

Human Resources Committee

**Thursday, 16 May 2024 at 6.30 p.m.
Committee Room - Tower Hamlets Town Hall,
160 Whitechapel Road, London E1 1BJ**

Supplemental Agenda

4 .2 Establishment of Appeals Sub-Committees 2024/25 (Pages 3 - 12)

4 .3 Establishment of Appointments Sub-Committee 2024/25 (Pages 13 - 20)

Contact for further enquiries:

Justina Bridgeman, Democratic Services,
justina.bridgeman@towerhamlets.gov.uk
020 7364 4854

<https://democracy.towerhamlets.gov.uk/>



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Non-Executive Report of the: Human Resources Committee Thursday, 16 May 2024	 TOWER HAMLETS
Report of: Linda Walker, Interim Director of Legal & Monitoring Officer	Classification: Open
Establishment of Appeals Sub-Committees 2024/25	

Originating Officer(s)	Matthew Mannion, Head of Democratic Services
Wards affected	(All Wards);

Executive Summary

The terms of reference of the Human Resources Committee include establishing an Employee Appeals Sub-Committees to be convened by the Monitoring Officer or Director of Workforce, OD and Business Support as appropriate for determination of appeals under human resources procedures requiring a Member level decision.

This report recommends the establishment of a sub-committees for this function for the current municipal year, proposes a procedure for its meetings and criteria for membership of each sub-committee in accordance with the Constitution and agreed procedures.

Recommendations:

The Human Resources Committee is recommended to:

1. Agree the terms of reference for Employee Appeals Sub-Committees 2024/25 as set out at Appendix A of this report;
2. Agree the Employee Appeals hearing structure as set out at Appendix B of this report.

1. REASONS FOR THE DECISIONS

The Constitution requires that the Human Resources Committee sets up Employee Appeals Sub-Committee to determine of appeals under human resources procedures requiring a Member level decision.

2. ALTERNATIVE OPTIONS

- 2.1 The are no alternative options, if the Sub-Committees are not set up then the Council will not be able to hear appeals under human resources procedures requiring a Member level decision.

3. DETAILS OF THE REPORT

APPEALS SUB COMMITTEE

- 3.1 For appeals by employees under human resources procedures that require a Member-level decision, the Employee Appeals Sub-Committee comprises of an ad hoc panel for each appeal dependent on availability. This panel will include in each case a Chair and two other Councillors drawn from the Committee Members and its appointed substitutes. Once appointed for a particular appeal, the membership of the Sub-Committee must remain the same throughout all stages of that appeal. An additional clause to specify that the membership of any Appeals Sub Committee be politically balanced was agreed by the Committee at its first meeting in 2023/24. The Director of Legal is authorised to make or amend sub committee appointments in accordance with Section 24 of the Constitution (from the nominations received from Members/Groups as required).
- 3.2 Members can only sit on an Appeals Sub–Committee if they have received annual training at this Council on policies and procedures relevant to the consideration and determination of the appeal which the sub–committee is charged.
- 3.3 The terms of reference and membership arrangements for the Employee Appeals Sub-Committee are attached at Appendix A. Also attached is the Appeals hearing structure (Appendix B).

4. EQUALITIES IMPLICATIONS

- 4.1 The recruitment process will follow equalities best practice to ensure a diverse range of potential candidates. Members of the Appointments Sub-Committee will be trained on appointments and on equalities practices.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.

- Data Protection / Privacy Impact Assessment.

Best value

5.2 Agreeing appropriate procedures for the consideration of appeals by officers is important in ensuring the Council's officers can support the Best Value obligations.

Risk Management,

5.3 There is a risk that the Council's reputation will suffer if the recruitment and employee appeals process does not operate smoothly and effectively. The recommendations detailed above aim to mitigate this risk by implementing a standardised approach to all such appeals.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

6.1

7. COMMENTS OF LEGAL SERVICES

7.1 Under the Council's Constitution the Human Resources Committee is required to set up an Employee Appeals Sub-Committee to determine of appeals under human resources procedures requiring a Member level decision.

