

PERSONNEL PROCEDURES

SUMMARY

- 1.1 This reports sets out the progress of negotiations to secure a general reform of personnel procedures and seeks the support of Members for proposals for change to the contractual status of the procedures and in respect of rights of appeal.

RECOMMENDATION

- 2.1 To note the progress achieved in reforming personnel procedures.
- 2.2 To approve the proposal to alter the contractual status of the existing procedures for discipline, grievances, attendance, capability, redeployment, restructuring and redundancy and appeals, so that they no longer form part of employees' contracts.
- 2.3 To approve the removal of the current right of appeal to a panel of Members in favour of appeals being determined by senior officers.

REASONS FOR RECOMMENDATION

- 3.1 We have reached an impasse in consultation with the unions over changes to the existing personnel procedures. A clear expression of Members' views will help towards a resolution.
- 3.2 We need to complete the process of necessary reform to the existing procedures in order to bring them up to date and make them more fit-for-purpose.

SUPPORTING INFORMATION

- 4.1 Proposals for change to the existing Council personnel procedures have been put forward to the trade unions for discussion. The new procedures are much shorter than the existing ones and set out key principles that are then supported by other documents that will give guidance and advice. The new procedures are designed to be less prescriptive than the existing ones, following the repeal of the statutory Dispute Regulations in April last year.

- 4.2 The old statutory Regulations set out a rigid approach to all disciplinary and grievance processes that had to be followed in all cases, whether or not it was helpful in the particular circumstances. The Regulations were widely felt to be inappropriate and were repealed with effect from April last year. Their repeal allowed the Advisory Conciliation and Arbitration Service (ACAS) to bring forward a more flexible approach in their new Code that now governs these matters in place of the Regulations. The new ACAS Code gives advice to employers and must be taken into account by the Employment Tribunal in considering claims.
- 4.3 The new Council procedures take advantage of the increased flexibility in the Code and seek to allow managers to respond appropriately to different employment issues as they arise; for example, by using mediation instead of a formal hearing. The guidance and support is designed to help them to do this.
- 4.4 There has been a lengthy process of discussion with the unions over the new procedures and a considerable measure of agreement has been reached. The new procedures were taken to the Corporate Joint Committee in December for formal endorsement but this was not reached as two issues of principle could not be agreed.
- 4.5 Management wants the new procedures not to form part of the contracts of employees, unlike the existing ones. The process of change has been too slow and the contractual nature of the current procedures means that the union can veto change. The union veto can only be overridden by reaching individual agreement with every member of the workforce or by wholesale dismissal and the offer of new contracts. The unions no longer speak on behalf of the majority of the affected workforce and their veto is no longer appropriate. We need to be able to promote change more quickly in future. Consultation will still be undertaken but when case-law or new Regulations come in we must be able to effect changes in a timely manner. The contractual status of the new procedures is the first of the two areas in which agreement has not been reached.
- 4.6 The second area of disagreement relates to appeals. Currently, appeal rights under some procedures are resolved by officers but most still follow the old local government practice and go to Members. The practice of Members gearing employee appeals dates back to a time before modern employment protection legislation. Before the enactment of the statutory protection that now exists in respect of unfair dismissal and a whole range of other issues, such as discrimination etc, and before the establishment of the Employment Tribunals, there was no external scrutiny of management decisions. It was in that context that the practice of Member appeals originated.
- 4.7 Employees now have the right to take claims against dismissal and on a wide range of grievances to a tribunal that will give independent, impartial, legally qualified scrutiny to them. Employees can either opt for professional representation – whether privately or through their union – or they can opt to represent themselves. There are no costs for submitting a claim and, unlike the civil courts, except in very rare circumstances, there is no risk of costs if a claim is not upheld.

