

Employment Committee

Excerpt of the minutes of the meeting held on Wednesday 13 June 2018 at the Town Hall, Royal Leamington Spa at 6.00 pm.

Present: Councillors Barrott, Mrs Bunker, Cain, Day, Mrs Evetts, Mrs Falp, Gallagher, Mobbs and Parkins.

1. **Apologies and Substitutes**

- (a) No apologies for absence were received.
- (b) Councillor Cain substituted for Councillor Doody.

2. **Appointment of Chairman**

It was proposed by Councillor Gallagher, seconded by Councillor Day and

Resolved that Councillor Mrs Bunker, be appointed as Chairman of the Committee for the 2018/19 municipal year.

3. **Declarations of Interest**

There were no declarations of interest.

9. **Disciplinary Procedure for Statutory Officers**

The Committee considered a report from Democratic Services that brought forward proposals for amendments to the Constitution in respect of the disciplinary procedures for statutory officers at Warwick District Council following legislative changes; and consideration of the need to appoint a Sub-Committee for specific matters.

The report followed the discussions by this Committee on 13 September 2017 when it considered the appointment of a Sub-Committee, as currently set out within its Constitutional remit "*that contains at least one member of each of the registered political groups to deal with employment related matters that fall within the jurisdiction of elected members.*"

During consideration of the item, members were concerned because one of the registered political groups, namely the Whitnash Residents' Association (WRA), only had one Member on the Committee and Liberal Democrat Group had no members on the Committee. This would mean that in the event that WRA Member could not attend a sub-committee meeting, there was no alternative Member of that political group to act as a substitute. Therefore the Committee deferred a decision until the next meeting, pending a written report to provide clarification on the duties the sub-committee would perform and on the situation regarding membership. This report provides that detail that was requested by the Committee.

The role of the required Sub-Committee was understood to relate to three specific areas of work set out within Officer Employment Procedure Rules:

EMPLOYMENT COMMITTEE MINUTES (Continued)

- (1) the recruitment of Chief Officers (defined within Article 12 of the Constitution as Heads of Service, Deputy Chief Executives and Chief Executive);
- (2) disciplinary and potential dismissal of Chief Officers; and
- (3) to consider right of appeal to members in respect of disciplinary action and dismissal.

In respect of the recruitment of Chief Officers; at present the interviews were undertaken by the Employment Committee as a whole. Normally a maximum of five Councillors from the Committee tended to attend these meetings. This was to ensure the number of people present was not disproportionately large. Technically all members of the Committee were entitled to attend and non-attendance was recorded as part of the annual report to Council.

It should be noted that the final decision to appoint to the role of Chief Executive (as Head of Paid Service), Deputy Chief Executive & Monitoring Officer (As the Monitoring Officer) or Head of Finance as (Chief Finance Officer) (who were statutory officers) had to be made by Council on recommendation from Employment Committee (or a Sub-Committee of Employment Committee).

The same principles applied for the disciplinary and potential dismissal of Chief Officers. However following legislative updates, regarding statutory officers there was a need for a further stage of consideration within the Council's Constitution; dismissal of a Statutory Officer might not be given by the Council until the recommendation of the Employment Committee (or a Sub-Committee of it) had been considered by an Independent Panel of at least two Independent Persons. Independent Persons were persons appointed under section 28(7) Localism Act 2011 for the purposes of the Code of Conduct for Members.

It was recommended that the recruitment, disciplinary and potential dismissal of any Chief Officers should be undertaken by a Sub-Committee of Employment Committee of no less than four and no more than six Councillors. This was to enable the effective management of arranging such a hearing, ensuring the process did not become onerous for the parties involved. This was particularly important for consistency in approach and questioning during each process, and to digest and consider potentially complicated matters in relation to disciplinary and potential dismissal of Chief Officers.

Any Sub-Committee appointed would need to be politically proportionate to the size of each political group on the Council, at that time.

The need for a Sub-committee did not specifically need to be set out within the terms of reference for the Committee because any Committee was entitled by law to appoint a sub-committee (made up of members of the Committee) and delegate work to it that it felt appropriate. However due to the nature of the matters being considered and to ensure clarity it was felt that the Constitution (née Council) should direct the Committee to appointment a Sub-Committee for such matters and detail what those specific matters would be.

