

Review of Process for Employment Related Appeals

Introduction

At its meeting on 1 April 2008, the Appointments Committee considered the attached report (Annex A) that proposed a change to the authority's current procedures for handling all employment related appeals.

Following discussion the Committee resolved to recommend to the Constitution Committee

“That the Scheme of Delegation within the Constitution be amended in accordance with the revised process set out in paragraph 4 of the report, and the terms of reference for the Appointments and Appeals Committees be amended accordingly”

Attached at Annex B are the proposed revised terms of reference for and the Appeals Committee. No changes are required to the terms of reference of the Appointments Committee. (which are attached for information purposes).

Recommendation

That the proposed changes to the constitution referred to above be recommended to the Council for adoption.

Appointments Committee – 1 April 2008

Constitution Committee [this is a matter for the Constitution Committee (and then the full Council as it involves a change to the procedure of a Council committee, and to the Constitution itself), but the views of the Appointments committee are sought first]

AGENDA NO:

REVIEW OF PROCESS FOR EMPLOYMENT RELATED APPEALS

Committee Date	1 April 2008
Background Documents	None
Principal Consultees	The principal trade unions
Officers	Joint report from: Peter Bungard, Chief Executive and Sue Scrivens, Head of Human Resources

Purpose of Report	This paper proposes a change to the authority's current procedures for handling all employment related appeals.
Recommendations	That the Scheme of Delegation within the Constitution be amended in accordance with the revised processes set out in paragraph 4 of this report, and the terms of reference for the Appointments and Appeals Committees be amended accordingly.
Resource Implications	The Head of Human Resources believes that the revised arrangements will make current processes more efficient, therefore reducing process cost. Existing training for managers will be revised to incorporate the new arrangements.

MAIN REPORT CONTENTS

1. Background

The current County Council arrangements for hearing appeals related to employment matters have developed over decades on a piece meal basis and have never been fully reviewed. Indeed our existing arrangements refer to Committees which no longer exist.

In 2001, the Government issued the Local Authorities (Standing Orders)(England) Regulations which regularised Member involvement in the recruitment and dismissal of staff. In essence, these Regulations specifically gave a role to Members in the appointment of 2nd Tier officers and above but clarified that the responsibility for appointments and dismissals at levels below 2nd tier was the responsibility of the Head of Paid Service or nominated persons.

In addition, recent legal developments include the introduction of new statutory disciplinary and dismissal procedures which for the first time require appeal mechanisms to be put in place. These dismissals include failed probation, dismissal at the end of a fixed term contract and refusal to allow an employee to work beyond the normal retirement age of 65. The Council now needs to respond to these developments by putting into place the appropriate arrangements.

A number of local authorities have recently taken the opportunity to review existing appeals procedures to reflect the Regulations and the changing legal framework and some have adopted the revised approach recommended in this paper.

2. Summary Proposed Revised Arrangements

In summary the proposal is for Members to hear employment related appeals for all officers at 2nd tier and above plus those officers at 3rd tier who directly report to a Group Director. In general all other appeals will be heard by the appropriate senior manager. This proposal has the support of the trade unions.

3. Current Employment Appeal Arrangements

The current arrangements are as follows. The constitution currently states that the Appeals Committee has a role to consider individual dismissal appeals and complaints by employees under the Council's grievance, harassment, equal pay claims and other procedures relating to employees in the following circumstances:

- ❑ Capability
- ❑ Ill health Retirement
- ❑ Disciplinary
- ❑ Redundancy
- ❑ Probation
- ❑ End of a fixed term contract
- ❑ Retirement (at the Normal Retirement Age of 65)

A separate appeals process is already in place with respect to grievances and individual grievances which relate specifically to the grade of an employee's job.

4. Proposals

The proposal is to align the Council's employment appeal arrangements with the 2001 Regulations. This will mean that the Appointments Committee will continue to hear appeals

against dismissal and other employment related matters as well as taking responsibility for the appointment of all senior staff at 2nd tier and above, and some 3rd tier officers who report directly to a Group Director. In practice this means all Directors, Group Directors, some 3rd tier officers who report directly to a Group Director and the Chief Executive. All other appeals will in future be heard at officer level.