- 4.8 This is now the appropriate “check and balance” against arbitrary managerial decisions. If senior managers dismiss well-founded employee appeals they know that they will spend some uncomfortable hours being cross-examined at the tribunal, that their decisions will be overturned and that substantial sums can be awarded in compensation. In this context, Member appeals are anachronistic and no longer needed. Their purpose has been superseded by the Employment Tribunals, which are far better equipped to bring external scrutiny to bear on unfair or arbitrary decisions.
- 4.9 We are currently seeking to encourage managers to see themselves first and foremost as people-managers, rather than as subject experts. Supporting managers with personnel procedures that are fitter for purpose and easier to follow is an important part of this move. Taking key employment decisions like final appeals out of the hands of management is at odds with this direction of travel. The new procedures align all rights of appeal for staff - other than chief officers and school-based staff - to senior officers rather than to Members.
- 4.10 We need to become more business-focussed as an organisation. Decisions need to be reached more efficiently and in a more timely manner. We can no longer afford decisions to be subject to appeals that take weeks or months to convene. Managers need to be empowered to manage the people that are accountable to them by taking full responsibility for timely decisions in respect of their employment. The present Member appeals system struggles to cope with a dozen or so appeals per year. Unfortunately, we are facing the need to dismiss some hundreds of staff by reason of redundancy. Many of these employees may wish to appeal; this will place an unrealistic strain on the present appeal process. The unions, however, are unwilling to agree to change.
- 4.11 We are currently consulting with the unions formally under section 188 of the Trade Union and Labour Relations (Consolidation) Act (TULRCA) on a range of issues, including the introduction of these new procedures in place of the existing contractual provisions.
- 4.12 We have proceeded to this point on the basis of consultation with the Council Cabinet Member for Resources and the authority delegated to officers under the scheme of delegations set out in the constitution. However, the political position in respect of appeals will be clarified for everyone concerned if a majority of Members supports the proposed change. Member support for the changes will make clear that the re-alignment of appeal rights has the backing of the council and will therefore help resolve the continuing disagreement with the trade unions.
- 4.13 It is very much hoped that agreement can be reached as a result of the consultation but the process will conform to the relevant statutory requirements and will therefore enable the council to implement the changes in a lawful manner even if agreement cannot be reached with the unions.

OTHER OPTIONS CONSIDERED

5. We could concede the unions' points of principle in respect of appeals and contractual status. This would leave us with appeal arrangements that disempower our managers and procedures that remain subject to a union veto over necessary changes in future. This is the fall-back option but it would be far from ideal and it would fail to make important steps towards modernising our procedures.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Stuart Leslie Julian Kearsley
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For more information contact: Background papers: List of appendices:	Rod Wood, Director of HR 01332 643724 e-mail rod.wood@derby.gov.uk None Appendix 1 – Implications
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IMPLICATIONS

Financial and Value for Money

- 1.1 The council needs to reduce its workforce to bring costs into line with its resources following the reduction in government grant. This will involve the dismissal of large numbers of staff on grounds of redundancy. The present appeal arrangements cannot cope efficiently with the large number of appeals that might ensue.

Legal

- 2.1 Advice has been taken from counsel as to the ways in which changes can be made to the existing procedures. Consultation is being undertaken in line with s188 TULRCA with a view to reaching agreement. The existing procedures have contractual force and can therefore only be changed by agreement or by dismissal and re-engagement on fresh terms.

Personnel

- 3.1 As set out in the report.

Equalities Impact

- 4.1 None directly arising.

Health and Safety

- 5.1 None directly arising.

Environmental Sustainability

- 6.1 None directly arising.

Asset Management

- 7.1 None directly arising.

Risk Management

- 8.1 The process of contractual change gives rise to the risk of litigation. Failure to observe the provisions of s188 TULRCA would create a potential for awards for failure to consult. Any dismissals that are not carried out fairly could result in claims to the tribunal. These risks have been mitigated by taking the advice of counsel.

Corporate objectives and priorities for change

- 9.1 The organisational development section of the corporate plan calls for modernisation and better management. The recommendations are consistent with delivering those objectives.