EMPLOYMENT COMMITTEE MINUTES (Continued)

Statutory officers had certain protections in law against dismissal due to the nature of their roles within the local authority. These statutory protections were changed due to the by regulations in 2015 and minor modifications were made at the time to the Council's Constitution to reflect this. The Joint National Council for Local Authority Chief Executives had since updated the Chief Executives' Handbook to reflect changes to the statutory provisions for dealing with matters of discipline. The handbook included a model disciplinary procedure to be followed when an allegation was made relating to the conduct or capability of a Head of Paid Service or there was some other substantial issue that required investigation, except where parties locally had agreed to vary it.

The main changes were:

- a) the period for which a Statutory Officer may be suspended was not limited but that it shall be reviewed every two months;
- b) the Head of Paid Service or the Monitoring Officer could suspend another Statutory Officer in an emergency;
- c) provisions relating to the dismissal of the Head of Paid Service applied equally to the Monitoring Officer and Chief Finance Officer;
- d) no notice of dismissal of a Statutory Officer could be given by the Council before the recommendation of the Disciplinary Sub-Committee to dismiss had been considered by an Independent Panel of at least two Independent Persons; and
- e) where a Disciplinary Sub-Committee was considering the proposed dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer it must include at least one member of the Executive.

The requirement for the involvement of the Independent Persons, appointed under section 28(7) Localism Act 2011 for the purposes of the Code of Conduct for Members, was included following the initial regulation publication. However following a further review it was considered appropriate that further changes were made, in the light of the model procedure suggested in the Chief Executives' handbook.

As part of considering the Sub-Committee issue, officers had taken the opportunity to reflect on the current remit of Employment Committee. This highlighted a number of small administrative functions that were within the remit of the Committee which should be amended or removed.

Currently the Committee was required "To make arrangements for Councillors to determine appeals of employees where the relevant policy allows an appeal to elected Members". It was considered that this should be removed as the normal practice was for officers to make these arrangements to enable the appropriate meetings to take place.

The Committee was required "To organise a disciplinary hearing to receive the evidence of such a person and to decide the outcome of such a hearing in accordance with the Officer Employment Procedure Rules". It was considered that the organisation of such hearings was the role of officers. A small revision was therefore proposed as set out at Appendix 1 to the report.

EMPLOYMENT COMMITTEE MINUTES (Continued)

Recommended to Council that it amends the Constitution as set out at Appendix 1 to the minutes.

Resolved that the disciplinary procedure for statutory officers as set out at Appendix 2 to the minutes, be approved.

(The meeting ended at 7.09 pm)

CHAIRMAN
12 September 2018

**Warwick District Constitution
Part 3
Responsibility for Functions
Section 2 Council Functions**

- F. **EMPLOYMENT COMMITTEE** (11 Members One of whom will be the Leader as a representative of their political group)

To exercise delegated powers as follows (note i to iii, v and vi not included as not relevant to this matter):

- iv. ~~To make arrangements for Councillors to determine appeals of employees where the relevant policy allows an appeal to elected Members~~
- vii. To appoint an *Independent Investigator* ~~person~~ in relation to disciplinary investigations (including capability) involving the Head of Paid Service and Statutory Officers.
- viii. To appoint a sub-committee, at an appropriate time that will
 - (a) ~~viii organise a~~ *undertake* disciplinary hearings to receive the evidence of ~~such a person~~ *Independent Investigator* and to decide the outcome of such a hearing in accordance with the Officer Employment Procedure Rules;
 - (b) ~~ix~~ appoint or dismiss chief officers (*excluding statutory officers*) in accordance with the Officer Employment Procedure Rules;
 - (c) ~~xii The Committee (or sub-committee if acting on behalf of the Committee)~~ To recommend to Council the appointment or dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer in line with the Officer Employment Procedure Rules;
 - (d) *determine the suspension of a statutory officer and if the suspension continues, to review this decision (or the urgent decision to suspend by the Head of Paid Service or Monitoring Officer) at least every two months.*
- xi ~~to appoint a sub-committee that contains at least one member of each of the registered political groups to deal with employment related matters that fall within the jurisdiction of elected members.~~

NB1: Where the committee (or a sub-committee of it) is involved in the appointment, discipline or dismissal of Statutory Officers, it must include a member of the Executive, *that will normally be the Leader.*

NB2: Where it is proposed that a statutory officer is dismissed prior to Council determining the decision it must be considered by a Panel of at least two Independent Persons as defined under the Localism Act 2011.