7.2 When considering the criteria for the Employee Appeals Sub Committee, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). Section 4 above sets out the steps which will be taken with regard to ensuring the Council meets its obligations in this regard.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- Appendix A – Terms of reference and membership arrangements for the Employee Appeals Sub-Committee
- Appendix B – Appeals hearing structure.

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

- NONE.

Officer contact

Joel West, Democratic Services Team Leader 020 7364 4207

EMPLOYEE APPEALS SUB-COMMITTEE

Terms of reference:

1. That the Human Resources Committee establish an Employee Appeals Sub-Committee with the following terms of reference:-
 - To consider and determine appeals by employees under human resources procedures requiring a member level decision.

Membership:

2. That the membership of the Employee Appeals Sub-Committee comprise:-
 - 2.1 A panel of **three members** to be appointed by the Director of Legal on an ad hoc basis for each employee appeal from a pool of all Members and Substitutes of the Human Resources Committee, on the basis of politically proportionality and in accordance with the wishes of the leaders of the relevant political groups.
 - 2.2 The first item of business at each Employee Appeals Sub-Committee shall be to appoint, from amongst the Sub-Committee Members, a Chair for the appeal hearing.
 - 2.3 The quorum for the Employee Appeals Sub-Committee shall be three Members.
 - 2.4 Members may serve on an Employee Appeals Sub-Committee panel only after they have received annual training at this Council on policies and procedures relevant to the consideration and determination of the appeal with which the Sub-Committee is charged.
 - 2.5 In the case of an appeal which gives rise to any issues relating to safeguarding of adults or children, no Member may sit on the Employee Appeals Sub-Committee to consider that appeal unless they have previously received training in safeguarding matters to the satisfaction of the Director of Legal and the Corporate Director, Children's Services or the Corporate Director, Health and Social Care as appropriate.
 - 2.6 The Director of Legal shall be authorised to convene meetings of the Employee Appeals Sub-Committee, to discharge functions on its behalf, subject to the criteria set out in paragraphs 2.1 to 2.5 above

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APPEAL HEARING STRUCTURE

1. **Introduction of parties and explanation of structure.**
 - In attendance:
 - Members hearing the Appeal
 - Human Resources Adviser
 - Legal adviser to the Panel
 - Committee Clerk or other note taker
 - Manager presenting case.
 - Appellant
 - Appellant's Representative (only one representative will be allowed to attend the hearing and this may be a Trade Union Representative or a work colleague.
2. **APPELLANT'S CASE** will be put first using supportive evidence, documentation and witnesses.
3. **MEMBERS HEARING THE APPEAL** will ask any points regarding the Appellant's case, including questions to witnesses.
4. **THE MANAGER PRESENTING THE CASE may ask** points of clarification only of Appellant or witnesses. If either side does not wish to check any points with the witnesses, they may leave the hearing at this stage.
5. **THE MANAGER** will then present his / her case, explaining why the original decision was considered appropriate.
6. **MEMBERS HEARING THE APPEAL MAY ASK** questions of the Manager and his / her witnesses.
7. **THE APPELLANT** (or his / her representative) **may ask** points of clarification only from the Manager or his / her witnesses.
8. **APPELLANT'S CONCLUDING REMARKS** (if any)
9. **MANAGER'S CONCLUDING REMARKS** (if any)
10. **AFTER AN ADJOURNMENT** if the Members are able to come to a decision within a reasonable timescale the Chair of the Sub Committee hearing the Appeal will give the decision. If the decision is likely to take some time the parties will be offered the option of being notified of the decision the following working day by the Human Resources Adviser. The decision will be confirmed in writing to the Appellant.

