

Report of the Director of Governance and Monitoring Officer

Review of the Council's Constitution

Summary

1. This report sets out the proposed amendments to the Council's Constitution for consideration by the members of the Audit & Governance Committee and makes a recommendation that the draft Constitution is considered by Full Council at their Annual Council Meeting which is due to take place on 21 May 2020.

Recommendations

2. The Audit and Governance Committee is asked to recommend the following:
 - 2.1 That the amendments set out in the tracked changed version of the Constitution annexed to this report be approved.
 - 2.2 That the proposed amendments to the Terms of Reference for Audit and Governance Committee at Appendix 1A be approved.
 - 2.3 That Full Council at their Annual Council Meeting, which is due to take place on 21 May 2020, consider the proposed changes to the Constitution and approve the implementation of the amended Constitution immediately after the Annual Council Meeting.
 - 2.4 That the Director of Governance liaise with the Corporate Management Team to ensure that each service area has in place a system to deliver the consistent compliance with the requirements in the Constitution that relate to delegated decisions taken and recorded by officers.

- 2.5 That the Director of Governance undertake a review of the Protocols and Procedures that support the provisions of the Constitution and the Council's overall governance framework to ensure they are comprehensive, accurate and up to date.
- 2.6 That the Director of Governance collate a central record of the Protocols and Procedures that support the provisions of the Constitution that is available electronically to all members, officers and the public.
- 2.7 That the Director of Governance in consultation with the Group Leaders and the Corporate Management Team provide training to members and officers to improve the understanding across the Council of the requirements set out in the Constitution.

Background

3. On 18th September 2019 the Audit and Governance Committee considered a report from the Interim Assistant Director, Legal and Governance setting out proposals for undertaking a review of the Council's Constitution and Governance arrangements.
4. At the meeting on 18th September 2019 the Audit and Governance Committee resolved:
 - “(i) That the report and information provided be noted;
 - (ii) That the proposed constitutional review be undertaken in two parts as outlined above:
 - (iii) That the Interim Monitoring Officer review the current Constitution as a whole for accuracies, consistency of references and current working practices and report back details of any proposed changes to Committee ideally at the meeting in December 2019;
 - (iv) That the Committee establish a Working Group as and when required to assist in part (ii) above in any constitutional review, examining the potential re-introduction of a ‘Committee System’.”

5. On 26th September 2019 the Executive also considered a report from the Interim Assistant Director Legal and Governance on the proposed review of the Constitution and Governance arrangements.
6. At the meeting on 26th September 2019 the Executive resolved:
 - “(i) That the proposals to review the Council’s Constitution and Governance arrangements using a 3-stage approach, as detailed in Option2 at paragraph 9 of the report, be approved.
 - (ii) That the review of the Constitution include consideration of the provisions regarding key decisions, to ensure that the legal requirements are met.
 - (iii) That the Terms of Reference for Stage 2 of the review (governance arrangements) be agreed by the Leader and Deputy Leader, in consultation with the Chair of Audit and Governance Committee.”
7. The review of the Constitution began in October. A team of officers from legal, finance and democratic services produced a consultation questionnaire which was circulated to all members and senior officers asking for comments, concerns and issues relating to the constitution.
8. In addition officers met with members and officers to discuss specific issues that they would wish to be addressed in the review and identified amendments to a be made to the Constitution based on the information provided by officers and members.
9. Attached to this report at Appendix 1 is a list of the key changes which are proposed as a result of the exercise set out in paragraphs 7 & 8 above. This includes the proposed changes to the terms of reference of the Audit & Governance Committee at Appendix 1A. In addition there is a full copy of the tracked changes in the Constitution document which include minor amendments, formatting changes, corrections in relation to

cross references and up dates to reflect current practice. Members are asked to consider all the proposed changes in both these documents.

