

HUMAN RESOURCES & COUNCIL TAX COMMITTEE

24 FEBRUARY 2025

REPORT OF DIRECTOR LAW & GOVERNANCE & MONITORING OFFICER

A.6 HUMAN RESOURCES COMMITTEE AND ARRANGEMENTS FOR STATUTORY OFFICER AND NON-STATUTORY CHIEF OFFICER APPEALS

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek approval of the proposed amendments to the Terms of Reference of the Human Resources Committee to include the determination of Appeals of Chief Officers for recommendation onto Full Council, together with a recommendation to establish a Chief Officer Employment Appeals Sub-Committee and to review the Council's HR Policies and Procedures, to ensure they are consistent with the changes concerning appeals processes.

EXECUTIVE SUMMARY

It is important to set out the context of seeking to amend the Terms of Reference of the Human Resources Committee.

The Council's Staff Handbook states *"Employees have a right of appeal against any formal disciplinary decision. The appeals procedure is part of the Disciplinary Policy and Procedures"*.

Disciplinary Policy and Procedures issued by Human Resources updated October 2017 state
"15. APPEALS PROCEDURE
15.1 Refer to Appeal Policy"

APPEALS PROCEDURE (Updated August 2012):

"As an employee of the Council, there may be occasions where a formal decision is required to be taken about your employment. Where this occurs, formal policies and procedures will be followed to ensure a fair process is applied. It is essential that any actions or decisions made are based on facts and evidence provided as part of that process.

There may, however, be times where an employee is unhappy with the decision made or action taken. Where this occurs they have the right to appeal against that decision. The purpose of the Appeals Procedure is to outline the process which will be followed when exercising the right of appeal.

The right of appeal will usually apply where decisions are taken regarding the outcome of a disciplinary or capability hearing, formal grievance or redundancy selection. In all cases, the appeals process will be the same and further advice relating to each specific procedure can be found in the following policies:

- *Disciplinary Policy, Rules and Procedure*

- *Grievance Procedure*

In paragraph 2.2 of the Disciplinary Policy and Procedure, the Scope of the Procedure is stated as:

“The procedure applies to all employees of Tendring District Council, with the exception of the Council’s Statutory Officers who are covered by National Employer’s procedures. These are agreements of the Joint Negotiating Committee (JNC) for Chief Executives and Chief Officers of Local Authorities. Cases where an employee’s ability to undertake the job they are employed to do is in question, will normally be dealt with under the Capability Procedure. Human Resources will advise on the best course of action to take in these circumstances”.

In September 2022, the Handbook for Chief Executives was updated by the *Joint Negotiating Committee for Chief Executives*. The Conditions of Service for Local Authority Chief Officers was last updated by the Joint Negotiating Committee in 2017. Further information on both of these documents is contained within the legal requirements section of this report.

Consequently, there was a need to review whether the Council had the appropriate decision-making structure in place to accord with appeal requirements for the Chief Executive, Statutory Officers, and Non-Statutory Chief Officers and their deputies, as set in the relevant Staff Handbooks.

Upon undertaking the review, it is recommended that a Chief Officer Employment Appeals Sub-Committee is established with the Terms of Reference as set out in Appendix A, following a recommendation from the Human Resources and Council Tax Committee onto Full Council for approval and consequential amendments to the Council’s constitution.

RECOMMENDATION(S)

It is recommended that the Human Resources and Council Tax Committee:

- (a) Notes the outcome of the review undertaken by the Council’s Monitoring Officer as requested by Full Council;**
- (b) recommends to Full Council that:**
 - (i) the Human Resources and Council Tax Committee’s Terms of Reference be amended to include the determination of Employment Appeals of Chief Officers, with these functions being delegated to a Chief Officer Employment Appeals Sub-Committee;**
 - (ii) a Chief Officer Employment Appeals Sub-Committee is established with the Terms of Reference as set out in Appendix A, with the necessary amendments being made to the Council’s Constitution, to be highlighted in the reference report to Full Council;**
 - (iii) political proportionality would not apply to the Employment Appeals Sub-Committee, on the basis that it is not a committee which meets regularly; and**
- (c) Subject to (a) and (b) authorises a delegation to the Head of People to undertake a review of the Council’s Human Resources Policies and Procedures, in consultation with the Head of Paid Service, to ensure they are up to date and consistent with the appeal process for Chief Officers as set out.**

REASON(S) FOR THE RECOMMENDATION(S)

The recommendations seek to implement the will of Council for a review in respect of Chief Officer Appeals and set out for consideration the appropriate steps to address the issue of employment appeals concerning Statutory Officers and Non-Statutory Chief Officers.