APPEALS UNDER THE DISCIPLINARY PROCEDURE

1. The function of the Appeal is to consider the evidence in the light of the submissions made by the Appellant, together with the Council's response and to decide upon the fairness and reasonableness of the decision. It is not a rehearing. It is a review process.
2. In reaching a decision, the Panel of Members should consider the following: -
 - (i) Has any new evidence been presented which was not heard by the Chair of the original Panel? New evidence will only be considered if it was not available to the deciding officer and is relevant to the matter.
 - (ii) Was the decision procedurally correct.
3. If the Appeal grounds are on procedural irregularities, the Panel must decide whether there were any such irregularities and, if so, whether these prejudiced the disciplinary decision to such an extent that a fair hearing was not possible.
4. Appeals against disciplinary action will only be considered on one or more of the following reasons:
 1. The PROCEDURE, - the grounds of appeal should detail how procedural irregularities prejudiced the disciplinary decision.
 2. The FACTS, - Failure to take account of material evidence.
 3. The DECISION, The decision did not justify the level of disciplinary sanction imposed. The Panel will decide if the decision was a decision a reasonable employer could reasonable make.

APPEALS UNDER THE SICKNESS PROCEDURE

APPEALS AGAINST DISMISSAL UNDER THE SICKNESS PROCEDURE:

THE STRUCTURE OF THE HEARING FOLLOWS THE DISCIPLINARY CODE.

THE GROUNDS FOR APPEAL ARE: -

1. That the medical opinion was wrong
2. That redeployment was a viable option
3. That having regard to operational requirements, financial constraints and personal circumstances, it would have been reasonable to allow a longer period to recover before a final decision was made.
4. That there were procedural irregularities by the Council in the operation of the scheme, and these irregularities prejudiced the case to such an extent that a fair hearing was not possible.

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Non-Executive Report of the: Human Resources Committee Thursday, 16 May 2024	 TOWER HAMLETS
Report of: Linda Walker, Interim Director of Legal & Monitoring Officer	Classification: Open
Establishment of Appointments Sub-Committee 2024/25	

Originating Officer(s)	Matthew Mannion, Head of Democratic Services
Wards affected	(All Wards);

Executive Summary

The terms of reference of the Human Resources Committee include the determination of criteria for the Appointments Sub-Committees established from time to time to consider the appointment of statutory and non-statutory Chief Officers and Deputy Chief Officers. This report recommends the establishment of a sub-committee for this function for the current municipal year, sets out the process for Chief Officer/Deputy Chief Officer appointments and proposes criteria for membership of each sub-committee for the Committee’s agreement.

Recommendations:

The Human Resources Committee is recommended to:

1. Consider the options presented at section 6 of the report to amend the process for the appointment to Chief Officer and Deputy Chief Officer posts and determine whether these or any other changes should be made to the appointments process.

2. Agree the terms of reference for Appointments Sub-Committees for the remainder of the municipal year 2024/25 as set out at section 4 of this report and the process for appointment to Chief Officer and Deputy Chief Officer posts as set out at section 5 of the report, subject to any amendments agreed in recommendation 1 above.

3. Delegate authority for any minor changes to the appointment process arising from the recommendations above to the Head of Democratic Services following consultation with the Chair of the Human Resources Committee.

1. REASONS FOR THE DECISIONS

The Constitution requires that the Human Resources Committee sets up Appointment Sub-Committees to determine senior officer appointments.

2. ALTERNATIVE OPTIONS

- 2.1 Some alternative options for amending the appointment process are set out in Section 6 of this report.
- 2.2 If the Sub-Committee is not established then the Council will not be able to proceed with appointments to senior officer posts.

3. DETAILS OF THE REPORT

- 3.1 Under the Officer Employment Procedure Rules at Part 4.9 of the Council's Constitution, the Appointments Sub-Committee will be established on criteria approved by the General Purposes Committee (should expected changes to the Council's committee structure be agreed at the Annual Council meeting on 17 May 2023, this will shortly be changed to Human Resources Committee) comprising relevant Councillors to make appointments to Chief Officer and Deputy Chief Officer posts.
- 3.2 The criteria and an appointment process designed to meet the requirements of the Constitution, to be clear and transparent for Councillors and officers, and to follow recruitment best practice resulting in a successful and fair appointments process have previously been agreed.
- 3.3 This report sets out the process for Chief Officers and Deputy Chief Officers. The process for the appointment of a Chief Executive is agreed separately.

Terms of reference

- 4.1 It is proposed that in accordance with the Council's Constitution, the Committee establish an Appointments Sub-Committee with the following terms of reference:- "To make appointments to Chief Officer and Deputy Chief Officer posts in accordance with the Council's Constitution and the agreed Recruitment and Selection Procedures."

