

Report to the Overview and Scrutiny Committee



Date of meeting: 16 October 2012

Subject: Staff Appeals Panel – Terms of Reference

Report of: Constitution and Member Services Scrutiny Panel

Chairman: Councillor M Sartin

Recommendations:

That a report be submitted to the Council recommending:

(a) that the terms of reference of the Staff Appeals Panel be amended so as to delete all appeals by staff except those involving dismissal, including those deriving from selection for redundancy;

(b) that this alteration be published in the Constitution when agreed by the Council; and

(c) that any amendments elsewhere in the Constitution to reflect these changes in the Panel's terms of reference be delegated to the Assistant to the Chief Executive.

Report

1. Introduction

1.1 This report deals with the terms of reference of the Staff Appeals Panel and proposes changes in relation to its jurisdiction in respect of appeals by staff. In respect of re-grading appeals, these proposals derive from a recent review of the Council's job evaluation scheme (by which salaries applicable to staff posts or groups of posts are determined) and in particular the question of an employee's right of appeal.

1.2 In addition, we are making proposals for removing from the Panel's responsibilities other appeals by staff for which the Panel is currently responsible. We are bringing these forward as at the request of the trade unions and subsequent Counsels advice.

1.3 The proposals were agreed by the Cabinet and the latter asked this Panel to review the terms of reference of the Staff Appeals Panel to ensure that they accord with the new policy.

2. Job Evaluation

2.1 We were advised that the Council's job evaluation maintenance policy and appeals procedure were introduced in 2003 following the implementation of the National Job Evaluation Scheme as part of the national Single Status Agreement. Implementation of job evaluation is subject to a collective agreement agreed by Council management, the trade unions and members.

2.2 In 2004, a Job Evaluation Maintenance Policy was discussed by the Joint Consultative Committee, which submitted recommendations to the Cabinet on 15 March 2004 for the adoption of the Policy (including appeal arrangements), which was adopted. Since 2003, the policy has accorded the employee a right of appeal to an officer/trade union appeal panel and decisions of the this Appeals Panel are final.

2.3 No changes were sought at that time for the terms of reference of the Staff Appeals Panel, which has since 1974 included responsibility for hearing staff appeals about re-grading. This responsibility has continued to be shown under the Panel's Terms of Reference. Due to organisational changes the job evaluation maintenance policy was amended following consideration by Joint Consultative Committee in January 2012 with the result that a number of changes to the policy, the maintenance pro forma and additional information sheet were agreed.

2.4 When it recently came to light that the Council's Constitution continued to include re-grading matters within Staff Appeals Panel's terms of reference, 7 members of staff in 4 posts (1 post being a benchmark post which covered 4 employees) appealed and these have subsequently been heard and concluded.

2.5 However, concerns were raised by Unison's Regional Officer on the implementation of the policy and specifically the appeals procedure. As a result both Unison and GMB representatives have withdrawn their support from the job evaluation process until matters are clarified. As a result, the policies, guidelines, procedures and pro formas relating to job evaluation were further reviewed by the officer Job Evaluation Panel and the resultant amendments have now been agreed by the Cabinet.

2.6 Members of the Staff Appeals Panel have indicated that they do not wish to consider job evaluation matters in the future. As there is an existing agreed appeals process, the opinion of the Unison Regional Organiser is that job evaluation appeals should not be submitted to a member Appeals Panel.

2.7 The Council recently obtained legal advice on the Terms of Reference for the Staff Appeals Panel regarding Job Evaluation.

2.8 Counsel's opinion on job evaluation can be summarised as follows:

- (a) the original job evaluation scheme precludes any appeal to the Staff Appeals Panel;
- (b) job evaluation reviews which were not part of the original process can be referred to the Staff Appeals Panel;
- (c) notwithstanding (b) above, the Staff Appeals Panel is not an appropriate forum to hear such appeals since Members are not trained in the Job Evaluation process and a second appeal against job evaluation decisions is not required.

2.9 The local Unison Branch Secretary and the local GMB representative have informed the Council that as the Cabinet has agreed the amended Job Evaluation Maintenance Policy they are willing to re-engage with the job evaluation process.

