



---

## Report of the Assistant Chief Executive (Corporate Governance)

### General Purposes Committee

Date: 18 May 2010

### Subject: Proposed Amendments to the Employment Committee Terms of Reference

---

#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

---

## Executive Summary

The General Purposes Committee has the authority to consider proposals to amend the Constitution and to make recommendations to full Council.

This report concerns proposed amendments to the Employment Committee's Terms of Reference, contained in Part 3, Section 2B of Leeds City Council's Constitution.

As they currently appear, its Terms of Reference expressly provide for the Employment Committee to make recommendations to Council to appoint or dismiss the Chief Executive. They do not, however, currently make any express provision for the Committee to recommend or to take disciplinary action short of dismissal against the Chief Executive.

Under the Local Authorities (Standing Orders) (England) Regulations 2001 ("the Regulations"), "disciplinary action" in relation to local authority employees means any action occasioned by alleged misconduct which, if proved, would be recorded on the employee's personal file. Disciplinary action short of dismissal will usually consist of either a written warning or a final written warning or, in certain circumstances, a transfer or demotion.

The current Terms of Reference do not include an express power (as is recommended under the model disciplinary procedure in the Joint Negotiating Committee's National Salary Framework and Conditions of Service Handbook for Local Authority Chief Executives) for the Employment Committee to suspend the Chief Executive.

The Employment Committee's Terms of Reference also authorise it to deal with **appeals** relating to grading, grievance and discipline in respect of the Chief Executive (and the Deputy Chief Executive and Directors). There is, however, no provision for an

initial stage in relation to a grievance submitted by the Chief Executive.

Under the Regulations, a local authority must incorporate into its standing orders provisions to the effect that no disciplinary action can be taken against the authority's Head of Paid Service, its Monitoring Officer or its Chief Finance Officer (by the local authority or by any committee or sub-committee) other than in accordance with a report by a Designated Independent Person ("DIP"). Suspension of those officers on full pay for up to 2 months (any longer requires the DIP's authority) **can** take place but neither the Regulations themselves nor the Council's Officer Employment Procedure Rules specify who has the authority to order suspension. It is therefore proposed that this power should be expressly exercisable by the Employment Committee and its Terms of Reference amended accordingly.

## **1.0 Purpose of This Report**

- 1.1 As part of a review of policies and procedures which apply to senior staff and having regard to the impending process to recruit and appoint to a number of posts within the Corporate Leadership Team ("CLT"), the Employment Committee's Terms of Reference have been reviewed.
- 1.2 This report and its recommendations aim to address gaps in the Employment Committee's Terms of Reference, so that responsibility for decision making in relation to disciplinary and grievance issues in respect of the Chief Executive, Monitoring Officer and Director of Resources is properly set out.

## **2.0 Background Information**

- 2.1 Under the 2001 Regulations, no disciplinary action (other than suspension for up to 2 months for investigatory purposes) may be taken against the Head of the Authority's Paid Service (i.e. in the case of Leeds City Council, the Chief Executive), its Monitoring Officer or its Chief Finance Officer (Director of Resources) other than in accordance with the recommendation of a Designated Independent Person ("DIP").
- 2.2 The Regulations also stipulate that the officers mentioned in 2.1 (and a number of other statutory and non-statutory Chief Officers) cannot be **appointed** or **dismissed** without a "proper officer" being appointed to canvass the Executive of the Authority for any material and well-founded objections.
- 2.3 While the Authority cannot dismiss or take other disciplinary action against the Chief Executive, the Monitoring Officer or the Director of Resources except in accordance with the recommendation of a DIP<sup>1</sup>, the "proper officer" process is not required in the case of disciplinary action short of dismissal.

## **3.0 Main Issues**

- 3.1 Disciplinary action short of dismissal against the Chief Executive

A copy of the current wording of the Employment Committee's Terms of Reference appears as Appendix A of this Report. It will be noted that while paragraph 1 deals with the **appointment** and **dismissal** of the Chief Executive and paragraph 2 deals

---

<sup>1</sup> Regulation 6 and paragraph 3 of Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2001

with **appointment, dismissal and disciplinary action** against the Deputy Chief Executive and Directors (as defined in the footnote to the Employment Committee's Terms of Reference), there is no provision for **disciplinary action short of dismissal** to be taken against the Chief Executive (even though paragraph 3 refers to **appeals relating to discipline** (i.e. not merely appeals relating to dismissal) in respect of the Chief Executive).

