

North East Derbyshire District Council

Council

4 March 2019

Joint Employment Committee and Joint Appeals Committee

Report of the Joint Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To revise the process for the hearing of disciplinary and capability matters in relation to members on the Strategic Alliance Management Team (SAMT) to ensure the process is fit for purpose.

1 Report Details

- 1.1 Members of Strategic Alliance Management Team (SAMT) are subject to a disciplinary and capability process that requires disciplinary and capability hearings to be heard by the Joint Employment Committee (JEC). The JEC's membership comprises both Council Leaders and Deputies and the Leader of the principal opposition in each Council.
- 1.2 Any appeal against a decision by the JEC would be made to the Joint Appeals Committee (JAC). The JAC's membership also comprises both Council Leaders and Deputies and the Leader of the principal opposition in each Council. An appeal cannot be heard by the same members that heard the original disciplinary or capability case so revised arrangements are required.
- 1.3 In order to resolve the issue the following proposals are recommended:
- The JEC and the JAC become one Committee entitled the Joint Employment and Appeals Committee (JEAC). The JEAC would sit as an 8 member Committee to deal with appointments of SAMT members. This membership proposed is as follows:

Bolsover District Council (BDC)	North East Derbyshire District Council (NEDDC)
Leader	Leader
Deputy	Deputy
Cabinet member	Cabinet member
Leader of principal opposition	Leader of principal opposition

- In order to address the issues set out at para 1.2, capability and disciplinary cases for Directors and Heads of Service would be heard by a more senior officer, with a right of appeal to Members. If an appeal against any decision as a result of such a hearing is made then a sub-committee of the JEAC would be arranged. This sub-committee would comprise of 4 members, being 2 members from each Council (including at least one Opposition Member) in order to provide an equal representation of Elected members from each Council. In such cases the sub-committee could comprise of the following:

Option 1	Option 2
Leader BDC	Leader NEDDC
Deputy NEDDC	Deputy BDC
Cabinet member BDC	Cabinet member NEDDC
Leader of principal opposition NEDDC	Leader of principal opposition BDC

- The proposals as set out in the report require amendment to the terms of reference for the JEC removing reference to dealing with disciplinary and capability matters for members of SAMT other than in relation to appeals against the initial decision. An amended set of the Terms of Reference is attached at **Appendix 1**.
- Amendment to the Scheme of Delegation to officers is also proposed to enable dismissal decisions regarding members of SAMT to be made by the Chief Executive Officer, or the Strategic Directors in his absence. The would amend paragraph 10.26 (ii) as follows

To determine all staffing matters including but not limited to:

- ...
- (ii) *the appointment, dismissal, suspension, or discipline of staff, save that in relation to the Chief Executive Officer, Strategic Directors and Heads of Service, this does not include the appointment and, **in the case of statutory officers**, their dismissal.*

This has the effect of removing the power to dismiss statutory officers only from the delegation, leaving all other dismissal decisions within the scope of the power.

- For dismissals arising from the decision of the senior officer there would be a right of appeal to this sub-committee of the JEAC.

1.6 The proposed changes as set out in the report outline a mechanism for ensuring Members remain independent by not being engaged in the matter prior to any appeal. This ensures a fair and transparent process with a clear and separate appeal process.

2 Conclusions and Reasons for Recommendation

2.1 The current arrangements for hearings of disciplinary and capability issues relating to SAMT Members must be changed to meet the requirements of natural justice by providing a fair and independent appeal mechanism.

2.2 In addition there is need for a formal procedure to be agreed.

3 Consultation and Equality Impact

3.1 The Unions will be consulted as part of the process before this matter comes to the Council.

3.2 Equality implications are dealt with within the proposed documents.

4 Alternative Options and Reasons for Rejection

4.1 The existing arrangements are unreasonable and therefore an alternative mechanism that provides an independent appeal mechanism is required.

