

Notice of Meeting

Employment Appeals and Ethics Sub-Committee

A Meeting of the Test Valley Borough Council will be held on:

Date: Wednesday 17 January 2017

Time: 4.30pm

Venue: The Annexe, Crosfield Hall, Broadwater Road, Romsey,
Hampshire, SO51 8GL

For further information or enquiries please contact:

Emma Horbury - **01264 368001**

Email: ehorbury@testvalley.gov.uk

Legal and Democratic Service

Test Valley Borough Council,
Beech Hurst, Weyhill Road,
Andover, Hampshire,
SP10 3AJ

www.testvalley.gov.uk

This is a formal notice under The Local Government Act 1972 that part of this meeting may be held in private because the agenda and reports for the meeting may contain exempt information under Part 1 of Schedule 12A to the Local Government (Access to Information) as amended. The public interest in maintaining the

Membership of Employment Appeals and Ethics Sub-Committee

| MEMBER | WARD |
|-----------------------|-------------|
| Councillor G Bailey | Blackwater |
| Councillor A Dowden | Valley Park |
| Councillor K Hamilton | Harroway |
| Councillor I Jeffrey | Dun Valley |
| Councillor C Lynn | Winton |

Employment Appeals and Ethics Sub-Committee

17 January 2018

AGENDA

1. **APPOINTMENT OF CHAIRMAN**
2. **APOLOGIES**
3. **DECLARATIONS OF INTEREST**
4. **Proposed Amendments to the Powers and Duties of the
Employment Appeals and Ethics Sub-Committee** 4 - 10

To consider proposed amendments to the Council's constitution following review.

ITEM 4 Proposed Amendments to the Powers and Duties of the Employment Appeals and Ethics Sub-Committee

Report of the Head of Legal and Democratic Services.

Recommended:

That the Employment Appeals and Ethics Sub-Committee consider the proposed changes to its powers and duties as set out in Annex 1 to the report as required by Article 15 of the Council's Constitution.

SUMMARY:

- The Council's Constitution has been reviewed and a number of amendments have been proposed, some of which affect the powers and duties of the General Purposes Employment Appeals and Ethics Sub-Committee.
- In accordance with Article 15 of the Council's Constitution, the General Purposes Employment Appeals and Ethics Sub-Committee is to consider any amendment to the Constitution which affects the Sub Committee's powers and duties prior to approval of the amendment by Council.
- The amendments are set out at paragraph 3.5 of this report.
- This report is presented to the General Purposes Employment Appeals and Ethics Sub-Committee to enable the required consideration to take place.

1 Introduction

- 1.1 The Council's Constitution underpins all of the Council's areas of activities and therefore contributes to the achievement of all its strategic objectives.

2 Background

- 2.1 Since the Constitution's adoption, it has remained under review in accordance with Section 37 of the Local Government Act 2000. A comprehensive review of the Council's Constitution was undertaken during the course of 2017 resulting in suggested amendments to the Council's Constitution. Full details of all proposed amendments can be seen in the Cabinet report of 17 January 2018. The proposed amended Constitution will be presented to full Council on 24 January 2018 for approval.
- 2.2 Members should note that any formatting or layout inconsistencies seen in the Annex to the Cabinet report will be corrected when the amendments are implemented in the Constitution.

3 Details of amendments

3.1 The proposed changes to the Constitution include some changes to the powers and duties of the General Purpose Employment Appeals and Ethics Sub-Committee which can be seen in the accompanying Annex 1.

3.2 Article 15 of the Constitution provides at 15.2 that:-

15.2 (a) Approval. Changes to the Constitution will only be approved by the full Council after consideration of any proposals by the Cabinet (and by the General Purposes Employment Appeals & Ethics Sub-Committee where the change relates to its powers and duties), with the advice of the Monitoring Officer which will include the results of any relevant consultation.

3.3 This report presents the proposed changes to the General Purposes Employment Appeals & Ethics Sub-Committee for such consideration.

3.4 It should be noted that the power to amend the Council's Constitution is a power of full Council. This is reflected in the proposed change to Article 15 which removes the requirement for Cabinet and the General Purposes Employment Appeals and Ethics Sub-Committee (where the change relates to its powers and duties) to consider proposed changes to the Constitution prior to approval by full Council (as shown in Annex 2 to the report).