Other Issues Arising Out of the Review

10. During the review a number of other issues which are relevant to compliance with the requirements set out in the Constitution document and to the general governance of the Council have arisen which need to be addressed. These are set out in paragraphs 11 – 14 below.
11. The provisions in the Constitution in relation to key decisions have been reviewed to ensure they are legally sound. However, in doing so it became clear that there is an issue in relation to the consistency of recording decisions taken by officers under delegated powers. To ensure transparency it is important that these are recorded appropriately and in particular that information is included to explain whether a decision is a key decision and, if not, the specific reasons for that conclusion. There is therefore a recommendation in this report to seek to improve the consistency and accuracy when recording officer decisions.
12. The review identified a need to better understand the role of scrutiny in both the decision making process and the development of policy. However the role of scrutiny is dependent on the decision making structure to be adopted by the Council in the longer term following the review of the Council's wider Governance Arrangements. The Terms of Reference for the review of Governance Arrangements are attached to this report at Appendix 2 for members' information.
13. There are a number of protocols and procedures in existence many of which have not been reviewed for a number of years. In addition there are protocols and procedures that do not exist that ought to be drafted to ensure a consistent approach to Council business and to the operation of the Council's governance framework. In addition there is not central record of protocols and procedures and no-one has responsibility for their keeping or ensuring they are accessible to members, officers and the public. These matters include, for example:
 - Compliance with Data Protection and Information Management
 - Ethics statement

- Guidance for Elected Members Appointed to Outside Bodies
- Officer and Elected Member International travel
- Elected Members Use of ICT and Council Resources
- Scrutiny Call-in Procedures
- Senior Officer Disciplinary Procedures
- Standards Complaints Procedures
- Report Writing Protocol
- Webcasting Protocol

This list is not comprehensive. Therefore there is a recommendation in this report to address the collation and review of protocols and procedures.

14. There are varying levels of understanding of the requirements set out in the Constitution across Elected Members and Officers. Compliance can be undermined if the requirements are not fully understood which is a risk that must be addressed. There is therefore a recommendation in this report to improve the understanding of the requirements of the Constitution to address this issue.

Analysis

7. Not relevant for the purpose of this Report.

Council Plan

8. The Council's governance framework is key to facilitating how residents engage with the decision-making process. The amendments to the Constitution are to ensure that the document enables residents to understand how decisions are taken.

Implications

9. The implications of the Constitution review are set out below:

- Finance – The Financial Regulations and the Contract Procedures have been reviewed and updated to ensure they are robust and legally sound.
- Human Resources (HR) & Equalities – The relevant parts of the Constitution that relate to staffing matters and equalities have been reviewed and updated.
- Legal – The legal implications and requirements have been considered as part of the review
- This report has no Crime and Disorder, Information Technology (IT) or Property implications.

Risk Management Assessment

10. The accuracy and efficiency of and the compliance with the Council's Constitution is a key element of managing areas of risk relating to the governance of the Council.

Recommendations

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 - 11.1 That the amendments set out in the tracked changed version of the Constitution annexed to this report be approved.
 - 11.2 That the proposed amendments to the Terms of Reference for Audit and Governance Committee at Appendix 1A be approved.
 - 11.3 That Full Council, at their Annual Council Meeting, which is due to take place on 21 May 2020, consider the proposed changes to the Constitution and approve the implementation of the amended Constitution immediately after the Annual Council Meeting.
 - 11.4 That the Director of Governance liaise with the Corporate Management Team to ensure that each service area has in place a system to deliver the consistent compliance with the requirements in the Constitution that relate to delegated decisions taken and recorded by officers.

- 11.5 That the Director of Governance undertake a review of the Protocols and Procedures that support the provisions of the Constitution and the Council's overall governance framework to ensure they are comprehensive, accurate and up to date.
- 11.6 That the Director of Governance collate a central record of the Protocols and Procedures that support the provisions of the Constitution that is available electronically to all members, officers and the public.
- 11.7 That the Director of Governance in consultation with the Group Leaders and the Corporate Management Team provide training to members and officers to improve the understanding across the Council of the requirements set out in the Constitution.

Reason for the Recommendations

To ensure that the Council's Constitution is accurate and consistent and that there is compliance with the provisions set out therein.

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Report **Date**
Approved 03/03/20

Wards Affected: List wards or tick box to indicate all **All**

For further information please contact the author of the report

Appendices

Appendix 1 – List of Key Changes to the Constitution, including Appendix 1A
(Draft Audit and Governance Committee Terms of Reference)

Appendix 2 – Draft Terms of Reference for the Review of Governance
Arrangements

Appendix 3 – Tracked Changed Constitution (online only)