Membership

- 4.2 In accordance with the proportionality rules for all Council Committees, it is proposed that the following arrangements, should apply;
 - a) For a **Chief Officer** (Corporate Director level) and **Deputy Chief Officer** (Director level) appointment, the Appointments Sub-Committee shall comprise of **five Councillors** as follows:-

- Three members nominated by the leader of the majority group, at least one of whom must either be the Mayor or a member of the Executive; and
 - Two Councillors nominated by the leader of the largest opposition Group.
- b) The Director, Workforce, OD & Business Support (or their respective nominee) is authorised to agree the dates of Appointments Sub-Committee meetings and following liaison with the Mayor and Group Leaders, to agree the membership of the Sub-Committee for each appointment that is required in accordance with nominations from the Mayor and group leaders; to receive their nominations, in accordance with the above allocation of places,
- c) The Mayor and political groups are expected to assist in achieving a Sub-Committee whose overall composition is diverse in terms of gender and ethnicity wherever possible. In the event that the initial nominations do not produce such a Sub-Committee, the Monitoring Officer or the Head of Democratic Services (or their respective nominee) after consultation with the Director, Workforce, OD & Business Support will discuss with the respective group leaders and the Mayor options for amending one or more of those nominations as necessary to achieve sufficient diversity.
- d) Members can only sit on an Appointments Sub-Committee if they have received training at this Council on recruitment and selection.
- e) The quorum for the Appointments Sub-Committee shall be at least three members.

5. PROCESS FOR APPOINTMENT OF CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

- 5.1 The rules governing the appointment of Chief Officers/Deputy Chief Officers are set out in the Council's Officer Employment Procedure Rules (Section 38 of the Constitution), which are in turn substantially derived from statutory provisions (primarily the Local Authorities (Standing Orders) (England) Regulations 2001). In practical terms the following is an outline of the process. This may be abbreviated or some elements of the process may not be required in the case of an internal-only recruitment or interim appointment.

Advertisement and longlisting

- 5.2 The Council may use recruitment consultants to assist with senior appointments. The Director, Workforce, OD & Business Support will work with the recruitment consultants and the Head of Paid Service or the relevant Corporate Director to establish a timeline for the recruitment process and agree any advertisements in accordance with Council policy.
- 5.3 Following advertisement, the Director, Workforce, OD & Business Support, the recruitment consultants and the Head of Paid Service or relevant Corporate

Director will agree a long-list of candidates and details of the process to follow this may include information visits, the use of assessment tools such as in-tray and other testing. Long-listed candidates will then undergo an assessment process.

Shortlisting and interviews

- 5.4 If necessary, the Appointments Sub-Committee may then meet to consider the results of the long-list process and the recruitment consultants' and officers' recommendations; and agree a shortlist of candidates for interview.
- 5.5 The Appointments Sub-Committee will then meet again to interview the shortlisted candidates. The officers will table suggestions for questions at the start of the meeting. References for candidates will be available for consideration but will only be considered once the ASC has decided who to appoint.

Appointment

- 5.6 If the Appointments Sub-Committee agrees on a candidate suitable for the post of Chief Officer/Deputy Chief Officer, it must inform the Mayor and each member of the Executive of its 'provisional intention to make an offer' to the preferred candidate. The Mayor and Executive members then have a two day period in which they may notify any objection to the making of the appointment. If no such objection is received within that period, a firm offer will be made. Should an objection be received the Appointments Sub-Committee would be required to reconvene to consider any objection and make a determination.