5 Implications

5.1 Finance and Risk Implications

5.1.1 There are no Finance implications.

5.2 Legal Implications including Data Protection

5.2.1 These are dealt with in the report.

5.3 Human Resources Implications

5.3.1 There are no direct Human Resources implications.

5.3.2 Members of SAMT are already subject to the JNC Conditions of Service in their contracts of employment.

6 Recommendations

That Council:

6.1 Merge the Joint Employment Committee and the Joint Appeals Committee so that they become the Joint Employment and Appeals Committee (JEAC)

6.2 Approve the proposed membership and Terms of Reference for the JEAC appended to this report and the proposed amendment to the Scheme of Delegation to Officers.

6.3 Refer the Terms of Reference and the amendment to the Scheme of Delegation to Officers to the Standards Committee to note and for inclusion in the Constitution.

6.4 Approve the membership of the Committee as 8 members, 4 from each of the 2 Councils.

6.5 Appoints the additional Cabinet member representative to Committee.

6.6 Give delegated authority to the Chief Executive Officer as Head of Paid Service to make any minor alterations required to the process.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>District Wards Affected</p>	All indirectly
<p>Links to Corporate Plan priorities or Policy Framework</p>	All indirectly

8 Document Information

Appendix No	Title
Appendix 1	Proposed Terms of Reference for the Joint Employment and Appeals Committee (the JEAC)
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
Report Author	Contact Number
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Article 10 of the Constitution – proposed change

10.5 Joint Employment and Appeals Committee (the JEAC)

- (a) There will be a Joint Employment and Appeals Committee of eight Members; four Councillors from North East Derbyshire District Council and four Councillors from Bolsover District Council.
- (b) The membership from North East Derbyshire District Council shall comprise the Leader of the Council, the Deputy Leader, a Cabinet Member and the Leader of the Largest Minority Group or their appointed substitute. Substitutes if called upon will replace an existing Member for the duration of an employment procedure in its entirety. At its conclusion, appointment reverts to the Member originally appointed. The Members and Substitutes shall be appointed at the Annual Meeting. The rules of proportionality shall apply to this Committee.
- (c) The Joint Employment and Appeals Committee will meet as a Committee in relation to all appointments of the Strategic Alliance Management Team which includes the Statutory Officers and other Chief Officers/Deputy Chief Officers (employed by the Council under Joint Negotiating Committee (JNC) terms and conditions).
- (d) The Joint Employment and Appeals Committee will meet as a Sub Committee of 4 comprised as one of the options below when dealing with a disciplinary or capability issue:

Option 1	Option 2
Leader BDC	Leader NEDDC
Deputy Leader NEDDC	Deputy Leader BDC
Cabinet member BDC	Cabinet member NEDDC
Leader of largest minority group NEDDC	Leader of largest minority group BDC

- (e) The Joint Employment and Appeals Committee will have the roles and functions as set out in the Functions Scheme.

5.10 Joint Employment and Appeals Committee

Functions	Matters not delegated
<p>To interview candidates for posts within the Strategic Alliance Management Team</p> <p>To appoint candidates to posts within the Strategic Alliance Management Team, with the exception of the Head of Paid Service, Chief Finance Officer and Monitoring Officer</p> <p>To recommend to the Councils' the appointment of the Head of Paid Service, Chief Finance Officer and Monitoring Officer</p> <p>To deal with the final stages of the grievance and harassment procedures for all Statutory Officers and other Chief Officers/Deputy Chief Officers</p> <p>To deal with appeals from the Chief Executive Officer and Chief Officers/Deputy Chief Officers, including Statutory Officers, against action taken against them</p> <p>In respect of the dismissal of any of the Statutory Officers, namely the Head of Paid Service, the Monitoring Officer and the Section 151 Officer, the Joint Employment and Appeals Committee shall make a recommendation to the Councils which will be supported via a report from two of the Councils' Standards Committee Independent Persons</p>	<p>To determine any matter referred to it.</p>