

SPECIAL UNION / EMPLOYEE CONSULTATION COMMITTEE

AGENDA

Monday 25th March at 3pm in the Council Chamber, The Arc, Clowne

Item No.		Page No.(s)
	PART 1 – OPEN ITEMS	
1.	To receive apologies for absence, if any.	
2.	Members should declare the existence and nature of any Disclosable Pecuniary Interest and Non Statutory Interest as defined by the Members' Code of Conduct in respect of: a) any business on the agenda b) any matters arising out of those items and, if appropriate, withdraw from the meeting at the relevant time.	
3.	RECOMMENDATION FROM THE STANDARDS COMMITTEE – Joint Employment Committee and Joint Appeals Committee	3 to 9

Bolsover District Council

Union and Employee Consultation Committee

25th March 2019

<p>RECOMMENDATION FROM THE STANDARDS COMMITTEE – Joint Employment Committee and Joint Appeals Committee</p>
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Report of the Head of Corporate Governance and Monitoring Officer

This report is public

PLEASE NOTE:

Attached is the report that was deferred from the Meeting of Council on 6th March 2019 pending further consideration by the Standards Committee and the UECC.

Standards Committee Members are asked at their meeting on 11th March to consider its content and make recommendations for consideration by UECC at their meeting on 25th March 2019 and Council on 3rd April 2019.

The discussions and recommendations of the Standards Committee will be presented verbally to UECC.

Bolsover District Council

Council

6th March 2019

Joint Employment Committee and Joint Appeals Committee

Report of the 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 the 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. This would amend paragraph 10.28 (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

That Council:

- 6.1 Merge the Joint Employment Committee and the Joint Appeals Committee so that it becomes 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 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 two Councils;
- 6.5 Appoints the additional Cabinet member representative to Committee; and
- 6.7 Give delegated authority to the Chief Executive and Head of Paid Service to make any minor alterations required to the process.

7 Decision Information

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: BDC: <i>Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> NEDDC: <i>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>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	All indirectly
Links to Corporate Plan priorities or Policy Framework	All indirectly

8 Document Information

Appendix No	Title
Appendix 1	Proposed Terms of Reference for the Joint Employment and Appeals Committee (JEAC)
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)	
None	
Report Author	Contact Number
Sarah Sternberg Joint Head of Corporate Governance and Monitoring Officer.	01246 242414

JOINT MEMBER PANELS FOR STAFFING MATTERS

(1) Joint Employment and Appeals Committee (JEAC)

There will be a Joint Employment and Appeals Committee (JEAC) of four Councillors from North East Derbyshire District Council and four Councillors from Bolsover District Council.

One named substitute is made for each appointed Member of the Committee who can be called upon to 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 membership from Bolsover District Council shall include the Leader of the Council and Deputy Leader, a Cabinet Member and the Leader of the Largest Minority Group. The Members shall be appointed at the Annual Meeting. The rules of proportionality shall apply to this Committee.

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).

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 NEDDC	Deputy BDC
Cabinet member BDC	Cabinet member NEDDC
Leader of principal opposition NEDDC	Leader of principal opposition BDC

The Joint Employment and Appeals Committee will have the following roles and functions:-

- (a) To interview candidates for posts within the Strategic Alliance Management Team
- (b) 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
- (c) To recommend to the Councils' the appointment of the Head of Paid Service, Chief Finance Officer and Monitoring Officer
- (d) To deal with the final stages of the grievance and harassment procedures for all Statutory Officers and other Chief Officers/Deputy Chief Officers
- (e) To deal with appeals from the Chief Executive Officer and Chief Officers/Deputy Chief Officers including Statutory Officers, against action taken against them

- (f) 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

Bolsover District Council

Special Union Employee Consultation Committee

25th March 2019

<p>Joint Employment Committee and Joint Appeals Committee – supplementary report</p>

Report of the Joint Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To set out proposals for revised arrangements for the Joint Employment Committee (JEC) and the Joint Appeals Committee (JAC) in relation to members of the Strategic Alliance Management Team (SAMT).

