

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	21 st November 2013
Report of:	Julie Davies, Head of People and OD
Subject/Title:	Staffing Committee Remit
Portfolio Holder:	Councillor B Moran, Performance

1.0 Report Summary

- 1.1 This report is in response to a Motion raised at Council on the 18th July 2013. The Motion, which was proposed by Councillor B Murphy and seconded by Councillor A Moran, requested a review of the Staffing Committee's terms of reference with a view to widening its remit to encompass matters that are normally entailed in the work of a Staffing Committee such as corporate culture, employee relations and communications, senior appointments, disciplinary matters and management structures.
- 1.2 The report outlines the current remit of Staffing Committee, taking into account the Terms of Reference, as detailed in the Council's Constitution, and the practice of the committee since its inception in 2009. The report also considers practice in other authorities.

2.0 Recommendations

- 2.1 Members are asked to
1. note the content of this report in line with the Motion raised at Council; and
 2. consider forming a small sub-group to discuss the findings of this report in more detail and bring forward a formal recommendation to the Committee at its next meeting.

3.0 Reasons for Recommendations

- 3.1 To enable the Committee to fully consider the Notice of Motion.

4.0 Wards Affected

- 4.1 No specific wards affected.

5.0 Local Ward Members

5.1 Not applicable

6.0 Policy Implications

6.1 No significant implications.

7.0 Financial Implications

7.1 No direct implications arising from this report.

8.0 Legal Implications

8.1 The current terms of reference, together with the Staff Employment Procedure Rules (S E P R), accord with the requirements of the Local Government Act 2000, the Local Government and Housing Act 1989 and the Local Authorities (Standing Orders) (England) Regulations 2001. These provisions mainly relate to the appointment or dismissal of statutory posts, the Head of Paid Service, Monitoring Officer and Chief Financial Officer.

9.0 Risk Management

In reviewing any terms of reference, care would have to be taken to ensure that these terms do not conflict or overlap with existing terms of reference of other committees or portfolio holders or contravene constitutional or statutory requirements in relation to them. This would depend upon the exact terms sought to be adopted. For example, the issue of incorporating HR policies into the Staffing Committee's terms of reference is not straightforward. Under Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Amendment Regulations 2001, power to appoint staff and determine their terms and conditions including dismissal is not a function to be the responsibility of the executive and therefore can be dealt with by a Staffing Committee. However, other HR policies and procedures, and matters such as corporate culture, employee relations and communications are not necessarily concerned with terms and conditions of employment and are not in Schedule 1. These have to be a Cabinet function.

Similarly, management structure does not concern terms and of employment and is not, therefore, a matter for staffing committee but for Cabinet. However, it may be acceptable for Staffing Committee to consider and make recommendations to Cabinet in the same way that they currently do with regard to matters outside their exact Terms of Reference.

10.0 Background and Options

10.1 Constitutional Powers

It is the responsibility of the full Council, unless delegated to another Committee or Sub-Committee, to agree and amend the terms of reference of its Committees.

The Cabinet is responsible for approving, monitoring and reviewing any Council Corporate personnel and HR policies. Its functions may be delegated to a Task Group, Cabinet Sub-Committee, Portfolio Holder or an officer and it may appoint an advisory panel.

10.2 The Current Terms of Reference

Cheshire East Borough Council Staffing Committee, which must consist of 7 members, has the following Terms of Reference:

- *i) undertaking the selection process for the appointment and formulating recommendations to the Council re the appointment and dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.*
- *ii) the designation of an officer to act as Monitoring Officer and Chief Finance Officer In accordance with the legislation and the appropriate procedures set out in the Staff Employment Procedure Rules.*
- *iii) undertaking the selection, appointment and dismissal procedures for any staff where so required by law (It should be noted that the Chief executive has powers to appoint all other staff).*
- *iv) hearing and determining appeals by staff under the relevant HR Policies and procedures, including through any appointed subcommittee.*
- *v) hearing and dealing with disputes registered with the Council by recognised Trade Unions.*

The Committee Rules state that in discharging the functions, powers and duties under Responsibility for Functions, the Committee has full delegated powers to take these decisions (subject to any special restrictions).

In addition to the Terms of Reference, the Staff Employment Procedure Rules (SEPR) apply. These detail the requirements relating to the Head of Paid Service and other Statutory, Chief and Deputy Officers which the Staffing Committee must follow and provide that the Staffing Committee is responsible for the suspension of sick pay and matters relating to fixed term contract.

10.3 Practice of the Staffing Committee Meeting

Staffing Committee follows the general format of other Committee Meetings and is divided into 2 parts. Part I is open to press and public. Part 2 is not open where the exemptions under LGA 1972 Pt I and II Sch. 12a (as amended) apply.

In addition to undertaking the recruitment and selection for those key posts set out in the Terms of Reference (above) and hearing dismissal appeals, the Staffing Committee also receives a quarterly report relating to such matters as Health and Safety, organisational development and general staffing issues.

Since the inception of the Staffing Committee, representatives of the recognised Trade Unions have attended the full meeting which has thus served as a forum for Trade Union concerns to be aired with Members, the majority of such issues being raised under Part 2. These have not been confined to formal disputes, as set out within the Terms of Reference. In addition, Trade Unions attend a formal Corporate Trade Union Meeting with the Head of HR and various service /department led consultative meetings.

10.4 Comparison with Other Local Authorities

Comparisons have been made with 14 other Local Authorities and whilst there are a variety of arrangements in place, and indeed many variations on the name of this Committee, the terms of reference for Staffing Committee in Cheshire East are in keeping with others and appear to be very 'typical' e.g. dealing with appointments, dismissal etc of specified senior posts and appeals under HR procedures.

A small number have extra elements of responsibility, including agreeing the pay policy and other separate issues such as dealing with specific cases of honoraria payments/ determining market rate supplements.

Other Authorities also operate different arrangements for meeting recognised Trade Unions. These include regular Joint Consultation Committees, regular meetings between Strategic Director and TU and regular meetings between Leader and TU. In some authorities, the Trade Unions are only invited to the Part 1 of their Staffing Committee and only attend if there is a relevant report on the agenda.

10.5 Part II agenda items

A number of issues that Staffing Committee would typically discuss may fall within the Part II LGA1972 exemptions categories. The relevant exemptions, provided the public interest in maintaining the exemption outweighs the public interest in disclosure, most likely apply,

for example, where individuals may be mentioned, where legal professional privilege may apply and regarding information concerning consultation or negotiation in connection with any labour relations matters between the authority and employees or office holders.

A judgement as to whether the exemption applies may have to be made for each meeting and, the wider the terms of reference, the more likely this question would need to be addressed with greater scope for challenge.

10.5 Summary

In light of the findings of this report, there are a number of options that the Council could consider in response to the Notice of Motion. These options range from retaining the current terms of reference (as set out in the Constitution) and adhering to them more closely; or to retain current practice of enabling the Staffing Committee to consider wider staffing issues (outside the precise terms of reference but in accordance with the SEPR). Another option would be to alter the terms of reference to add some of the matters mentioned in the Notice of Motion. In doing so, Members should determine those matters that they wish to include so as to provide clarity and a constitutional basis for a wider remit for the Staffing Committee.

To explore this in more detail and to bring the matter to a prompt resolution, it is therefore recommended that a sub-group of the Constitution Committee be set up with a view to bringing forward a formal recommendation to the next meeting of the Committee.

It should be noted that there is a distinction between widening the scope of internal matters for consideration such as policies and providing a forum for discussion with the Trade Unions.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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