

REPORT OF THE GOVERNANCE COMMITTEE

The Committee met on 4 February 2009 and 10 March 2009.

Attendance: Councillor Jones (Chairman) (2)
Councillors Reid (2), Ost (1), Rogers (1), and Tidy (2)

1. III Health Retirement/Termination and Flexible Retirement Policies

1.1 The Governance Committee agreed a report on 11 March 2008, providing information on the Local Government Pension Scheme Benefits, Membership and Contributions Regulations 2007 (SI 2007/1166), which introduced a 'new look' pension scheme from 1 April 2008. These regulations changed the ill health benefits to a three tier system whereby the amount of enhancement of pensionable service awarded is based on the likelihood of the employee returning to gainful employment in the future.

1.2 At the same meeting, the Governance Committee approved a Flexible Retirement Policy. Some minor changes have been made to this policy, notably strengthening the information requirements for the business case to include arrangements for phasing down to retirement and succession planning. The policy also offers no right of appeal as flexible retirement is discretionary. The examples at the end of the policy have also been updated.

III Health Retirement

1.3 The policy incorporates the Benefits Regulations relating to ill health retirements and statutory guidance on the operation of the scheme.

1.4 The appeals procedure has been written specifically for use within East Sussex County Council.

1.5 It should be noted that, although the structure of ill health pension benefits has changed substantially, existing members aged 45 or over on 31 March 2008 will receive no less than they would have received under the former scheme rules.

1.6 Since April 2008 to date, there have been 14 ill health retirements (8 Tier 1, 5 Tier 2 and 1 Tier 3) and represents 9.5 % of all retirements. This compares with 18 in the full year 2007/8.

Flexible Retirement

1.7 The County Council's Flexible Retirement Policy enables staff aged 50 plus (55 in 2010) to reduce their hours or pay by 20% or more and continue working in their current role, or move to a lower graded post and access their pension benefits. This has to be supported by a business case demonstrating savings and succession planning for the County Council and approved jointly by the Director of Law and Personnel and Deputy Chief Executive/Director of Corporate Resources.

1.8 The changes to the policy are as follows:

3.4 The business case should demonstrate how flexible retirement achieves a phased retirement, particularly where the reduction in hours is only 20% (or one day per week) at the outset. For example, if an employee applies for flexible retirement at the age of 60 on the basis of succession planning, the case should include details of future phasing down until the employee finally retires at the intended retirement date.

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3.7 In the event of flexible retirement being refused the employee must write to their Chief Officer, whose decision is final. There is no right of appeal and no other procedure, such as the Grievance Procedure, may be used.

1.9 There are currently 28 staff who have taken up flexible retirement in the County Council since we introduced the pilot scheme from July 2007.

1.10 The Governance Committee **recommends** the County Council to

- ✧ Approve the ill health retirement/termination policy as one of the County Council's suite of early retirement policies; and

- ✧ agree the changes to the Flexible Retirement Policy

2. Data in Transit policy

2.1 The background to this work goes back to the high-profile loss of 25 million records by Her Majesty's Revenue & Customs in November 2007 and the subsequent spotlight on continuing sensitive data losses in the public sector since.

2.2 A cross-departmental working group has proposed a policy and guidance for the secure handling of data in transit. The group limited the scope of the project to sensitive and confidential data being taken outside of their normally secure location as this presents the greatest risk of accidental loss/disclosure. There is other work going ahead at this time to meet the specific requirements of sharing data with government and NHS sectors which will address internal security.

2.3 The Data in Transit policy covers electronic and 'manual' records and will be supported by two guidance documents – one for physical data transfer (post, fax etc.) and one for electronic data transfer (email and device encryption), this latter one being dependent on the solution procured as a result of the tender.

2.4 The Data in Transit policy with supporting guidelines/protocols has been field tested across the council to ensure that a pragmatic solution is put in place that maintains necessary security without undue impact on service delivery.

3. Analysis of the application of formal employment policies

3.1 The Employment Act 2008 (which comes into force on 6 April 2009) introduces a number of changes for the resolution of workplace disputes (disciplinary, grievances, etc.). Employers will have increased flexibility to deal with such disputes and a revised Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice sets out the principles of how employers should approach workplace disputes. A key feature of the Code is the use of mediation to assist with the resolution of workplace disputes.

3.2 Employment Tribunals are required to take the Code of Practice into account when considering relevant cases. Any financial awards made in such cases may be adjusted up or down by up to 25% dependant upon compliance with the Code.