It is therefore proposed to amend the Terms of Reference of the Employment Committee as shown in paragraph 2 of Appendix B

### Grievances

#### 3.2 Grievances submitted by the Chief Executive

In relation to grievances raised by the Chief Executive, the model procedure provides for an informal stage (it recommends this be handled by the Monitoring Officer). If that does not resolve the grievance, the Model Procedure recommends a referral to the Grievance Committee with any appeal to Full Council.

The current Chief Executive's Statement of Written Particulars includes the standard Grievance Procedure clause for Leeds City Council employees:

**"14.1** *If you have [a] grievance relating to your employment you should discuss the matter initially with your immediate supervisor. If the grievance is to be raised formally, this must be submitted in writing. The process for this and further steps are governed by the Council's Grievance Procedure, which can be found in the local Conditions of Service referred to in paragraph 3 above."*

However as with the Council's Disciplinary Procedure, the Chief Executive and those employed on Chief Officers' Conditions are expressly excluded from the scope of the standard Leeds City Council Grievance Procedure.

The Model Procedure recommends that Councils establish a Grievance Committee. Although it suggests that the Grievance Committee should not comprise the same members as the Investigation and Disciplinary Committee, there is no reason why the function of hearing a grievance could not be dealt with by one panel of members of the Employment Committee, with any subsequent disciplinary issues arising out of it being dealt with by a different panel of members. This could be clarified in the footnote.

3.3 At present, there is no provision in the Employment Committee's Terms of Reference for the Committee to hear a grievance submitted by the Chief Executive.

3.4 This report therefore recommends amendment of the Employment Committee's Terms of Reference to address this issue and for the Employment Committee to deal with any such grievance and a differently constituted Employment Committee to deal with any appeal by the Chief Executive.

It may be that the informal process for resolving a grievance submitted by the Chief Executive (under the model procedure set out in Appendix 8 of the JNC Chief Executives' Handbook) will be adopted and incorporated by reference into the new Chief Executive's contract of employment in due course.

Appendix B of this report shows the proposed amendments to the Terms of Reference of the Employment Committee to address the points raised above.

### 3.5 Grievances against the Chief Executive

Paragraph 3 of the current Terms of Reference deals with **appeals** relating to grading, **grievance** and discipline in respect of the Chief Executive, Deputy Chief Executive and Directors. The current Chief Executive's statement of written particulars incorporates the Joint Negotiating Committee's National Salary Framework and Conditions of Service Handbook for Local Authority Chief Executives. In the case of grievances, the Handbook is advisory rather than prescriptive. Additionally, the advice leaves many issues to be determined by each local authority. For example, the nomination of a "receiving officer" to administer an initial filtering process (to decide whether a complaint about the Chief Executive is really a complaint about a particular Council service rather than against the Chief Executive personally, or is patently frivolous or unfounded, or could be resolved informally). It is generally inappropriate for a subordinate to hear a superior's grievance and the Chief Executive is the most senior officer in the Council. On that basis, the Handbook suggests that the Head of Human Resources (Chief Officer Human Resources in the case of Leeds City Council) carries out this filtering role. Either way, this should be clarified – as should the applicable grievance procedure itself. It is suggested that this be addressed by the Chief Officer ( Human Resources) prior to the appointment of a new Chief Executive and as part of the terms and conditions of his or her employment from the outset.

### 3.6 Suspension of the Chief Executive

Investigatory suspension of the Chief Officer, Monitoring Officer or Director of Resources for up to 2 months does not require the prior authority of a DIP (see paragraph 3 of Schedule 3 of the Regulations and paragraph 6 of the Officer Employment Procedure Rules). It is not clear, however, who would take the decision to suspend the Chief Executive of Leeds City Council.

### 3.7 Under the Joint Negotiating Committee's National Salary Framework and Conditions of Service for Local Authority Chief Executives, the model disciplinary procedure envisages that in most cases the power to suspend will be vested in the Investigating and Disciplinary Committee (equivalent to the Employment Committee at Leeds City Council). The model procedure also provides for the Chief Executive to be suspended at very short notice in exceptional circumstances. Under the model procedure, it is suggested that the Chair of the Investigating and Disciplinary Committee should hold the delegated power in those circumstances. This requires specific provision to avoid a Chief Executive from being able to challenge any suspension for lack of specific authority. However, while a function can be delegated to a committee, a sub-committee or to an officer, delegation to a single elected member is not provided for. It is therefore suggested that if that aspect of the model procedure were adopted, a suspension solely by the Chair of the Employment Committee would be open to challenge. A further practical problem would be that Leeds City Council does not have a standing Chair of the Employment Committee to call upon in those circumstances (the Chair being appointed at the time). While the usual 5 clear days notice generally applies to the Employment Committee, the Constitution does provide for shorter notice (Paragraph 4.1 of the Access to Information Procedure Rules). In the case of Leeds City Council, the Employment Committee can be convened at very short notice and it is not thought necessary, therefore, for a power to suspend at very short notice to be given to the Chair of the Committee even if that had been possible.