ALTERNATIVE OPTIONS CONSIDERED

The option of not pursuing the changes recommended was discounted as it would be contrary to the will of Council and otherwise mean that the Council did not have appeal structures in place for Statutory Officers or Non-Statutory Chief Officers that were compliant with the Council's obligations.

Employment Appeals from Deputy Chief Officers could be determined by the Sub-Committee however, this option was discounted as the Council's Management Team can determine these appeals in line with the existing arrangements.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The proposals in this report support good governance for the Council and as such supports the Council to deliver against its adopted Corporate Plan and its themes.

Tendring District Council adopted its Corporate Plan 2024-28 ('Our Vision') at full Council in November 2023 (Minute No. 76 refers) with Community Leadership and listening to, and delivering for, our residents and businesses to be recognised as cross cutting elements of the Plan. The Corporate Plan Themes are:

- Pride in our area and services to residents
- Raising aspirations and creating opportunities
- Championing our local environment
- Working with partners to improve quality of life
- Promoting our heritage offer, attracting visitors and encouraging them to stay longer
- Financial Sustainability and openness

The Council's Annual Governance Statement (a statutory document which sits alongside the Statement of Accounts, which is inspected by External Audit, and which follows the CIPFA format) covers the 7 principles of Local Code of Governance (for Local Government) and expects adherence with **Principle A - Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law**. Accordingly, the approach taken in this report can be said to support that Principle and, more generally, good governance.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Part 3 of the Council's Constitution contains the Responsibility of Functions - Scheme of Delegation - Schedule 1 sets out the Responsibility for Local Choice Functions.

Local Choice functions are those, which may (but need not) be the responsibility of the Cabinet. Schedule 1 of Part 3 of the Constitution details the responsibility for those local

choice functions as set out in Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as determined by the Council.

(Part 3.3) Paragraph 2 of Schedule 1 – for the Function of “*The determination of an appeal against any decision made by or on behalf of the authority*” currently has reserved the function to Full Council with a further delegation to state “*the relevant non-executive committee, unless expressly specified within the terms of reference*” (*)

In September 2022, following a review of practices introduced by the Local Authorities Standing Orders (England)(Amendment) Regulations 2015, the Joint Negotiating Committee (JNC) for Chief Executives of local authorities wrote to all Chief Executives to notify them their Handbook (“CX Handbook”) had been updated, which sets out what became the conditions of service of employees engaged on terms laid down by the JNC, with effect from September 2022. The circular and the new CX Handbook was requested to be brought to the attention of the Monitoring Officer and HR Director, to remind all Councils should ensure that the following committees should be established and ensuring that the appropriate delegated powers have been conferred on them:

- An Investigating and Disciplinary Committee (IDC) (para 1.2.2);
- An Appeals Committee (para 1.2.3); and
- An Independent Panel (para 1.2.4).

The Model Procedures & Guidance, as set out in Appendix 5 to the CX Handbook apply and should be followed unless alternative arrangements are agreed locally. Tendring District Council has not agreed any alternative arrangements. The guidance is to protect the Chief Executive and Head of Paid Service whilst providing the Council and its elected members guidance to ensure they:

- Understand the procedure to be used;
- Seek appropriate advice at every stage;
- Do not compromise the outcome of any proceedings; and
- Allow every opportunity for fair procedures to operate.

A key feature of the model procedures is the specific roles envisaged by the three committees referred to above. Councils should consider a number of important issues around the composition of committees and the delegation of appropriate powers. In particular, it must be borne in mind that staffing issues are a non-executive function and so these bodies have to be put in place by the Council and not the Leader.

