

Cheshire East Council

Council

Date of Meeting: 15 December 2016

Report of: Director of Legal Services

Subject/Title: Staffing Committee – Terms of Reference

1. Report Summary

- 1.1. This report recommends that Council amends the Terms of Reference of the Staffing Committee in relation to the approval of Human Resources Policies and Procedures and other matters.

2. Recommendation

- 2.1. That the terms of Reference of the Staffing Committee be amended as detailed in the Appendix to this report, with immediate effect.

3. Other Option Considered

- 3.1. To retain the existing Terms of Reference. This is not recommended as the existing Terms of Reference do not comply with the Local Government Act 2000 (including the various Functions Regulations made under that Act) in relation to the approval of Human Resources Policies and Procedures; and do not comply with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) in relation to other matters.

4. Reasons for Recommendation

- 4.1. To ensure that the Council's Constitution complies with: the Local Government Act 2000 (and the Functions Regulations made under that Act) in relation to the approval of Human Resources Policies and Procedures; and, in relation to other matters, with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).
- 4.2. Following consultation with the Chairman of the Constitution Committee, the Chairman of the Staffing Committee, and the Portfolio Holder with responsibility for Human Resources, this report has been brought direct to Council, without the normal step of referring it to the Constitution Committee.

5. Background/Chronology

- 5.1. This report recommends Council to change the Terms of Reference of the Staffing Committee in relation to the approval of Human Resources Policies and Procedures to ensure that the Council's Constitution complies with the Local Government Act 2000 (including the various Functions Regulations made under that Act); and the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended), in relation to other matters.
- 5.2. Since October 2015 the Council's Constitution has allocated responsibility for the approval of Human Resources Policies and Procedures to the Staffing Committee. Previously, the responsibility was allocated to the Portfolio Holder with responsibility for Human Resources. For the reasons set out in the following paragraphs, the October 2015 change in responsibility for the approval of Human Resources Policies and Procedures was legally unsound and it is recommended that it is reversed by Council.
- 5.3. The Local Government Act 2000 ('the 2000 Act') required larger local authorities to change their form of governance from the committee system to 'Executive Arrangements.' For most such authorities, including Cheshire East Council, this has meant adopting the Leader and Cabinet model of governance. The 2000 Act (and Statutory Instruments made under it) allocate responsibility for discharging an authority's 'functions' when operating Executive Arrangements.
- 5.4. Some functions are defined as 'Council functions' (or 'Council-side functions'). Council functions include the overwhelming majority of Town and Country Planning and Licensing matters. These are generally delegated to the authority's Planning and Licensing Committees (which are politically proportionate), or to officers under the Officer Scheme of Delegation.
- 5.5. Some functions are defined as 'Local Choice functions.' As the label implies, authorities may choose whether or not these functions are the responsibility of the Executive (Leader and Cabinet). That decision itself is a decision for the full Council. Under the Cheshire East Constitution, for example, functions relating to contaminated land (a Local Choice function) have been allocated to the Executive.
- 5.6. Council side and Local Choice functions are listed in a series of over a dozen Statutory Instruments made under the 2000 Act. These Statutory Instruments are referred to collectively as 'the Functions Regulations.'

- 5.7. Functions which are neither defined as Council functions nor as Local Choice functions in the Functions Regulations are, by default, the responsibility of the Executive (in Cheshire East, the Leader and Cabinet). Section 13 of the 2000 Act gives effect to this position by providing that:

‘... any function of a local authority which is not specified in ... [the Functions Regulations] ... is to be the responsibility of an executive of the authority under executive arrangements.’

