

Agenda item 10

Council Issues

1. Appeals Against Dismissal by Staff

Purpose of Report

To consider proposals for alterations to the way in which appeals against dismissal by staff are handled which include improving the timescales for dealing with casework by transferring responsibility for hearing some staff appeals to senior officers and abolishing the Appeals Committee.

Background

The Council's Constitution makes provision for the appointment of an Appeals Committee which comprises an appointed Chairman and four other members constituted for particular cases on a politically-balanced basis. Members of the Cabinet do not serve on the Committee.

The committee's powers are "to exercise the powers and duties of the Council on cases in which there is a right of appeal against decisions taken by or on behalf of the Council in relation to any of its functions". In practice the Committee meets to deal with appeals against dismissal by staff and has only rarely been required to hear any other kind of appeal. In fact there are not currently any other processes where there is a right of appeal to members. In 2011/12 the Panel heard 11 appeals against dismissal and in 2012/13 it heard six such appeals.

The Council's capability and disciplinary procedures provide for employees to have a right to appeal to a panel of Members in the case of a decision to dismiss for disciplinary, performance capability and sickness capability issues. Appeals against dismissals for redundancy, ending a fixed term contract, probation or ill health retirement are dealt with by a senior officer.

Where an employment tribunal claim is submitted, it is very likely that one of the panel members (normally the chairman) would need to be called as a witness in order to support the Council's defence of case in relation to the appeal decision. Following the recent elections a number of the regular panel members (including the chairman) are no longer members of the Council. Panel members are sometimes reluctant to attend as a witness when they are no longer a Councillor.

National rules about employment appeals

The statutory ACAS Code of Practice provides that appeals should be heard without unreasonable delay. Setting up a Member panel can cause some delays, often of 2-3

months. As a result, the employee has often left employment by the time of the Appeal (even if they were dismissed with notice) and some may already have submitted an application to an employment tribunal. The Tribunal has the power to increase a compensation award by up to 25% if it feels that the code has been broken.

The ACAS Code makes it clear that employers must give their staff the opportunity to appeal against any decision to dismiss. The Code states that appeals “should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case”. Supporting guidance advises that appeals should be heard by someone more senior than the person who took the disciplinary decision.

Proposal

Following consultation with trade unions it is proposed to change the Council’s employment procedures so that appeals against dismissal are heard by an independent senior officer who is no less senior than the dismissing officer, and this meets the guidelines set out by ACAS.

This would make it possible for arrangements to be made significantly more quickly. It is felt that senior officers will have a good level of experience in dealing with employment matters and that their knowledge and experience will enable a fair and consistent approach to appeals.

Trade unions consider that since members are the ultimate employer, it is an important principle that all employees should have the right to appeal to members against any decision to dismiss. They do not therefore support these changes.

However, the consent of trade unions is not required to the proposed changes and the risk of significant disruption or industrial relations problems is considered to be low. Further, it is considered that the right of appeal to a senior officer is adequate protection for individuals and is in accordance with the ACAS Code.

A number of other local authorities allow employment appeals to be heard by a senior officer rather than by a committee of councillors, including Kent, Hertfordshire and Wiltshire.

Chief Officers and Deputy Chief Officers

Decisions about the appointment and dismissal of Chief Officers and Deputy Chief Officers currently rests with a Chief Officer Committee established under Article 8 of the Constitution. They cannot take a final decision without following a statutory consultation process with all members of the Cabinet. It is, therefore, felt that members need to continue to be involved in making the decisions on dismissals and appeals against dismissals for Chief and Deputy Chief Officers. At present the Committee can delegate decisions on appointment to an officer or to a sub-committee but it cannot currently delegate the power to dismiss.

The ACAS Code applies to all staff and it is still necessary to allow decisions taken by the committee to be appealed. It is therefore proposed that:

- the initial decision to dismiss would be taken by a sub-committee or the Chief Executive or her nominee;
- an appeal against that decision would be considered either by a differently constituted sub-committee or by the parent committee. No member who participated in the decision to dismiss would be allowed to take part in the appeal.