Currently, the Council has:

- Human Resources Sub-Committee forming the Panel for the dismissal and disciplinary process for Senior Officers (as defined in paragraph 3 of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001 (as amended) (Part 3.21) which is akin to the role of the Investigating and Disciplinary Committee (as referred to above).
- The full Human Resources & Council Tax Committee undertaking the role of an advisory Independent Panel in accordance with the statutory provisions for the Chief Executive, Chief Financial Officer and the Monitoring Officer (together with the Independent Persons) (Part 3.20), which is akin to the role of the Independent Panel (as referred to above).

- Both of the above are supported by the Officer Employment Procedure Rules (Part 5.87-5.90)

With regards to an Appeal process the Officer Employment Rules state:

“Nothing shall prevent a person from serving as a member of a committee or sub-committee established by the Council to consider an appeal by –

- (a) another person against any decision relating to the appointment of that person as a member of staff of the Council, or*
- (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.”*

DISCIPLINARY ACTION IN CONNECTION WITH OFFICERS BELOW DEPUTY CHIEF OFFICER

Members will not be involved in the disciplinary action or dismissal against any officer below a Deputy Chief Officer. The Council’s disciplinary, capability and related procedures, as adopted from time to time will apply, and may allow a right of appeal to Members in respect of disciplinary action.

DISMISSAL

Members will not be involved in the dismissal of any officer below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct. The Council’s disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Members in respect of dismissals.

However, there is no reference to the appeal process from the Deputy Chief Officer and above. Therefore, it is necessary to give due consideration to the requirements within the Chief Executive’s Handbook and that of Chief Officers.

The Chief Officers Conditions of Service issued in 2017, states in PART 3 under DISCIPLINE, CAPABILITY AND REDUNDANCY that where disciplinary action against the Monitoring Officer or s151 Officer the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) in England, provide a degree of protection for these officers in their statutory role within local authorities. Paragraph 1.2 goes on to state that in England, Paragraph 13 and 13A and Appendix 5A of the Conditions of Service Handbook of the Joint Negotiating Committee for Local Authority Chief Executives, which give effect to these statutory requirements, can be used as a reference guide in circumstances where disciplinary action against the Monitoring Officer or s151 Officer is contemplated.

Therefore, it is considered appropriate to follow the same structure as suggested and give consideration to the establishment of an Appeals Committee.

In relation to Non-Statutory Chief Officers the Conditions of Service, state *“A particular consideration for Chief Officers is that the procedures must take account of an officer’s position in the hierarchy when determining who conducts investigations, undertakes disciplinary/capability hearings taking any appropriate action and who hears appeals. Depending on the structure of the authority and the circumstances of the case these functions should normally be undertaken by officers as appropriate but in some cases may require a*

committee of members to be involved in hearings or appeals”

The Council’s Pay Policy Statement defines “Chief Officers” as *“the Chief Executive, and Management Team for the authority, which also includes both the Monitoring Officer and the Section 151 Officer”*.

FINANCE AND OTHER RESOURCE IMPLICATIONS

The implications of this report will be met from existing resources and budgets.

USE OF RESOURCES AND VALUE FOR MONEY

External Audit expect the following matters to be demonstrated in the Council’s decision making:

- A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;*
- B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and*
- C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.*

As such, set out in this section the relevant facts for the proposal set out in this report.

The following are submitted in respect of the indicated use of resources and value for money indicators:

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| A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services; | The Council has an approved Budget and Policy Framework, which includes the resources required to deliver the services on behalf of the Council in accordance with the Corporate Plan, Cabinet’s Priorities, statutory duties and discretionary powers. |
| B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and | The Council’s report templates include headings for all the required considerations for informed decision making and managing risk. |
| C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services. | The Council is committed to delivering it’s Best Value obligations around continuous improvement. The measures set out in this report are an example where improvement upon the current position is proposed. |

MILESTONES AND DELIVERY

Human Resources and Council Tax Committee – February 2025

Full Council – March 2025

ASSOCIATED RISKS AND MITIGATION

Without an appeals process in place for the Council’s Chief Officers, the Council could be found in breach of their Terms and Conditions of Employment. Suitable training will be

delivered to the Sub-Committee prior to being able to sit and determine the outcome of an appeal.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The Statutory Officers and non-statutory Chief Officers forming Management Team are aware that changes were required to provide a Chief Officers Appeals Sub-Committee, as per the Terms and Conditions of those roles.