The proposed revised employment related appeals arrangements would be as follows:

Senior Management posts: Chief Executive Group Directors and Directors

Decisions to dismiss will be made by a Panel of Appointments Committee members.

Appeals following dismissal will be heard by a Panel of Appeals Committee Members (selected from Appointments Committee Members not involved in the dismissal).

Posts below Director and 3rd tier officers not reporting directly to a Group Director – capability, ill health retirement, disciplinary, redundancy or ‘efficiency of service’.

Decision to dismiss will be taken at 3rd tier level and above. In schools the position remains the same and the decision to dismiss will be made by the Staff Dismissal Committee.

Appeals will be heard by an appropriate Director or Group Director (and in schools by the Governors appeals committee)

Posts below Director which relate to a failed probation, fixed term contract, or retirement at normal retirement age of 65

The proposed arrangements for these new types of appeal are as follows

Decision to dismiss will be by the appropriate line manager

Appeals will be heard by the appropriate senior manager

5. Consultation with Trade Unions:-

The Unions have been consulted on this review and the emerging proposals. Both Unison and the GMB fully support the revised proposals and have asked that their comments be included in this report.

UNISON has commented that the ‘changes will support the implementation of the People Strategy and should ensure consistency and transparency in the process’.

‘GMB support the principles underpinning these proposals which reflect legislation, ACAS guidelines and will assist with implementing the People Strategy’.

6. Conclusion:

The continuation of the existing processes is not an option. It is incompatible with emerging responsibilities and legislation; the principles set out in the 2001 Regulations; and of appointment and dismissals being handled at the minimum level of seniority which is appropriate. Member input to the appointment and dismissal of senior managers in the Council will be maintained at its current level.

7. Recommendations:

That the Scheme of Delegation within the Constitution is amended in accordance with the revised processes set out in paragraph 4 above, and the terms of reference for the Appeals and Appointments Committees is amended accordingly.

These revised arrangements will be reviewed after the first year of operation to ensure that they remain fit for purpose.

3.2 APPOINTMENTS COMMITTEE

The purpose of the Appointments Committee is to enable members to play a full role in deciding which persons should be employed, or not, as the Council's most senior officers and to determine terms of employment.

Table 3.4: The duties of the Appointments Committee

To be responsible for	
1.	recommending to the full Council the appointment (on a permanent or temporary or acting up basis) and dismissal of the Chief Executive/Head of Paid Service
2.	The appointment (on a permanent or temporary or acting up basis) and dismissal of the Chief Financial Officer, Monitoring Officer/Director of Law and Administration, all Group Directors and Directors of Service reporting directly to a Group Director or the Chief Executive
3.	Determining the terms of employment, and any variation to those terms, of employees of the Council including terms of employment and exercising employer discretions in relation to pensions
4.	Subject to any other provisions of the Council's Constitution, determining any other matters affecting employees of the Council

Appointments Committee Membership:

5 County Councillors,

1. at least one of whom must be a member of the Cabinet and
2. at least one of whom should be a Cabinet Member whose portfolio of duties includes responsibility for the directorate in which an appointed officer would be employed. This requirement should be met by a County Councillor appointed to membership of the Appointments Committee being substituted by the appropriate Cabinet Member of the same political party in order to meet political balance requirements. This requirement will not apply in connection with the appointment (on a permanent or temporary or acting a basis) and dismissal of the Chief Executive/Head Paid Service (including his or her terms and conditions of employment and any variation to those terms and conditions). Failure to comply with this requirement will not invalidate any proceedings of the Appointments Committee.

Note: Other than suspension during an investigation into alleged misconduct, disciplinary action may not be taken against the Head of Paid Service, Chief Financial Officer or Monitoring Officer except in accordance with written recommendations made by a designated independent person.