- 5.8. The authority’s Staffing Committee is a committee established by Full Council and, as such, it is politically balanced. As a Council committee, Staffing Committee can only determine matters which are Council-side functions (as opposed to Executive (Cabinet) functions).
- 5.9. The power for local authorities to appoint staff is contained in section 112 of the Local Government Act 1972 (‘the 1972 Act’). Officers appointed under this section ‘shall hold office on such reasonable terms and conditions, including as to remuneration’ as the appointing authority ‘think fit’ (section 112(2)).
- 5.10. The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 and 2015) (together, ‘The Standing Orders Regulations’) require that the function of appointing, dismissing, or taking disciplinary action against an officer below deputy Chief Officer level must be discharged on behalf of the Council by the Head of Paid Service (the Chief Executive), or by an officer nominated by him. The Council’s Staff Employment Procedure Rules are compliant with The Standing Orders Regulations.
- 5.11. Schedule 1 of the The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (‘the 2000 Regulations’) makes the power to appoint staff under section 112 of the 1972 Act a Council-side function. However, the 2000 Regulations contain no reference to the approval of Human Resources Policies and Procedures; nor do any of the other Functions Regulations.
- 5.12. The power to make Human Resources Policies and Procedures derives from section 111 of the 1972 Act - the power for local authorities to do:

‘... any thing ... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.’

None of the Functions Regulations refer to section 111 of the 1972 Act. Accordingly, the default position set out in section 13(2) of the 2000 Act (see paragraph 5.7) applies and the power to approve Human Resources Policies and Procedures must rest with the Executive.

- 5.13. Until October 2015 the Council's Constitution reflected this legal position and the relevant provision in the Terms of Reference of the Staffing Committee read as follows:

'5 To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies remains with the Executive.' (Underlining added)

- 5.14. In October 2015, as part of a wide-ranging review of the Constitution, the Terms of Reference of the Staffing Committee were revised. Most of the revisions reflected changes in legislation. For example, under section 38 of the Localism Act 2011, the Council must approve annually a Pay Policy Statement; and it was logical that the Committee's remit was expanded to allow it to make recommendations to Council regarding that Statement.

- 5.15. However, for reasons that are not clear, the Term of Reference relating to Human Resources Policies and Procedures was replaced with the following wording:

'6.1 To approve all human resources policies including pay and grading structures (except those that must be approved in law by the Council and the implementation of national terms and conditions which will be undertaken by the Chief Executive/Head of Paid Service), employees' terms and conditions of employment, including changes to those terms and conditions and to approve policies on how the Council exercises its functions under the Local Government Pension Scheme and any other relevant pension scheme.'

- 5.16. This Term of Reference is unlawful in two respects. First, it seeks to make an Executive function (the approval of Human Resources Policies and Procedures) a Council-side function and allocate it to the Staffing Committee. Second, it seeks to make the terms and conditions of all employees (and any changes to the same) the responsibility of the Committee, contrary to The Standing Orders Regulations.

- 5.17. The reference to functions under the Local Government Pension Scheme is unobjectionable. This is because functions relating to local government pensions are expressly made a Council-side function in Schedule 1 to the 2000 Regulations, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.

- 5.18. It is therefore recommended that the Terms of Reference of the Staffing Committee are revised as set out (as Track Changes) in the Appendix to this report. The recommended revisions include several other minor and typographical changes. The recommended revisions may be summarised as follows:

- 5.18.1. The current paragraph 6.1 is deleted in its entirety.

- 5.18.2. In relation to the approval of Human Resources Policies and Procedures, the wording previously adopted prior to October 2015 is reinstated, with the addition of the words 'and procedures' in the second sentence.
- 5.18.3. A new paragraph 6.5 is added to empower the Committee to exercise functions relating to local government pensions, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.
- 5.18.4. References to specific posts are updated to reflect the relevant current job titles.
- 5.18.5. Reference to 'Chief Education Officer' in section 2 is deleted. (This role ceased in England with the coming into force of the Children Act 2004 and the requirement within that legislation for all top tier authorities in England to appoint a Director of Children's Services.)

6. Wards Affected and Local Ward Members

- 6.1. None.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. The recommendations are intended to ensure that Human Resources Policies and Procedures are approved in a lawful manner.

7.2. Legal Implications

- 7.2.1. These are set out in the body of this report.

7.3. Financial Implications

- 7.3.1. None.

7.4. Equality Implications

- 7.4.1. None.

7.5. Rural Community Implications

- 7.5.1. None.

7.6. Human Resources Implications

- 7.6.1. The recommendations are intended to ensure that Human Resources Policies and Procedures are approved in a lawful manner.