3.3 In 2007/8, there were 59 formal workplace dispute cases across the Council. Disputes place a significant demand upon the Council in terms of time commitments (for line management, PAT and Legal Services staff), potential damage to the Council's reputation, and the potential impact in terms of lost productivity, sickness absence and additional staff turnover.

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3.4 In light of the legislative changes and the sound business case it is now an appropriate time to adopt a formalised approach to mediation to deliver the lasting change to the way in which the Council manages workplace disputes.

3.5 As proposals are being brought forward to review the above policies to incorporate the new legislative changes it is also appropriate and timely to consider a broader review of the Grievance Policy and the Promotion of Dignity at Work Policy. The recommended changes would deliver increased clarity and remove any overlap from the operational application of the policies.

Implementation of Mediation and Policy Review

3.6 It is proposed that mediation is built into the County Council's employment policy framework as a key component in resolving workplace disputes, specifically relating to grievance, dignity at work and attendance management. It is not proposed that mediation is used in disciplinary cases. Parties will be expected to engage in mediation as a first stage in any dispute.

3.7 Furthermore, it is proposed to introduce a clause into employment contracts for employees commencing employment with the Council after April 2009. The inclusion of a clause into contracts of employment setting out our approach to mediation signifies the Council's commitment to the prompt resolution of workplace disputes.

3.8 It is proposed to amalgamate the Grievance Policy and the Policy on the Promotion of Dignity at Work to remove any scope for overlap between the policies and to increase clarity.

3.9 There are no substantive changes to the policies in addition to the introduction of mediation and minor amendments stemming from the amalgamation of the Grievance Policy and the Policy on the Promotion of Dignity at Work.

3.10 These recommendations have been shared with, and endorsed by, our recognised Trade Unions.

3.11 The Governance Committee **recommends** the County Council to:

- ✧ Agree to the inclusion of mediation as an agreed part of the Council's dispute resolution policies in accordance with the legislative changes.
- ✧ Agree to the amalgamation of the Grievance Policy and the Promotion of Dignity at Work Policy.

4. Review of the Constitution

4.1 The Local Government and Public Involvement in Health Act 2007 required the Council to review its executive arrangements. The Governance Committee (23 September 2009) and the County Council (13 October 2009) agreed to adopt the new style Leader and Cabinet Executive model. This change has led to a need to revise the constitution to clarify where powers lie, particularly where they relate to the Leader and to the Cabinet. We have also taken the opportunity to review the full Constitution and have made some recommended changes.

4.2 The Constitution has been updated on the basis that the Leader at the time of implementation is content to maintain delegated powers as they have operated over the last few years; the amendments are therefore the minimum necessary to comply with the legislation. The Leader may require that the Constitution is changed, in respect of the arrangements for the exercise of executive powers, at any time during the course of his/her appointment as Leader.

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4.3 The new executive arrangements must be implemented three days after the date of the June election this year and it is proposed that the revised Constitution is implemented at the same time.

4.4 The features of the new style leader and Cabinet executive are:

- a councillor is elected as Leader by the Council for a four year term following the elections;
- the Council will have the power to remove the Leader during their four year term;
- the Leader not only appoints the Cabinet but also determines the size of the Cabinet (within the statutory minimum of 2, and maximum of 10);
- the Leader will decide how executive functions are to be discharged (i.e. what cabinet portfolios will exist, and how they will be allocated, and delegations to officers);
- the executive arrangements must include provision for the appointment of a deputy leader with the power to act in the leader's absence; and
- the deputy leader is appointed (and may also be removed by the leader).

Significant changes

4.5 The objective has been to make only those changes which are necessary because of the law. Where changes are deemed to be significant these changes are identified in the following paragraphs.

Delegated powers

4.6 The fundamental change to the Constitution lies with the shift of powers to the Leader and the resulting delegations. Delegations of all executive functions 'flow' from the Leader rather than the County Council and are at his/her sole discretion.

Integrated Waste Management Contract Committee

4.7 There is a separate paragraph in this report recommending the dissolution of the East Sussex County Council and Brighton & Hove City Council Integrated Waste Management Services Contract Committee, and to vary the Joint Working Agreement. Should this be agreed the terms of reference for the Committee will be removed from section 3 of the Constitution.

Governance Committee Terms of Reference

4.8 The report recommends a revision to the terms of reference of the Governance Committee to delegate powers to the Committee for the approval of personnel policies. The current system requesting approval by the full County Council is considered to be unnecessary.