Note: Sub-Committee membership throughout the appointment process must remain the same

- 5.7 Membership of the Sub-Committee must remain the same throughout the process for an appointment and there can be no substitutions once the process has commenced for a particular appointment. A member of the Sub-Committee who ceases his/her participation after the Sub-Committee has started to meet may not be replaced. Rather the Sub-Committee would continue with a reduced number of members, subject to remaining quorate. Equally, a member of the Sub-Committee who does not participate in a stage of the process (e.g. shortlisting) may not then take part in a subsequent stage (e.g. interviews).
- 5.8 These provisions represent good recruitment practice. However, there may be occasions when their strict application could work against other aspects of best practice - for example by reducing the diversity of the Sub-Committee in terms of gender or ethnicity. In such exceptional circumstances the Director, Workforce, OD & Business Support may waive the requirement at 5.7 above in order to ensure a sufficiently diverse membership of the Sub-Committee, provided that consistency is maintained within each distinct stage of the appointment process (but see paragraph below).

6 OPTIONS FOR AMENDING THE APPOINTMENT PROCESS

6.1 The Committee may wish to consider the following possible amendments to the process as is set out above for the 2024/25 year:

Membership

6.2 To amend the wording at paragraph 4.2 above as follows:

- a) For a **Chief Officer** (Corporate Director level) and **Deputy Chief Officer** (Director level) appointment, the Appointments Sub-Committee shall comprise of **five Councillors** as follows:-
- Three members nominated by the leader of the majority group **from within that group**, at least one of whom must either be the Mayor or a member of the Executive; and
 - Two Councillors nominated by the leader of the largest opposition Group **from within that group**.

Advertisement and Longlisting

6.3 To replace the wording at paragraph 5.3 above with:

Following advertisement, the Director, Workforce, OD & Business Support, ~~the recruitment consultants and the Head of Paid Service or relevant Corporate Director~~ will **convene a meeting of the sub committee to** agree a long-list of candidates and details of the process to follow, this may include information visits, the use of assessment tools such as in-tray and other testing. Long-listed candidates will then undergo an assessment process.

Appointment

6.4 To amend or remove the existing discretion on continuity of membership of appointment sub committees as set out in paragraph 5.8 above.

6.5 If any or all of the above amendments are approved by the Committee, there may be the need for further minor style and consistency changes to the remainder of the process. Accordingly, it is suggested the Committee delegates these minor changes to the Head of Democratic Services following consultation with the Chair.

6. **EQUALITIES IMPLICATIONS**

6.1 The recruitment process will follow equalities best practice to ensure a diverse range of potential candidates. Members of the Appointments Sub-Committee will be trained on appointments and on equalities practices.

7. OTHER STATUTORY IMPLICATIONS

7.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

Best value

7.2 Agreeing appropriate procedures for the appointment of senior officers is important in ensuring the Council recruits the best leadership team available to support the Best Value obligations.

Risk Management,

7.3 There is a risk that the Council will not be successful in securing the best staff and its reputation will suffer if the recruitment and selection process for senior staff does not operate smoothly and effectively. The recommendations detailed above will ensure the Council complies with the statutory requirements for the appointment of Chief Officers and Deputy Chief Officers.

7.4 Should the Committee agree that a sub committee be convened to longlist candidates in all instances (see paragraph 6.3) there may be an increased risk of delays to senior officer recruitment.

7.5 Should the Committee agree to remove the current provision for discretion on membership of appointment sub committees (see paragraph 6.4), there may be an increased risk of delays to senior officer recruitment.

8. COMMENTS OF THE CHIEF FINANCE OFFICER

8.1 The report seeks agreement of the terms of reference, changes to the process and delegation relating to the Human Resources Committee. These changes do not result in financial implications.

9. COMMENTS OF LEGAL SERVICES

9.1 Under the Council's Constitution it is for the Human Resources Committee to determine criteria for the appointment of statutory and non-statutory Chief Officers and Deputy Chief Officers for Appointments Sub-Committees, which may be established from time to time to consider such appointments.

- 9.2 The Local Authorities (Standing Orders) (England) Regulations 2001 require that an Appointments Sub-Committee include at least one member of the Executive. The regulations also set out a statutory 'objection' procedure under which an appointment may only be confirmed if there is no well-founded objection to the proposed appointment by the Mayor or a member of the Executive.
- 9.3 When considering the criteria for Appointments Sub Committees, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). There is information in section 6 above relevant to these considerations.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- None.

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

- NONE.

Officer contact for more information

Joel West, Democratic Services Team Leader 020 7364 4207

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