

REPORT TO COUNTY COUNCIL

DATE: 5 JANUARY 2022

AMENDMENTS TO THE CONSTITUTION

Report of the Monitoring Officer

Cabinet Member: Richard Wearmouth

Purpose of report

To create a new committee known as the Grievance Committee to hear and determine grievances raised by the Chief Executive and Chief Officers and also grievances made against the Chief Executive and Chief Officers.

Make consequential amendments to the Terms of Reference to the Staffing and Appointment Committee and the Employment (Appeals) Committee to clarify roles and responsibilities and comply with the Council's legal obligations.

Recommendations

It is recommended that the Council:

- 1. Establishes a Grievance Committee.**
- 2. Appoints a Chair and Vice Chair to the Grievance Committee, nominations to be made by Group Leaders.**
- 3. Approves the Terms of Reference as set out in Appendix A to the report.**
- 4. Appoints 5 Members to serve on the Committee in accordance with the political proportionality of the Council, nominations to be made by Group Leaders.**
- 5. Approves the amendments to the Terms of Reference of the Staff and Appointments Committee and the Employment (Appeals) Committee, as set out in Appendix B,**
- 6. Delegates to the Monitoring Officer authority to review and make consequential amendments to other protocols and provisions of the Constitution to give effect to this resolution. This delegation to be exercised in consultation with the Advisory Constitution Working Group.**

Link to Corporate Plan

This report updates the County Council Constitution which is a key governance document in the NCC Corporate Plan 2018-2021.

Key issues

The Chief Executive and Chief Officers have a statutory and contractual right to raise a grievance to their employer. The County Council has grievance policies, but they do not make provision for a process to investigate, hear and determine such grievances for very senior officers.

Employment issues are non-executive functions of the Council and must be discharged by the Council, a committee, or a duly delegated officer. Given the seniority of the staff, the Council needs to make arrangements for a committee to discharge these functions on its behalf. The attached procedure takes account of the ACAS Code of Practice and the guidance provided in the JNC for Chief Executives of Local Authorities in England and Wales.

The existing Pay Policy Statement 2021 is at variance with the Terms of Reference of the Staffing and Appointments Committee and the Employment (Appeals) Committee in relation to the exercise of certain employment functions. The amended Terms of Reference attached as Appendix B seeks to clarify the various delegated functions to ensure that they are compliant with the Council's legal obligations and in accordance with the prevailing guidance.

Background

1. It is a term to every contract of employment that an employee should be able to raise a grievance with their employer.
2. The County Council has a grievance policy which applies to its staff. However, the procedures for resolving any such grievances do not properly take account of the seniority of staff.
3. In November 2020 the Council agreed to adopt the Model Disciplinary Procedure and Guidance set out in the JNC for Chief Executives of Local Authorities in England. The JNC also has a Model Code which covers how Councils should deal with grievances raised by and against a Chief Executive. The attached Terms of Reference take account of this and extend its provisions to Chief Officers. The definition of Chief Officer is set out in the terms of reference for each committee.
4. The procedure attached at Appendix A also reflects the guidance provided in the statutory ACAS Code for resolving workplace disputes.
5. The establishment of this committee and the clarification of the roles and responsibilities of the Staffing and Appointment Committee and the Employment (Appeals) Committee provides the Council with the necessary decision taking bodies to

ensure that it is able to resolve any workplace disputes that arise in accordance with its legal obligations.

6. The Council does not currently have a Grievance Committee or terms of reference of any other committee to discharge this function.
7. The JNC Model Code specifically sets out that the Members sitting on the Grievance Committee should be independent of any disciplinary functions and so it is recommended that a separate committee is formed.
8. The recommendation is for a committee of 5 members which is in accordance with the guidance in the JNC Model Code.
9. The County Council Procedure rules provide that the Council will appoint the chair and vice chair of committees. In the absence of such an appointment the meeting will elect a chair and vice chair for each meeting from its members.
10. A review of the constitution and the County Council's Pay Policy Statement approved in 2021 shows that the Policy and the Terms of Reference of the Staffing and Appointments Committee and the Employment (Appeals) Committee are at variance. Clarity is required as to the various delegations and functions of these committees to bring them into compliance with the County Council's legal obligations and to provide clarity to the Council's Scheme of Delegation.
11. The number of members and the political proportionality of these Committees also requires clarification to ensure that the Council observes the rules of political proportionality. The Staffing and Appointments Committee will continue to comprise 9 members and the Employment (Appeals) Committee will continue to be a panel of 5 chosen from a pool of 20.
12. The recommendation delegates to the Monitoring Officer the responsibility to make any consequential amendments to other parts of the Constitution to give effect to these changes in consultation with the Advisory Constitution Working Group.

Implications

Policy	The proposed amendments will align the Constitution with the latest guidance and legislation required to be followed in respect of the employment of the Council's Chief Officers
Finance and value for money	No direct costs will be incurred by updating the Constitution. Failure to make the required amendments could, however, result in adverse value for money implications for the Authority.