Appointments to Committees

4.9 Since this Constitution was originally agreed, the legislation relating to appointments to some committees has been clarified. In particular, the appointments to the Corporate Parenting Panel, Adoption Panels, Fostering Panel, Standing advisory Council for Religious Education, East Sussex Schools Forum, and the Schools Admission Forum are all executive functions and appointments of Councillors should be made by the Cabinet or relevant Lead Member.

Complaints Panels

4.10 Legislation has required that we change the way in which Children's Services handle complaints panels. There is now a legal requirement that any Complaints Panel relating to

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children or young people is made up of three independent members. This means that there will be no Councillors or Officers on the Panels. It is recommended that, to avoid confusion, this becomes the corporate standard for appointment to all complaint panels.

Section 3 (Scheme of delegation to the Director of Law and Personnel)

4.11 Since being agreed by Governance Committee, Section 3 of the Constitution has been revised to take into account minor changes to the scheme of delegation for the Director of Law and Personnel in respect of Trading Standards. The revised delegations are attached in the additional documents.

4.12 The Governance Committee **recommends** the County Council to agree

- ✧ The recommended changes to the Constitution; and
- ✧ That the implementation of the revised Constitution is co-terminus with the change to the new executive arrangements.

5. Amendments to Contract Standing Orders

5.1 The amendments proposed are relatively minor, and pick up on issues that have arisen since the last update; the changes include:

- CSO 2.4.1 - To additionally authorise Chief Officers in consultation with the relevant Lead Cabinet Member to waive the requirement to comply with the provisions of one or more CSOs. This should reduce the number of reports going to Lead Cabinet Member meetings on these matters. Proposals to waive CSOs are now to be accompanied by a waiver report, which needs to comply with specified requirements.
- CSO 4.2 – To include a requirement for the criteria for admission to and suspension and exclusion from the County Council’s Select Lists of contractors to be specified in writing. This will help ensure transparency around the process of operating Select Lists.
- CSO 12.4.1- To add a provision clarifying the process for the transfer of contracts

5.2 School Governing Bodies have their own Contract Standing Orders, which are based on the County Council’s Standing Orders. These need some minor amendments to reflect changes that have been made to the County Council’s Contract Standing Orders.

5.3 The Governance Committee **recommends** the County Council to agree

- ✧ Approve amendments to Contract Standing Orders; and
- ✧ Authorise the Director of Law and Personnel to make any necessary amendments to the Contract Standing Orders for Schools.

6. Joint Integrated Waste Management Services Contract

6.1 On 31 March 2003, Brighton & Hove City Council and East Sussex County Council jointly awarded the Joint Integrated Waste Management Services Contract (the IWMSC) to South Downs Waste Management Services Ltd. At the same time, the Councils entered into a

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'Joint Working Agreement' so as to ensure that the IWMSC was managed and controlled effectively. The Joint Working Agreement regulates the equitable apportionment between the Councils of payments to the contractor, and required the creation of a joint committee to provide oversight for the project as a whole.

6.2 Since March 2003, the necessary sites and planning consents for the required infrastructure under the IWMSC have been delivered, and construction phase for the facilities is either complete (Hollingdean); near completion (Whitesmith and Maresfield) or underway (North Quay, Newhaven). The project has therefore entered an operational phase.

6.3 In these circumstances, the need for a free standing Joint Committee has diminished. The IWMSC Project Board reports directly to Cabinet (at both Councils) for the necessary strategic decision making. Therefore dissolving the Joint Committee would properly reflect the stage the IWMSC has now reached and the constitutional arrangements now in place in Brighton & Hove.

6.4 The Joint Working Agreement remains relevant as the instrument by which the two Councils' rights and obligations flowing from the Principal Contract are regulated, but it is proposed that the requirement for the Joint Committee is removed.

6.5 In order to ensure regular involvement of Members from both Councils over and above specific reporting to Cabinet, it is proposed that the IWMSC Project Board will arrange six monthly meetings between both Councils' Lead Members and others (as deemed appropriate) to discuss the progress and performance of the Project. The Project Board will also make reports to the Transport and Environment Scrutiny Committee as appropriate.

6.6 The IWMSC Project Board has been consulted and the proposal is being taken forward to Brighton & Hove City Council in parallel.

6.7 The Governance Committee **recommends** the County Council to agree

- ☆ the dissolution of the East Sussex County Council and Brighton & Hove City Council Integrated Waste Management Services Contract Committee, and to vary the Joint Working Agreement; and
- ☆ That the Director of Law and Personnel be authorised to make the relevant changes to [the County Council's constitution, and to] the Joint Working Agreement.

PETER JONES
Chairman

10 March 2009