Chairman and the lead negotiators.

#### Proposals and counter-proposals

All proposals, and where they are developed counter-proposals, shall be in written form once they have been formulated but before they are negotiated upon. These shall be made available to both sides to ensure that discussions are based on a common understanding of the matters under consideration.

#### Conduct of meetings

The effective running of meetings is the responsibility of the chairman. All participants shall respect the role of the chairman.

Either side may request a recess to enable separate discussions by the sides to take place. Separate meeting facilities should be made available to facilitate this.

If the chairman considers that it would be helpful to the negotiations to have a recess to enable additional information to be sought or issues clarified by a person(s) not present in the meeting it shall be at the chairman's sole discretion to do this. Any similar requests made by other participants would not normally be denied. Any additional information provided shall be made available to all those participating in the negotiations.

It is expected that all matters discussed at meetings shall be confidential at all times.

#### Consultation

It may assist the process of collective bargaining for there to be consultation with staff affected by the proposals which are under consideration.

Any consultation shall be with all staff affected by the proposals and it is recognised that Trades Unions may wish to undertake consultation with their own members.



## **Appendix 2 Summary of roles and responsibilities**

| <b>Body</b>                                  | <b>Key responsibilities</b>  |
|--|--|
| Council                                      | Functions relating to Health and Safety at work – Part I of the Health and Safety At Work etc Act 1974<br>Functions relating to local government pensions – Regulations under the Superannuation Act 1972<br>Appointment / dismissal the Head of Paid Service, appoint/dismiss the Monitoring Officer and Chief Finance Officer (S151 Officer), designate an officer to act as Monitoring Officer and an officer to act as Chief Finance Officer |
| Employment Committee                         | Delegated Council functions which are more appropriately dealt with by a Committee such as appointments and hearings   |
| Cabinet                                      | The formulation of operational HR policies with advice from Executive Management Team and in discussion with the Joint Negotiating and Consultation Committee  |
| Joint Negotiating and Consultation Committee | To act as the consultation body between Employer and Employee representatives on matters of HR policy and practice. To act as the negotiating body between Employer and Employee representatives on matters relating to terms and conditions within approved budgets.  |