Section 4 Scheme of Delegation

An additional delegation to the Chief Executive and Monitoring Officer (individually) to enable them to suspend the statutory officers within the Council, where they consider it is an emergency to do.

Part 4 Rules of Procedure Officer Employment Procedure Rules

6. Disciplinary Action

(a) Head of Paid Service, Chief Finance Officer and Monitoring Officer

Statutory Officers can be suspended on full pay whilst an investigation into alleged misconduct takes place, such suspension to be reviewed after two months and every month thereafter.

In an emergency, the Head of Paid Service or the Monitoring Officer may suspend a Statutory Officer. In other cases, only the Employment Committee may suspend a Statutory Officer, or extend the suspension.

No disciplinary action may be taken in respect of a Statutory Officer except in accordance with a recommendation in a report made by a designated independent investigator.

A politically balanced ~~Sub-Committee group~~ of no fewer than ~~three~~ ~~four~~ members and no greater than ~~six~~ (along with two Independent Persons) will be appointed by the Employment Committee to consider any allegations of discipline. ~~The Head of Paid Service may be suspended on full pay by the Employment Committee whilst an investigation takes place. The Statutory Officers may be suspended by the Head of Paid Service. In all cases the suspension will last no longer than two months.~~

(b) Chief Officers

Preliminary investigations into any disciplinary matters will be conducted by the Head of Paid Service. Where the preliminary investigation determines there is a potential case to answer, a Sub Committee of no fewer than ~~four~~ ~~three~~ elected members will be established by the Employment Committee, as set out in the JNC Constitution conditions of service and salaries for Chief Officers.

(c) Other Officers

Councillors will not be involved in disciplinary action against any Officer below a Chief Officer.

EMPLOYMENT COMMITTEE MINUTES (Continued)

7. Dismissal

(a) Head of Paid Service, Monitoring Officer & Chief Finance Officer

The dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer must be recommended by Employment Committee and ratified by Council.

Where a Sub-Committee is considering the proposed dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer it must include at least a member of the Executive.

When a recommendation to dismiss the Head of Paid Service, Monitoring Officer or Chief Finance Officer is made by a Sub-Committee, the Head of Paid Service or the Monitoring Officer will convene a panel of at least two independent persons appointed under section 28(7) Localism Act 2011 to consider the proposed recommendation of the Sub-Committee prior to any recommendation for dismissal being made to Council. ~~Where a committee or sub-committee of the council is to consider the possible dismissal of the head of paid service, the monitoring officer or the chief finance officer it must include~~

- ~~• At least two independent members appointed in accordance with section 28(7) Localism Act 2011 and~~
- ~~• The Leader.~~

The committee or sub-committee must be appointed at least 20 working days in advance of the scheduled hearing.

~~If the committee or sub-committee is of the view that dismissal is appropriate the committee or sub-committee may only make a report to Council with its recommendation for dismissal. The committee or sub-committee is not empowered to give any notice of dismissal.~~

In cases where dismissal is recommended the final decision will be taken by council, who must consider any advice, views or recommendations from the committee or sub-committee, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.

~~Notice of dismissal of the head of paid service, the monitoring officer, or chief finance officer shall only be given where the Leader of the Executive advises the proper officer appointed for the purpose that the Executive have a well founded and material objection to the appointment of that person.~~

Notice of dismissal of a Statutory Officer shall only be given where no well-founded objection has been received from any member of the Executive. This shall be provided by the Leader to the officer appointed for the purpose of this procedure.

EMPLOYMENT COMMITTEE MINUTES (Continued)

No notice of dismissal of a Statutory Officer may be given by the council before the proposal has been considered by an Independent Panel of at least two members appointed under section 28(7) Localism Act 2011.

No notice of dismissal may be given without the prior approval of the council.

