

Management Committee

19 September 2017

Review of Constitution – Joint Appeals Committee

For Recommendation To Council

Portfolio Holder(s)/ Brief holder

Corporate – Cllr P Barrowcliff

Senior Leadership Team Contact:

S Caundle, Assistant Chief Executive

Report Author:

Corporate Manager HR & OD – Bobbie Bragg

Statutory Authority

Section 4 (1) of the 1980 Act (designation and reports of Head of Paid Service) as the head of the authority's paid services or by an officer nominated by him (regulation 2 Local Authorities (Standing orders) (England) Regulations 2001)

Purpose of Report

That delegated powers are given to the HR&OD Corporate Manager to revise existing employment policies.

Recommendations:

- 2 To recommend the following to Full Council:
 - (a) that the practice of holding Joint Appeals Committee to discharge the function of various personnel related appeals be discontinued;
 - (b) that the constitution be amended accordingly to delete any reference to the Joint Appeals Committee and its delegated functions;
 - (c) that delegated power is given to the HR&OD Corporate Manager to create an informal working party consisting of the three HR portfolio holders across the three Councils to revise the existing employment policies subject to prior consultation with the Joint Negotiating & Consultation Committee (JNCG) to remove reference to appeals to the Joint Appeal Committee
 - (d) that delegated power be given to the HR & OD Corporate Manager to incorporate a new appeal process reflecting as appropriate the need to have an ad-hoc Advisory body to deal with relevant disciplinary / dismissal issues involving statutory posts: Ref: Constitution / Part B /para 3.2 Procedural rules
 - (d) that delegated power be given to the Monitoring Officer to amend the Constitution including the Officer Scheme of Delegation to reflect the cessation of the Joint Appeals Committee and the provisions of the new

employment policies once created to include so far as appropriate power to the HR&OD Corporate Manager to create an advisory panel / committee in advance of dismissal of a statutory post which meets relevant statutory obligations;

Background and Reason Decision Needed

- 3 Subsequent to the creation of the Shared Service Partnership of West Dorset District Council and Weymouth and Portland Borough Council in 2012, a Joint Appeals Committee was established replacing the sovereign Staff appeals hearings.
- 4 The original partnership of joint working and a shared workforce had not long been created at the time when the joint arrangements were put into place. However joint working has now been successfully operating for five years with North Dorset District Council joining in March 2015 forming the Dorset Councils Partnership.
- 5 Historically North Dorset District Council has not had councillor involvement in the employee dismissal appeals process and to date this difference in arrangements has not been addressed.
- 6 The terms of reference of the joint committee, sets out the current arrangements which is to consider various officer appeals against dismissal under the Council's disciplinary procedure, capability procedure, sickness absence management and redundancy and redeployment procedures.
- 7 Under section 4(1) of the 1989 Act (designation and reports of head of paid service) the Chief Executive as the Head of Paid Service is discharged with the following responsibilities:-
 - a) *The functions of : Appointment and Dismissal of and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under [section 4\(1\)](#) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him [regulation 2 Local Authorities (Standing Orders) (England) Regulations 2001]*
 - b) *Where he/she considers it appropriate to do so in respect of any proposals of his/her with respect to any of the matters specified in subsection (3) below, to prepare a report to the authority setting out his proposals.*

(3) *Those matters are:*

The manner in which the discharge by the authority of their different functions is co-ordinated; the number and grades of staff required by the authority for the discharge of their functions; the organisation of the authority's staff; and the appointment and proper management of the authority's staff. [Section 4 Local Government and Housing Act 1989]
- 8 Best practice, as set out in the "Discipline and Grievance at Work Guide" of the Advisory, Conciliation & Arbitration Service (ACAS) identifies that when dealing with disciplinary appeals "an employee who wishes to appeal against any disciplinary decision must do so within five working days. The senior manager will hear all appeals and his/her decision is final."

- 9 Although, the above advice is not specific to the public sector, translating this best practice guidance into local government would suggest that all Workforce matters clearly reside within the control of Head of Paid Service.
- 10 Any disciplinary decision would have been carefully considered and legal advice taken to ensure that these matters are properly managed at a senior level.
- 11 In the event the employer is a member of a Union, there is every opportunity for them to be properly represented by their Union official.
- 12 As far we are aware, no Councils seem to involve members in an appeal process to the same extent as exists for the WW&PJC i.e. that include dismissals on the grounds of Capability, Sickness absence, Redundancy and Redeployment.
- 13 In the event an employee is not satisfied with a dismissal decision, a further external appeal process is in place in the form of Employment Tribunals which are available to all employees (free of charge) if they consider they have been unfairly or wrongfully dismissed.

Risk Management (including Health & Safety)

It would be difficult to justify why councillors would take a decision that could materially impact upon any Disciplinary, Capability, Redundancy or Redeployment judgements which had been properly and carefully considered, following due proper process by the Head of Paid Service or his representative together with external legal advice .

Human Resources

All Disciplinary, Capability, Redundancy or Redeployment policies and Procedures would have had been properly and diligently followed and external employment law advice.

Consultation and Engagement

Consultation with Unison, Unite and GMB

Appendices

None

Background Papers

The Discipline and Grievance at Work Guide of the Advisory, Conciliation & Arbitration Service (ACAS)

West Dorset District, Weymouth & Portland Borough and North Dorset District Council revised Constitution Part B Procedural rules Para 3.2

Implications

Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

Report Author: Bobbie Bragg - July 2017