1 Report Details

- 1.1 The attached Council report was considered by Standards Committee on the 11th March. The Standards Committee recommended that its comments on the report be referred to the Union Employee Consultation Committee in order that these could be considered prior to the report being referred to Council at the meeting scheduled for 3rd April.
- 1.2 As set out in the attached report the two Councils' Constitutions contain different terms of reference for the JEC and therefore the purpose and role of the Joint Committee is not clear and not consistent. Therefore revised arrangements are required. The attached report proposes that a Joint Employment and Appeals Committee be established. It also sets out the mechanism for making appointments to the roles with the Strategic Alliance Management Team and the process for dealing with appeals on issues relating to capability, performance, sickness absence and conduct, in line with the established arrangements for all other Bolsover staff who have a right of appeal to the Employee Appeals Committee in such cases. The attached report sets out the need to have revised arrangements in place in order to have a clear and consistent approach and procedure across both Councils for members of the Strategic Alliance Management team which reflects ACAS guidance and the relevant statutory regulations.
- 1.3 At Standards Committee on the 11th March, Members considered the procedure proposed in the attached report. The Committee recommended putting in place these arrangements pending the planned formal Constitutional review. Consequently the Standards Committee made a recommendation to that effect to ensure a fair and workable arrangement was in put place. The Standards Committee will then reconsider the arrangements at the start of the new corporate year as part of the planned formal Constitution review in 2019/20.

- 1.4 As set out in the attached report the proposal includes an increase in the Joint Employment and Appeals Committee membership from each Council to 4 Members. This is to assist with the formation of the necessary sub Committees and making sure the number of members from each Council is the same. The Extra Member proposed is a Cabinet Member. This also adds more Executive Members to the appointments process for roles with the Strategic Alliance Management Team.

As set out in the report it is now before the UECC so that the UECC's views can be taken into account by the Council when it considers the proposals at its next meeting.

- 1.5 Given the revised arrangements need to be in place for both Councils, North East Derbyshire District Council approved the revised arrangements at their meeting on 4th March. This means that should this Council want to consider further alternative arrangements to these proposals, more time would be needed in order for the two Councils to agree and adopt a process.
- 1.6 As a reminder to Members, this report has no effect on appeals. These will still be heard before Members for all employees.

2 Conclusions and Reasons for Recommendation

- 2.1 The process for dealing with disciplinary/capability hearings for Joint Heads of Service and above relies on the consistency of the terms of reference of the JEC across the two Councils. Currently they are not the same and so it is not possible to keep existing arrangements.
- 2.2 Therefore there is a need for the arrangement to be revised and agreed across the Strategic Alliance so that there is in place a fair and workable process. 2.3 As set out in the this report, the Standards Committee has already placed this issue at the top of its work plan as part of the planned Constitution review for the forthcoming corporate year which will enable further consideration of the matter.

3 Consultation and Equality Impact

- 3.1 Discussion has taken place with the relevant Union representatives as part of ongoing dialogue. Consideration by the UECC enables formal engagement and consultation on the proposals in order that UECC's comments are reported to Council.
- 3.2 There are no direct equality issues arising from the report. However failure to have consistency and a fair process in the two Councils needs to be addressed.

4 Alternative Options and Reasons for Rejection

- 4.1 To do nothing is not an option as that leaves the Strategic Alliance without joint arrangements for dealing with disciplinary/capability hearings for Joint Heads of Service level and above.
- 4.2 This process will be reviewed as part of the Standards Committee's planned annual review of the Constitution which will be undertaken in the new municipal year.

5 Implications

5.1 Finance and Risk Implications

5.1.1 There are no direct financial implications.

5.1.2 Risks relate to not having a suitable, satisfactory and consistent arrangement in place that is agreed across both Councils.

5.2 Legal Implications including Data Protection

5.2.1 As set out directly in the report and the risk section.

5.2.2 The Regulations to be complied with in respect of this subject are the Local Authorities (Standing Orders)(England) Regulations 2001, SI 3384.

5.3 Human Resources Implications

5.3.1 As set out directly in the report and the risk section.

6 Recommendations that

6.1 Members of the UECC consider the report and give views on the proposals in order that these can be incorporated in a Council report for Council on 3rd April.

6.2 Members note that these arrangements will be reviewed as part of the 2019/20 planned annual Constitutional review by Standards Committee.

7 Decision Information

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 <input type="checkbox"/></i> <i> Capital - £150,000 <input type="checkbox"/></i> <i>NEDDC: Revenue - £100,000 <input type="checkbox"/></i> <i> Capital - £250,000 <input type="checkbox"/></i> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	None directly
Links to Corporate Plan priorities or Policy Framework	None as this relates to staffing matters.

8 Document Information

Appendix No	Title
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)	
None other than the Council report in the agenda.	
Report Author	Contact Number
Sarah Sternberg	2414

Report Reference –