(b) Chief Officers

The dismissal of Chief Officers will be made by a Sub Committee of the Employment Committee, as set out in the JNC Constitution conditions of service and salaries for Chief Officers.

NB. Where a meeting of the Employment Committee is required under these terms the meeting will take place under Council Procedure rules with the press and public excluded as per the Access to Information procedure rules of the Constitution.

8. Appeals

The Council's disciplinary capability and related procedures, as adopted allow the right of appeal to a sub-committee in respect of disciplinary matters.

If the Sub-Committee takes action short of dismissal, the Statutory Officer may appeal to a Sub-Committee of the Employment Committee. The Sub-Committee (or no less than four Councillors who have not previously considered the case) will consider the report of the Independent Investigator and any other relevant information considered by the Disciplinary Sub-Committee, e.g. new information, executive objections (if relevant), outcome of any further investigation, etc. The Statutory Officer will have the opportunity to appear at the Sub-Committee and make representations, although the appeal hearing will usually take the form of a review of the disciplinary decision rather than a re-hearing.

The Sub-Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of this Sub-Committee will be final.

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

In this procedure, 'Statutory Officer' means the Head of Paid Service (Chief Executive), the Monitoring Officer (Deputy Chief Executive & Monitoring Officer) and/or the Chief Finance Officer (Head of Finance & Section 151 Officer).

1. Issues requiring investigation

Where an allegation is made relating to the conduct or capability of a Statutory Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Disciplinary Sub-Committee (DSC).

Other structures are necessary to manage the whole process, including an Independent Panel should there be a proposal for the dismissal of a Statutory Officer. This will be comprised of independent persons, appointed in accordance with The Local Authorities (Standing Orders) (England) Regulations 2001 as amended.

2. Timescales

It is in the interests of all parties that proceedings be conducted expeditiously. It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

3. Suspension

Suspension will not always be appropriate as there may be alternative ways of managing the investigation.

However, the DSC will need to consider whether it is appropriate to suspend the Statutory Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Statutory Officer might compromise the investigation or impair the efficient exercise of the Council's functions.

In any case, the Statutory Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

The Head of Paid Service or the Monitoring Officer has the delegated power to suspend another Statutory Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by that Statutory Officer are such that their remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority.

The continuance of a suspension should be reviewed after it has been in place for two months and every month thereafter.

EMPLOYMENT COMMITTEE MINUTES (Continued)

4. Right to be accompanied

Other than in circumstances where there is an urgent requirement to suspend a Statutory Officer, they will be entitled to be accompanied at all stages.

5. Considering the allegations or other issues under investigation

The DSC will, as soon as is practicable inform the Statutory Officer in writing of the allegations or other issues under investigation and provide them with any evidence that the DSC is to consider, and of their right to present oral evidence.

The Statutory Officer will be invited to put forward written representations and any evidence including written evidence from witnesses they wish the DSC to consider. The DSC will also provide the opportunity for the Statutory Officer to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the DSC.

The DSC will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Statutory Officer before taking further action.

The DSC shall decide whether:

- the issue requires no further formal action under this procedure; or
- the issue should be referred to an Independent Investigator

The DSC shall inform the Statutory Officer of its decision without delay.

6. Appointment of an Independent Investigator

The DSC will be responsible for appointing an Independent Investigator, providing the necessary facilities, paying the remuneration and providing all available information about the allegations.

The Independent Investigator should be selected from the list maintained by the National Joint Secretaries.

7. The Independent investigation

The ACAS Code of Practice on Discipline and Grievance requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. For Statutory Officers, this should be carried out by an Independent Investigator operating on the basis of an independent investigation using their powers to access information and witnesses.

Once appointed it will be the responsibility of the Independent Investigator to investigate the issue / allegation and to prepare a report stating in their opinion whether (and, if so, the extent to which) the evidence they have obtained suggests that there is evidence to support further action under this procedure. While it is not the role of the Independent Investigator to decide what action may be taken under this procedure, they may, in cases concerning

EMPLOYMENT COMMITTEE MINUTES (Continued)

potential misconduct, give a view as to the seriousness of the matter and in any case, set out a range of actions which they consider to be available to the DSC.