Research has been undertaken on a number of other Councils' Constitutions, and it is standard practice for a Chief Officer Appeals Sub-Committee to exist.

The Head of People has been consulted with the proposed recommendations and has confirmed their agreement. A delegation will be required so that a review of the Council's Human Resources Employment Policies and Procedures can be undertaken by the Head of People (in consultation with the Chief Executive, as Head of Paid Service). These procedures will require updating in accordance with the proposed recommendations if the Committee approves the establishment of a Chief Officer Appeals Sub-Committee being recommended to Full Council for approval.

EQUALITIES

The Council must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.

The proposal does not impact on the protected characteristics.

SOCIAL VALUE CONSIDERATIONS

Social Value is defined through the Public Services (Social Value) Act 2012 and requires all public sector organisations (and their suppliers) to look beyond the financial cost of a contract and consider how the services they commission and procure might improve the economic, social and environmental well-being of an area. Therefore, social value considerations are not relevant to the proposed recommendations as set out in this report.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050

There are no implications positively or negatively towards the Council's Net Zero agenda.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder

Health Inequalities

Area or Ward affected

None related to this report

ANY OTHER RELEVANT INFORMATION

none

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Through the Annual Review of the Constitution in late 2023 and early 2024, the Officer Employment Procedure Rules and the Terms of Reference & Delegated Powers of the Human Resources and Council Tax Committee and its Sub-Committee, were considered.

This was specifically considered at the meeting held on 18 January 2024 of the Constitutional Review Working Party. The Working Party was advised of the position and the decision taken by Full Council at its meeting held on 29 March 2022. The Full Council in 2022 followed receipt of a letter from The Joint Negotiating Committee for Chief Executives of local authorities.

The Monitoring Officer explained to the Working Party the purpose of a review of the terms of reference and delegated powers of the Human Resources and Council Tax Committee and its sub-committee which would look in particular at the relevant Human Resources policies and the model procedures for an Appeals Committee for the dismissal of the statutory officers.

In addition, a 'knock on' review of the Officer Employment Procedure Rules would need to take place.

Following a suggestion made by the Chief Executive the Working Party revisited the composition of the Human Resources Sub-Committee Panel, which was the body that formed part of the recruitment process for the appointment of Senior Officers (as defined in Paragraph 3 of Part 11 of Schedule 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended)). The Leader of the Council undertook to consult the Assistant Director (Partnerships) and the Head of People on the matters raised by the Working Party before deciding whether he wished to make any recommendations to Cabinet on this matter.

The Officer Employment Procedure Rules have been reviewed by the Monitoring Officer in light of the requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 and the changes to the Rules were set out to the Cabinet Report in February 2024. **The review regarding appeals was at that time still outstanding.**

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Full Council March 2022 (minute 150)

(i) Council notes that the Monitoring Officer intends to exercise her delegated powers (as a result of management restructures and legislative requirements) and make appropriate amendments to the Constitution in relation to the following matters:-

...
· *The terms of reference and delegated powers of the Human Resources & Council Tax Committee and its Sub-Committee.*

On 16th February 2024, following a report of the Corporate Finance & Governance Portfolio Holder (the Leader of the Council) on the Annual Review of the Council's Constitution Cabinet resolved (Minute No. 91):

2. *That Cabinet -*

(e) *notes, welcomes and endorses that the Monitoring Officer intends to review the terms of reference and delegated powers of the Human Resources and Council Tax Committee and its sub-committee which would look, in particular, at the relevant Human Resources policies and the model procedures for an Appeals Committee for the dismissal of the statutory and chief officers.*

This report is the outcome of that review.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

There are no background papers (within the terms of the legislation) and published reference material are appropriately annotated within this report.

APPENDICES

Appendix A – Proposed Chief Officer Employment Appeals Sub-Committee is Terms of Reference

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

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