At least one member of the Executive would sit on any committee or sub-committee, in order to comply with the Local Authorities (Standing Orders) (England) Regulations 2001. Written notice is still required to be given to all members of the Cabinet of any intended appointment or dismissal of a chief or deputy chief officer.

Recommended:

- (1) That the existing right of appeal to members be replaced with the right of appeal to a senior officer in order to speed up the appeals process and provide greater certainty to employees and managers but with a right of appeal to members retained for those officers who are appointed by members, namely chief and deputy chief officers, to the Chief Officer Panel.
- (2) That the terms of reference of the Chief Officer Committee in paragraph 8.1.5 of the constitution be amended to read:

8.1.5 Committee to determine the Terms and Conditions of employment of Chief and Deputy Chief Officers

Membership: Five Members of the Council to include the appropriate Cabinet Member.

(i) to be responsible for the appointment and dismissal of Chief/Deputy Chief Officers and appeals against dismissal of such persons, with the power:

- (a) to appoint sub-committees of three Members to deal with particular appointments, dismissals or appeals; and
- (b) to authorise the Chief Executive or her nominee to deal with a particular appointment or dismissal;

(ii) to resolve any issue relating to the terms or conditions of employment of Chief/Deputy Chief Officers not already covered by the Council's Officer Employment Procedure Rules; and

(iii) to decide the level of performance pay to be awarded to the Chief Executive and members of the Corporate Leadership Team.

- (3) That the Member Appeals Committee be abolished and references to it in the constitution be deleted.

2. List of Approved Bodies

The Council's scheme of allowances sets out the list of approved bodies other than its Committees, attendance at which constitutes an approved duty. The Scheme provides that

this list is updated on a regular basis. The updated list is attached as the Annex to this report.

List of Approved Bodies

Appendix 3

Only those bodies listed below (or on the list subsequently updated and published as Appendix 3 to *The Constitution*) is deemed to be an Approved Duty.

Essex County Council will only consider a claim for mileage and expenses in connection with a member's attendance at a meeting of an Approved Body if they are unable to make the claim from the Approved Body. A member must not make more than one claim for the same attendance.

An Approved Body may be internal or external and

- is not covered by the definition of Council, Committee or Sub-Committee; and
- is one where the appointment has been formally made in writing by the Cabinet Member.

The published list will be updated as Appendix 3 of *The Constitution* when required (last update 09 July 2013) and reported to Council annually.

1. A12 Alliance
2. Adoption Panel - North
3. Adoption Panel – South
4. Adoption Panel - West
5. Age UK
6. Anglian (Central) Regional Flood Defence Committee
7. Anglian (Eastern) Regional Flood Defence Committee
8. Ann Johnson's Educational Foundation
9. Bancroft School
10. Basildon and Thurrock University Hospital NHS Foundation Trust
11. Basildon Local Strategic Partnership
12. Basildon Renaissance Partnership
13. Basildon Youth Strategy Group – all Basildon Members
14. Billericay Educational Trust
15. Bradwell Power Station Liaison Committee Council
16. Bradwell Quarry Liaison Group (Rivenhall Airfield)
17. Braintree Locality Board – all Braintree Members
18. Braintree Youth Strategy Group
19. Brentwood Youth Strategy Group – all Brentwood Members
20. Bulls Lodge Liaison
21. Castle Point Local Strategic Partnership
22. Castle Point Youth Strategy Group
23. Chelmsford Educational Foundation
24. Chelmsford Local Strategic Partnership
25. Coastal renaissance Partnership Board
26. Colchester and District Visual Arts