2.10 The Cabinet has agreed the amended Job Evaluation Maintenance Policy and has asked us to look at the wording in the Constitution. It was for the Cabinet to determine its policy on job evaluation and to conduct employer/employee discussions through the Joint Consultative Committee. It is a matter for our Panel to consider the wording of the Constitution and make recommendations to the Council on this.

3. Scope of the Staff Appeals Panel

3.1 As part of the review of the job evaluation scheme, Counsel was also asked to give additional advice on the other types of staff appeals shown in the Staff Appeals Panel's terms of reference and to advise on whether it is preferable to rely on existing procedures (including appeal arrangements) which are managed at officer level to deal with these items.

3.2 We have reviewed Paragraph 2(a) of those terms of reference which lists the types of appeal as follows:

"(a) The Panel shall be empowered to consider and determine appeals by employees of the Council for the following matters:

- (i) re-grading;
- (ii) grievance;
- (iii) disciplinary;
- (iv) re-deployment;
- (v) redundancy; and
- (vi) dismissal.

3.3 Many Councils limit the involvement of such member-level panels to item (vi) only, relying on operational policies at officer level which have their own appeal mechanisms to deal with the other listed appeals. Counsel advised as follows:

"There has been a suggestion that the remit of the Staff Appeal Panel be further limited, in the context of disciplinary decisions, to appeals against decisions which only involve dismissal.

This is a suggestion which has merit as it would ease the workload on member panels and would focus such panels on the most serious of cases leaving less serious disciplinary matters to be dealt with by those with managerial authority and experience. I do not think that the time and expense of arranging such a panel is really justified when what is at issue is, for example, a written warning."

4. Grievances

4.1 Counsel was subsequently asked to clarify his views on grievance appeals and, in response, expressed the opinion that serious grievances (e.g. about sexual or racial harassment) could be reserved to the Staff Appeals Panel whilst less serious ones could be dealt with at management level. However, Counsel pointed to the difficulty of defining "serious grievances" in this context and the possibility of disputes arising over this definition. He took the view that the Council should either completely exclude grievance appeals or allow them all to be dealt with by the Panel. Counsel advised that this was a decision which was finely balanced but he took the view the safer decision might be to retain all grievance appeals within the jurisdiction of the Staff Appeals Panel.

5. Consultees

5.1 We were asked by the Cabinet to seek the views of staff union representatives and the Chairman of the Staff Appeals Panel on the Staff Appeals Panel role and, with this in mind, we invited them to attend our recent meeting.

5.2 In the event,, the local Branch Secretary of UNISON, Mr Peter Freeman, attended the meeting and submitted the views of his members. Unfortunately, the Chairman of the Staff Appeals Panel could not attend but a note of his views was circulated.

5.3 The Chairman of the Staff Appeals Panel's main point was that the highly technical nature of the job evaluation process placed members at a disadvantage in adjudicating on such appeals. The Panel's view was that a second level of appeal was disproportionate bearing in mind that an appeal arrangement already operated at officer level where an Appeals Panel of trained officers could adjudicate on the initial evaluation assessment of their colleagues at the initial Panel meeting. He also commented that all parties need to have full confidence in the Job Evaluation Scheme and that recent events had undermined this. His comments were supported by Mr Freeman and this Panel.

5.4 On the question of grievances we took the view that these should only come to the Staff Appeals Panel if they arose in the context of staff dismissal but not otherwise. Our feeling is that dismissal from the Council's service is the maximum penalty which can be applied to any member of the Council's workforce and it is right and proper that staff should have the opportunity for a final appeal to Councillors before that action is taken. We do not feel that

this applies to the other categories of appeal which in our view are better dealt with at officer level.

5.5 In reaching this view, we took note of the advice of the Assistant Director (Human Resources) that in many neighbouring Councils, Staff Appeals Panels concentrate on dismissal appeals only, relying on internal appeals arrangements for all disciplinary matters short of dismissal, together with appeals about redeployment, and grievances.

6. Changes to the Constitution

6.1 We recommend that the terms of reference of the Staff Appeals Panel be amended by deleting from paragraph 2(a), items (i)-(v) as set out in paragraph 3.2 above. We also recommend that item (vi) should be amended as follows:

"dismissal (including those deriving from selection for redundancy)".

6.2 There will be minor consequential changes to the Constitution as a result of these alterations. We are proposing that these be made by the Assistant to the Chief Executive once the Council has agreed the substantive changes.