

Medway Council
Meeting of Employment Matters Committee
Wednesday, 5 September 2018
7.00pm to 7.42pm

Record of the meeting

- Present:** Councillors: Godwin, Khan, Wicks (Chairman) and Williams
- Substitutes:** Councillors:
Aldous (Substitute for Steve Iles)
Carr (Substitute for Mrs Josie Iles)
- In Attendance:** Vicky Nutley, Assistant Head of Legal Services
Carrie McKenzie, Assistant Director - Transformation
Tim Silver, Acting Head of HR Services
Michael Turner, Democratic Services Officer

340 Apologies for absence

Apologies for absence were received from Councillor Mrs Josie Iles and Councillor Steve Iles.

341 Record of meeting

The record of the meeting of the Committee held on 13 June 2018 was agreed and signed by the Chairman as correct.

342 Urgent matters by reason of special circumstances

There were none.

343 Declarations of Disclosable Pecuniary Interests and Other Significant Interests

Disclosable pecuniary interests

There were none.

Other significant interests (OSIs)

There were none.

Employment Matters Committee, 5 September 2018

Other interests

Councillor Khan disclosed that she was a member of the GMB trade union.

The Assistant Director – Transformation, in relation to agenda item no 5 (Statutory Officers Dismissal Procedures), disclosed that although she was not one of the three Statutory Officers that the report dealt with she was a member of the Chief Executive's Corporate Management Team.

344 Statutory Officers Dismissal Procedures

Discussion:

Members considered a report which proposed new arrangements for dealing with disciplinary action against the Council's Statutory Officers in order to comply with statutory requirements.

The following issues were discussed:

- **Independent Persons**

It was clarified that the Independent Persons who would comprise the Independent Persons Panel had to be the same Independent Persons appointed by the Council for the purpose of advising on councillor conduct issues. They were appointed by full Council after applying for the position in response to a public advertisement.

- **Appeals**

Members were advised that the Statutory Officers could appeal any decision to take disciplinary action against them short of dismissal. As Council had to approve any proposal to dismiss then no appeal against a decision to dismiss was possible. However, as Council was effectively reviewing the process before a final decision was taken then effectively a form of appeal would take place at Council.

The procedures only applied in the case of dismissal on disciplinary grounds. Officers undertook to clarify where the decision would be taken to dismiss a Statutory Officer on the grounds of redundancy and whether an appeal against such a decision existed.

- **Decision making in cases of a need to urgently suspend**

The proposal in the report was that a decision to suspend one of the Statutory Officers would be a matter for the Employment Matters Committee. The report stated such a decision could not be delegated to the Chairman of the Committee. In the light of that and given it would seem inappropriate for a subordinate officer to take such a decision, a Member queried how an urgent decision could be made to suspend one of the officers in circumstances where the seriousness of the situation

Employment Matters Committee, 5 September 2018

meant it was not feasible to wait for a meeting of the Committee to take place given that five days' public notice had to first be given. Officers confirmed that it would not be legally possible to delegate such a decision to the Chairman of the Committee or to the Leader. A formal meeting of the Committee would be needed (it could not take place virtually) but provided the meeting was quorate then a decision could be taken. The Access to Information rules contained an implicit power to convene meetings in cases where less than 5 days' notice had been given.

Although the proposal was that, for consistency, the power to suspend all three officers would rest with the Employment Matters Committee it would be possible to include provision for the Head of the Paid Service to suspend either the Chief Finance Officer or the Monitoring Officer in cases of urgency. Officers were asked to clarify what urgency powers existed to suspend the Chief Executive in cases of urgency.

Officers also advised that suspension was a neutral act and the authority could require one of the officers not to attend for work pending a formal decision to suspend.

Decision:

The Committee agreed to:

- a) ask officers to clarify the process for taking urgent decisions in circumstances where there is a need to urgently suspend the Statutory Officers, and:
- b) recommend the following to Council:
 - i) to extend the terms of reference of the Employment Matters Committee, as set out in Appendix 1 of the report;
 - ii) to appoint a Disciplinary Appeals Committee and agree its terms of reference, as set out in Appendix 1 of the report, and agree the Committee should comprise three Members of the Council appointed on a politically proportionate basis (Cons 2: Lab 1);
 - iii) to appoint an Independent Persons Panel, agree its terms of reference, as set out in Appendix 1 of the report, and agree that it should comprise three Independent Persons;
 - iv) to agree to pay a fee to Independent Persons appointed to the Independent Persons Panel equal to the agreed rate paid in respect of their role in advising a Council on Councillor Conduct issues;
 - v) to amend the Employment Rules, as set out in Appendix 2;

Employment Matters Committee, 5 September 2018

- vi) to amend the Employee Delegation Scheme as set out in Appendix 3, including agreeing to delegate to the Head of Democratic Services authority to invite and appoint members to serve on the Independent Persons Panel as set out in paragraphs 5.7-5.9 of the report, and;
- vii) to agree that where the Employment Matters Committee is considering allegations regarding disciplinary matters relating to the Designated Statutory Officers that, for consistency, unless a Member is unavoidably indisposed or conflicted, the same Members shall comprise the Committee until the matter has been dealt with fully and that the same principle shall apply to the Disciplinary Appeals Committee.

345 Organisational Change

Discussion:

Members considered a report which dealt with new organisational reviews and transfers for the period 1 April to 31 July 2018.

A Member referred to the fact that the catering service staff at the Innovation Centre had been transferred from the Council to Medway Norse; the service had then been transferred back to the Council with a decision then taken to outsource the service with the possibility it may remain in-house. Concern was expressed about the impact of this on the staff. It was suggested a review of how the TUPE process worked in these situations take place given the potential for similar situations to arise in a number of other cases.

Decision:

The Committee agreed to note the present position and the support arrangements for staff.

346 Staff Suspensions During the Period 1 April 2013 to 31 March 2016

Discussion:

Members considered a report which detailed the numbers of employees suspended and the costs involved during the period 2012/13 to 2016/17.

A Member commented that the report did not detail the lengths of the suspensions other than stating the longest single period of suspension amongst the cohort was 321 calendar days. Officers assured Members this figure was significantly higher than the average and undertook to provide the information about the lengths of suspensions.

A Member noted that the number of suspensions was higher in Children and Adults than elsewhere. The Assistant Director – Transformation responded

Employment Matters Committee, 5 September 2018

that, for example, where safeguarding was an issue then the Council had no choice but to suspend the member of staff.

A Member asked for clarification in cases where a suspended employee was also subject to a police investigation. The Assistant Director – Transformation advised that there was no case law on this but under employment law employment could be terminated where the Council had reasonable belief there were grounds to dismiss. Therefore there were circumstances where it would be possible to terminate employment before a police investigation had concluded.

Decision:

The Committee agreed to note the report.

Chairman

Date:

Michael Turner, Democratic Services Officer

Telephone: 01634 332817

Email: democratic.services@medway.gov.uk