3.5 There are three substantive proposed amendments to the powers and duties of this Sub-Committee which are:

3.5.1 (1) Deletion of former point 5 "~~To advise the Authority on matters relating to the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer~~".

This amendment takes account of changes in legislation which require the appointment of an Independent Panel including no less than two Independent Persons and a member of Cabinet to consider the relevant evidence where dismissal of one of those Officers listed is contemplated and to provide its advice, views and recommendations to Council with whom the ultimate decision lies. Amendments are proposed to the powers of the parent General Purposes Committee to convene a Sub-Committee to form that Independent Panel along with the Independent Persons and Cabinet member.

3.5.2 (2) Amendment of point 4 as follows:

4. To assess, review and determine appeals relating to dismissals (save for redundancy or failure to renew fixed term contract) of all staff (except Chief Officers) with a minimum of two years' service, all appeals by staff that relate to employment.

This amendment is intended to reflect current practice, policy and procedure within the organisation and recognising the existing position that purely operational procedures do not come before Committee.

A number of the Council's Human Resources Policies including the 'Disciplinary' and 'Grievance and Resolution' Policies were updated on 1 February 2017 following consultation with the Policy Procedure Review Group and Union consultation with staff.

The Test Valley Borough Council Disciplinary Policy provides that appeals against dismissal of Officers with more than two years service will be heard by this Sub-Committee. So, this Sub-Committee retains the duty to hear appeals against dismissal by Officers who have accrued the employment rights which attach to two years continuous employment under the Employment Rights Act 1996. In accordance with the Policy, appeals from Officers with lesser time served will be determined by an appropriate Manager.

In accordance with the Disciplinary Policy appeals against decisions short of dismissal are dealt with by an appropriate Manager and in accordance with the Redundancy Policy and Procedure appeals against redundancy will be heard by the General Purposes Redundancy Appeals Sub-Committee.

For the avoidance of doubt it should be noted that historically, the "Disciplinary and Appeals Policy and Procedure" which preceded the 1 February 2017 updated policy provided that appeals against dismissal from employees with less than one year's service "could go no higher than the Chief Executive".

The one year to two year change between the two Policies reflected the change in legislation increasing the general qualifying period for employees commencing employment after 6 April 2012.

- 3.5.3 (3). Addition of the following specific duty "*To assess, review and determine appeals relating to early payment of pension as a consequence of ill-health for current and former employees.*"

This reflects the practice that the Sub-Committee currently hears such appeals and to clarify that they remain within the remit of Sub-Committee.

4 Corporate Objectives and Priorities

- 4.1 Maintaining and improving the Constitution to reflect current legislation and the broader agenda of local government is essential in order to deliver effective and lawful decisions in the day to day implementation of the Corporate Plan.

5 Consultations/Communications

- 5.1 Heads of Service and Portfolio Holders have been consulted and support the proposed amendments to the Constitution, including the proposed amendments to the powers and duties of this Sub-Committee.

6 Option Appraisal

- 6.1 Failure to update the Constitution to reflect current legislation or to ensure clarity in the authority and execution of decision-making could mean that the Council may be subject to legal challenge or that any legal action taken under these regulations would be invalid.

7 Risk Management

- 7.1 A risk assessment has been completed in accordance with the Council's Risk management process and the existing risk controls in place mean that no significant risks (Red or Amber) have been identified.

8 Resource Implications

- 8.1 None save the time of officers in undertaking the necessary changes to the Constitution.

9 Legal Implications

- 9.1 Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review.

10 Equality Issues

- 10.1 An Equality Impact Assessment of the matters in this report is not required as no potential for unlawful discrimination and/or low level or minor negative impact have been identified.

11 Other Issues

- 11.1 Community Safety - None
- 11.2 Environmental Health Issues - None
- 11.3 Sustainability and Addressing a Changing Climate - None
- 11.4 Property Issues - None
- 11.5 Wards/Communities Affected – None specifically

12 Conclusion and reasons for recommendation

- 12.1 The Sub-Committee is required to consider any amendment to the Constitution which affects its powers and duties prior to approval by Council.