Legal	This accords with the Council's legal obligations – Local Government Act 1972 and Local Government and Housing Act 1989. The amendment of the constitution is a none-executive function
Procurement	N/A
Human Resources	These amendments make proper arrangements for employees to raise grievances and for the Council to properly discharge its employment functions through appropriate committees
Property	N/A
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	The arrangements provide for any employee with complaints which may include protected characteristics to raise these with their employer.
Risk Assessment	If the Council fails to investigate and determine grievance complaints in a timely manner, complaints can be made to an Employment Tribunal.
Crime & Disorder	N/A
Customer Consideration	N/A
Carbon reduction	N/A
Health and Wellbeing	These amendments make proper arrangements for employees to raise grievances and for the Council to properly discharge its employment functions through appropriate committees
Wards	All Wards

Background papers:

Section 101 Local Government Act 1972

Section 112 Local Government Act 1972

Local Government and Housing Act 1989

Local Authorities (Standing Orders) Regulations 2001 and 2015

JNC for Chief Executives of Local Authorities in England and Wales

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

	Full Name of Officer
Monitoring Officer/Legal	
Executive Director of Finance & S151 Officer	
Relevant Executive Director	
Chief Executive	
Portfolio Holder(s)	

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21. Employment (Appeals) Committee

Terms of Reference and Powers

- (a) To discharge the Council's disciplinary functions as an employer, in relation to the Head of Paid Service and Chief and Deputy Chief Officers.

NB It should be noted that the arrangements at paragraphs (b) to (e) below apply to disciplinary action in relation to a Statutory Officer (defined as the Head of Paid Service, Monitoring Officer and Chief Finance Officer).

- (b) To consider and determine whether a Statutory Officer (defined as the Head of Paid Services, Monitoring Officer and Chief Finance Officer) should be suspended (or continue to be suspended) either immediately, or following a preliminary investigation into their conduct, and to formally review any suspension after it has been in place for two months in consultation with the Independent Investigator and after taking into account any representations by the Officer. Suspension will not be appropriate in every case as this will depend on the nature of the allegations or seriousness of the issue and before suspending a Statutory Officer careful consideration should be given to whether it is necessary or if there are any suitable alternative ways of managing the situation.
- (b) The Monitoring Officer or, in the case of a conflict of interests, a Deputy Monitoring Officer in consultation with the Director of Human Resources and the Chair of the Committee may determine that a decision on the suspension of a Statutory Officer is required at very short notice and before the Committee can meet, if his or her continued presence at work poses a serious risk to the health and safety of others or to the resources, information or reputation of the Council. Any decision to suspend must be reviewed by the Committee as soon as it is practicable to do so.
- (c) To consider and determine disciplinary action short of dismissal in relation to a Statutory Officer in accordance with the Local Authorities (Standing Orders) Regulations 2001 (as amended) and JNC Model Disciplinary Procedure.
- (e) To make recommendations to Council regarding the dismissal of a Statutory Officer for capability, conduct or for some other substantial reason
- (f) To determine grievance appeals relating to the Chief Executive and Chief Officers (as defined in the terms of reference for the Grievance Committee).
- (g) To hear and determine disciplinary action in relation to other Chief and Deputy Chief officers (defined in S.2 (1) (b) (c) and (d) of the Local Government and Housing Act 1989).

NB Composition: Members will be drawn from a panel of 20 members (to include 4 Cabinet Members) announced as such a panel at the commencement of the municipal year.

No dismissal of a chief or deputy chief officer shall be taken until the officer appointment procedure rules have been complied with.

22. Staff and Appointments Committee

Terms of Reference and Powers

- (a) To discharge the Council's functions of the employer in relation to the Chief and Deputy Chief Officers (to include the Chief Financial Officer and Monitoring Officer). Chief Officer is defined as the Head of Paid Service, the Monitoring Officer and any officer defined in S.2 (1) (b) (c) and (d) of the Local Government and Housing Act 1989 (Deputy Chief Officer being defined in para (d)).
- (b) To consider, approve, or make recommendations to the County Council, in relation to any changes to the overall structure of the Council's workforce, and the number and designation of Chief Officer and Deputy Chief Officer posts.
- (c) To determine the terms and conditions relating to employees of the County Council to include the remuneration and terms and conditions of employment for the Head of Paid Service and Chief and Deputy Chief Officers.
- (d) To exercise the discretions available to the employer under the Local Government Pension Scheme and related legislation in relation to the Head of Paid Service and to Chief and Deputy Chief Officers.
- (e) To approve any voluntary severance, settlement or ex-gratia payments to be made to the Head of Paid Service or to Chief or Deputy Chief Officers.

NB: No offer of appointment may be made to a Chief or Deputy Chief Officer until the Officer Employment Procedure Rules have been complied with.

The Head of Paid Service may approve acting up arrangements in the case of the temporary absence of a Chief or Deputy Chief Officer but may not appoint any interim arrangement without the approval of the committee and compliance with the Officer Appointment Procedure Rules set out in the Constitution.