8. Receipt and consideration of the Independent Investigator's report by the DSC

The DSC will consider the report of the Independent Investigator, and also give the Statutory Officer the opportunity to state their case and, to question witnesses, where relevant, before making a decision.

Having considered any other associated factors the DSC may:

- Take no further action
- Recommend informal resolution or other appropriate procedures
- Refer back to the Independent Investigator for further investigation and report
- Take disciplinary action against the Statutory Officer short of dismissal
- Propose dismissal of the Statutory Officer to the Council

9. Action short of dismissal

The DSC may agree to impose no sanction, or to take action short of dismissal, in which case the DSC will impose an appropriate penalty / take other appropriate action.

10. Where dismissal is proposed

Proposal to dismiss on the grounds of misconduct and for other reasons such as capability or some other substantial reason

The DSC will inform the Head of Paid Service that it is proposing to the council that the Statutory Officer be dismissed (unless it is the Head of Paid Service that the DSC is proposing to dismiss, in which case the DSC will inform the Monitoring Officer) and that the executive objections procedure should commence.

Executive objections procedure

The Head of Paid Service (or Monitoring Officer as the case may be) will notify all members of the executive of:

- The fact that the DSC is proposing to the council that it dismisses the Statutory Officer
- Any other particulars relevant to the dismissal
- The period by which any objection to the dismissal is to be made by the leader on behalf of the executive, to the Head of Paid Service (or Monitoring Officer as the case may be)

At the end of this period the Head of Paid Service (or Monitoring Officer as the case may be) will inform the DSC either:

- that the leader has notified their that neither they nor any member of the executive has any objection to the dismissal
- that no objections have been received from the leader in the period or
- that an objection or objections have been received and provide details of the objections

The DSC will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the Committee

EMPLOYMENT COMMITTEE MINUTES (Continued)

will act accordingly, i.e. it will consider the impact of the executive objections on its proposal for dismissal, commission further investigation by the Independent Investigator and report if required, etc.

Having satisfied itself that there is no material and well-founded objections to the proposal to dismiss, the DSC will inform the Statutory Officer of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material.

The role of the Independent Panel

Where the DSC is proposing dismissal, the proposal needs to go before the Independent Panel. The Independent Panel must be appointed at least 20 days before the Council meeting which would consider the proposal to dismiss.

Both parties should be present or represented at the Panel meeting (the DSC might be represented by its Chair or other nominated person at the meeting). The Panel should receive any oral representations from the Statutory Officer, and should invite any response on behalf of the DSC to the points made, and may ask questions of either party.

The role of the Independent Panel is to offer any advice, views or recommendations it may have to the Council on the proposal to dismiss. The Independent Panel should review the decision and prepare a report for Council. This report should contain a clear rationale if the Panel disagrees with the recommendation to dismiss.

The role of the Council

The consideration by the Council will take the form of a review of the proposal that the Statutory Officer should be dismissed, and must take into account:

- Any advice, views or recommendations of the Independent Panel
- The conclusions of the investigations into the proposed dismissal
- Any representations from the Statutory Officer

The Statutory Officer will have the opportunity to appear before the Council and make representations to the Council before a decision is taken.

Redundancy, Permanent Ill-Health and the expiry of Fixed Term Contracts

Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel.

However, the authority should follow appropriate and fair procedures in these cases and have mechanisms in place, including appropriate delegated authorities, to manage such eventualities. In addition, dismissals for all reasons including those set out in this paragraph must be approved by the Council itself.

EMPLOYMENT COMMITTEE MINUTES (Continued)

11. Appeals against dismissal

Where the DSC has made a proposal to dismiss; the review by the Council will also fulfil the appeal function.

12. Appeals against action short of dismissal

If the DSC takes action short of dismissal, the Statutory Officer may appeal to the Appeals Sub-Committee. The Appeals Sub-Committee will consider the report of the Independent Investigator and any other relevant information considered by the DSC, e.g. new information, executive objections (if relevant), outcome of any further investigation, etc. The Statutory Officer will have the opportunity to appear at the Appeals Sub-Committee and make representations, although the appeal hearing will usually take the form of a review of the disciplinary decision rather than a re-hearing.

The Appeals Sub-Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.

The decision of the Appeals Sub-Committee will be final.