Test Valley Borough Council – General Purposes Employment Appeals and
Ethics Sub-Committee – 17 January 2018

| | | | |
|--|--|-----------|-----------------|
| <u>Background Papers (Local Government Act 1972 Section 100D)</u> | | | |
| None | | | |
| <u>Confidentiality</u> | | | |
| It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public. | | | |
| No of Annexes: | 2 | File Ref: | |
| (Portfolio: Corporate) Councillor Flood | | | |
| Officer: | Karen Dunn | Ext: | 8401 |
| Report to: | General Purposes Employment Appeals and Ethics Sub-Committee | Date: | 17 January 2018 |

Responsibility for Council Functions

GENERAL PURPOSES EMPLOYMENT APPEALS & ETHICS SUB-COMMITTEE

Composition

- (a) The General Purposes Employment Appeals and Ethics Sub-Committee will be comprised of five Councillors from the General Purposes Committee.
- (b) An Independent Person will attend meetings at the request of a Councillor who is its subject of a complaint or otherwise at the instruction of the Monitoring Officer. The Independent Member will not be entitled to vote at the meeting.
- (c) The Test Valley Association of Parish and Town Councils will appoint Parish Council representatives. Parish Council representation may be consulted by the Monitoring Officer or the Sub-Committee. When Parish representatives are consulted they may attend the meeting.
- (d) The meeting will be chaired by a Councillor who shall be elected by the members of the Sub-Committee.

Comment [WA1]: Included from Article 9 which has been deleted, updated to stipulate that the membership must come from the General Purposes Committee

Powers and Duties:

Subject to the Council's Constitution to exercise the powers and duties of the Council in respect of the following matters:-

1. To assess and review complaints referred to it that Borough Councillors and Parish Councillors have failed to follow their respective Codes of Conduct and to determine the appropriate course of action regarding the complaints.
- ~~2. To carry out its role and functions as set out in Article 9.02 of the Constitution.~~
- ~~3.2.~~ To determine complaints following local investigation in respect of Borough Councillors and Parish Councillors.
- ~~4.3.~~ To grant dispensation to Borough Councillors from requirements relating to interests set out in the Members' Code of Conduct pursuant to Section 33(2)(c) -and (e) of the Localism Act 2011.
- ~~5. To advise the Authority on matters relating to the dismissal or discipline of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.~~
- ~~4.~~ To assess, review and determine appeals relating to dismissals (save for redundancy or failure to renew fixed term contract) of all staff (except Chief Officers) with a minimum of two years' service. all appeals by staff that relate to employment issues except appeals against redundancy.
- ~~6.5.~~ To assess, review and determine appeals relating to early payment of pension as a consequence of ill-health for current and former employees.

Comment [WA2]: Article 9 has been deleted

Comment [WA3]: To make the distinction that this does not apply to Parish Cllrs

Part 2 - Articles of the Constitution

Article 15 – Review and Revision of the Constitution

145.1 Duty to monitor and review the constitution

The Monitoring Officer will monitor and review the operation of the Constitution and ensure that the aims and principles of the Constitution are given full effect.

145.2 Changes to the Constitution

- (a) **Approval.** Changes to the Constitution will ~~only~~ be approved by the ~~F~~full Council ~~after consideration of any proposals by the Cabinet (and by the General Purposes Employment Appeals & Ethics Sub-Committee where the change relates to its powers and duties), with the advice of the Monitoring Officer which will include the results of any relevant consultation.~~
- (b) **Changes from Leader and Cabinet form of Executive.** If there are proposals to change the executive arrangements, the Council will take reasonable steps to consult local electors and other interested persons when drawing up proposals.

Comment [WA1]: There is no legal requirement to take changes through Cabinet or the General Purposes Employment Appeals & Ethics Sub Committee as the Constitution is a function of Council

145.3 Exception of the requirement

The following changes to the Constitution may be effected by the Monitoring Officer, subject to reporting the change to ~~Full Council (after reporting the change to the next appropriate meeting of the General Purposes Employment Appeals & Ethics Sub- a Committee where the changes relates to its that Committee's powers and duties), and then to full Council.~~

Comment [WA2]: As above, this expands the requirement to all committees

- (a) Changes to the delegated functions to Chief Officers (as defined in the Officer Employment Procedure Rules in Part 4).
- (b) Changes required giving effect to any change in the law or directives issued under legal powers by Government.

(c) (i) Typographical or similar changes;

- (ii) In consultation with the Corporate Portfolio Holder, minor changes, as may be identified from time to time, such as changes to the names of Committees, Portfolios, or job titles etc.**

Comment [WA3]: To allow timely amendments of a minor nature, resulting from staffing changes etc.

References:

~~Sections 30 and 37, Local Government Act 2000~~
~~Chapters 10 and 15, Guidance DETR~~