7.7. Public Health Implications

7.7.1. None.

7.8. Implications for Children and Young People

7.8.1. None.

7.9. Other Implications (Please Specify)

7.9.1. None.

8. Risk Management

8.1. A legal argument could be constructed to suggest that all Human Resources Policies and Procedures 'approved' by the Staffing Committee since October 2015 are invalid. Whilst such an argument might be unlikely to appeal to an Employment Tribunal, if Council approves the recommendation set out in this report, the risk can be eliminated by referring all such policies and procedures to the Portfolio Holder for formal approval.

9. Access to Information/Bibliography

9.1. All Acts of Parliament and Regulations referred to in this report are in the public domain and available at: <http://www.legislation.gov.uk/>

9.2. The Council's Constitution, including earlier iterations of the document are available on the authority's website at: http://www.cheshireeast.gov.uk/council_and_democracy/your_council/constitution.aspx

10. Contact Information

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APPENDIX

STAFFING COMMITTEE (Terms of Reference)

8 Members

Statement of Purpose

1 The Staffing Committee is a key component of Cheshire East's corporate governance. It provides an independent and high level focus on Human Resources, Organisational Development and Health & Safety matters affecting the Council.

2 The purpose of the Staffing Committee is

(a) to provide independent assurance to the members of the adequacy of the HR service and staffing related matters,

(b) with regard to the Head of Paid Service, Monitoring Officer and **Section s151 Officer (Statutory Officers):**

To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and

Make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person.

(c) appoint/dismiss the Statutory Chief Officers, namely:

The **Executive Director of People and Deputy Chief Executive (Director of Children's Services - ~~Chief Education Officer~~)**;

Strategic Director of Adult Social ~~Services~~Care and Health (Director of Adult Social Services); and

Director of Public Health.

including undertaking the recruitment and selection process.

(d) to appoint/dismiss the Executive Director of **Place ~~Economic Growth and Prosperity~~** including undertaking the recruitment and selection process.

(e) to approve "in year" salary or other benefit increased to the Head of Paid Service

Functions of the Committee

Recruitment and Selection

3 With regard to Statutory Officers:

To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and

make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person.

4 To make a recommendation to the Council to approve the dismissal of any of the Statutory Officers prior to notice being given to that person, and provided that the procedure set out in the Staff Employment Procedure Rules has been complied with.

5. appoint/dismiss Statutory Chief Officers and the Executive Director of **Place ~~Economic Growth and Prosperity~~**.

HR Policies

~~6.1 To approve all human resources policies including pay and grading structures (except those that must be approved in law by the Council and the implementation of national terms and conditions which will be undertaken by the Chief Executive/Head of Paid Service), employees' terms and conditions of employment, including changes to those terms and conditions and to approve policies on how the Council exercises its functions under the Local Government Pension Scheme and any other relevant pension scheme. To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies and Procedures remains with the Executive~~

6.2 To make recommendations to Council in relation to the annual Pay Policy Statement and any amendments to such statement.

6.3 To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more.

6.4 To make decisions in relation to proposed severance packages with a value of £100,000 or more.

~~6.5 to exercise the functions relating to local government pensions, so far as they relate to Regulations made under sections 7, 12, or 24 of the Superannuation Act 1972.~~

Appeals

7.1 For a Staffing Appeals Sub Committee:

to consider appeals from Staff in the following circumstances:

- Appeals against dismissal
- Appeals against grievance
- Appeals against policy (but only the first appeal where the appeals are based on the same issues/circumstances)

7.2 With effect from 1st January 2016, Members appointed to the Staff Appeals Sub Committee may only hear appeals if they have received the mandatory training on appeals procedures offered by the Council (tailored in accordance with the individual Member's existing knowledge and experience).

Organisational Performance

8 To receive regular updates on performance information in order to assess the effectiveness of current Human Resources Organisational Development and Health & Safety policies and practices .These will include as a minimum:

- Headcount Data
- Sickness Absence
- Turnover
- HR Casework (including disciplinary, grievance and capability)
- Health and Safety Accidents Records
- Health and Safety Training