27. Colchester Economic Growth Board
28. Colchester NHS Trust
29. Colchester Youth Strategy
30. Corporate Parenting Panel
31. County Council Network
32. Crouch Harbour Authority
33. Crumps Farm Liaison Group
34. Danbury Lakes and Country Park Forum
35. Dedham Vale and Stour Valley Joint Advisory Committee
36. Earls Colne and Halstead Educational Charity
37. East of England Local Government Association
38. East of England Rural Forum
39. Epping Forest Local Strategic Partnership
40. Epping Youth Strategy Group
41. Equality and Diversity Board
42. Essex Association of Local Councils
43. Essex Awards Trust
44. Essex Casualty Reduction Board
45. Essex Coastal Forum
46. Essex County Traveller Unit Committee
47. Essex Environmental Trust
48. Essex Partnership for Flood Management
49. Essex Partnership Steering Group
50. Essex Rural Partnership
51. Essex Waterways Ltd
52. Fawbert and Barnard's Educational Foundation
53. Feering and Kelvedon Local History Museum
54. Fitch and Mott Foundation
55. Fostering Panel – Mid Essex
56. Fostering Panel – North East Essex (1)
57. Fostering Panel – North East Essex (2)
58. Fostering Panel – South Essex
59. Fostering Panel – West Essex
60. George Courtauld's Educational Charity
61. Gosling Educational Foundation
62. Grange Farm Centre Trust
63. Great and Little Leighs Educational Charity
64. Great Notley Country Park Partnership Board
65. Harlow College of F.E.
66. Harlow Local Strategic Partnership
67. Harlow Stansted Gateway Transportation
68. Harlow Youth Strategy Group
69. Hatfield Forest National Trust Local Committee
70. Haven Gateway Partnership and Transportation
71. Highways Panel - Basildon
72. Highways Panel - Braintree
73. Highways Panel - Brentwood

74. Highways Panel – Castle Point
75. Highways Panel - Chelmsford
76. Highways Panel - Colchester
77. Highways Panel – Epping Forest
78. Highways Panel - Harlow
79. Highways Panel - Maldon
80. Highways Panel - Rochford
81. Highways Panel - Tendring
82. Highways Panel - Uttlesford
83. IAA Member Working Group (Waste)
84. IGNITE – Enterprise Centre for Braintree
85. Improvement and Efficiency South East (IESE)
86. Kent and Essex Inshore Fisheries and Conservation Authority (EIFCA)
87. King Edward VI School Historic Foundation
88. Lee Valley Regional Park Authority
89. Local Children Trust Board - Mid Essex
90. Local Children Trust Board - North East Essex
91. Local Children Trust Board - South East Essex
92. Local Children Trust Board - South West Essex
93. Local Children Trust Board - West Essex
94. Local Government Association – Inland Flood Risk Management Group
95. Local Government Association – Rural Commission
96. Local Government Association – Special Interest Group on Coastal Issues
97. Local Government Association – Urban Commission
98. Local Government Association (LGA)
99. Maldon Locality Board
100. Maldon Plume Education Trust
101. Maldon Plume Library
102. Maldon Youth Strategy Group
103. National Association of Areas of Outstanding Natural Beauty
104. National Bus Lane Adjudication Service Joint Committee
105. National Parking Adjudication Service Joint Committee
106. North Essex Parking Partnership (NEPP)
107. North Essex Partnership NHS Foundation Trust (NEPFT)
108. Police and Crime Panel
109. Princess Alexandra Hospital NHS Foundation
110. Reserve Forces and Cadets Association for East Anglia
111. Rochford Local Strategic Partnership
112. Rochford Youth Strategy Group
113. Rural Community Council of Essex (RCCE)
114. Safeguarding Vulnerable People Panel
115. Safer Essex
116. Safer Routes to School Panel
117. Saffron Walden Museum Society
118. Saffron Walden Town Library Society
119. South Essex NHS Foundation Partnership Trust
120. South Essex Parking Partnership (SEPP)

121. Southend Airport Consultative Committee
122. Southend University Hospital NHS Foundation Trust
123. Standing Advisory Council for Religious Education (SACRE)
124. Stansted Airport Community Trust
125. Stansted Airport Consultative Committee (STACC)
126. Strategic Aviation Special Interest Group of the LGA (SASIG)
127. Tendring Youth Strategy Group
128. Thames Gateway and South Essex Board
129. Thames Regional Flood Defence Committee
130. Urban Commission
131. Uttlesford Local Strategic Partnership
132. Uttlesford Locality Board
133. Uttlesford Youth Strategy Group
134. Veolia Cleanaway Trust
135. Victoria History of the County of Essex
136. Visit Essex Board