- 3.8 Accordingly, it is recommended that the Employment Committee's Terms of Reference should be amended to include an express power to suspend the Chief Executive. The Regulations limit the [internal] power to suspend to a maximum of 2 months. Any longer period of suspension requires the authority of the DIP. It is also proposed by this report that the power to suspend the Monitoring Officer or the Director of Resources should be vested in the Employment Committee rather than in the Chief Executive. While this might appear to restrict the Chief Executive's power, ultimately no disciplinary action itself (suspension not being disciplinary action for these purposes) could be taken against the Monitoring Officer or the Director of Resources without the appointment of a DIP in any event. The statements of written employment particulars for the Monitoring Officer and the Director of Resources state that the disciplinary rules and appeal mechanisms applicable are those set out in the Council's Disciplinary Procedure and Code of Conduct. Since these statements of particulars were issued, a new disciplinary procedure has been introduced and all JNC staff are expressly excluded from it. A new disciplinary procedure for JNC staff is to be agreed and introduced.

#### Amendment to correct administrative error

As a minor point, item 3 in the footnote to the current version of the Employment Committee's Terms of Reference refers to paragraph 3 of the Regulations. This should be a reference to paragraph 3 of Part II of Schedule 1 of the Regulations. It is therefore recommended that this be amended accordingly (as per Appendix B).

### **4.0 Implications For Council Policy And Governance**

- 4.1 In terms of Corporate Governance it is important that the Authority has clear processes and procedures (a) for regulating the conduct of **all** of its officers, including in relation to disciplinary matters (without necessarily having to resort to dismissal) and (b) for dealing with any grievances that **any** of its officers may have.
- 4.2 The proposed amendments only relate to the Chief Executive, the Monitoring Officer and the Director of Resources, and there are no direct Council-wide policy implications.

### **5.0 Legal And Resource Implications**

- 5.1 Without clear authority to take disciplinary action short of dismissal against the Chief Executive or to suspend the Chief Officer, Monitoring Officer or Director of Resources, the Council takes the risk that any such action could be challenged as being ultra vires or, at least in the case of the Chief Executive, of having to choose between the extremes of dismissal on the one hand and taking no action on the other.
- 5.2 This also has implications for the Council in relation to any claims that might be brought by a Chief Executive for wrongful and/or unfair dismissal.
- 5.3 While it might in practice be difficult for a Chief Executive to remain in post after having received a written warning, not to have a lesser sanction than dismissal as an option could render the dismissal of a Chief Executive procedurally unfair. If there is no provision for the Chief Executive to be given a written warning, for example, he or she could argue that (a) any such sanction would be invalid or (b) that any dismissal would be both procedurally and substantively unfair (on the basis that the alleged conduct would only warrant disciplinary action short of dismissal but that the procedure does not allow for that lesser sanction).

- 5.4 The failure by an employer to follow a fair procedure when dismissing an employee can also lead to a percentage increase in any tribunal award of compensation of up to 25%.
- 5.5 At present, while the Employment Committee can hear a grievance appeal in respect of the Chief Executive, it is not apparent from the Employment Committee's Terms of Reference who would hear the initial grievance. This provides scope for a challenge to the process in the context of any subsequent claim brought by the Chief Executive and, in theory, the potential for an increase in any tribunal award and to the authority of whoever the Council proposes should deal with a grievance at the first formal stage.

## **6.0 Conclusions**

- 6.1 The current version of the Employment Committee's Terms of Reference should be amended:
- 6.1.1 to cover grievances relating to the Chief Executive;
- 6.1.2 to cover disciplinary action short of dismissal against the Chief Executive; and
- 6.1.3 to give the Committee the power to suspend the Chief Executive, Monitoring Officer or Director of Resources.

## **7.0 Recommendations**

- 7.1 It is recommended that the General Purposes Committee considers whether the Employment Committee's Terms of Reference should be amended as per the attached draft (Appendix B).

### Background Documents:

**Appendix A:** The current Employment Committee's Terms of Reference

**Appendix B:** Proposed amended Employment Committee's Terms of Reference