

COUNTY COUNCIL – 21 MARCH 2017

CONSTITUTION REVIEW

Report by the Chief Legal Officer and Monitoring Officer

Introduction

1. Under the Constitution, the Monitoring Officer is required to monitor and review the operation of the Constitution to ensure that its aims, principles and requirements are given full effect. This includes making recommendations to Council on any necessary amendments. The Monitoring Officer is authorised to make any changes to the Constitution which are required to:
 - Comply with the law
 - Give effect to the decisions of Council (or Cabinet, Committees etc.)
 - Correct errors and otherwise for accuracy or rectification
2. Other changes will only be made by Full Council, following a recommendation of the Monitoring Officer.
3. This report therefore:
 - recommends certain changes for Council's *approval*; and
 - notes that the Monitoring Officer will make any consequential changes to the Constitution arising from the Senior Management Review;
 - lists certain changes made by the Monitoring Officer under his delegated powers, *for noting*.

Potential changes – Council approval needed

Write off of debts – Financial Procedure Rules

4. There is currently an inflexibility in the Financial Procedure Rules (Part 8.2 of the Constitution) where those procedures conflict somewhat with the Chief Legal Officer's delegated power (under Part 7.2) to "settle any legal proceedings...where the Chief Legal Officer considers that such action is necessary to protect the Council's interests.
5. The difficulty is that the current Financial Procedure Rules (paragraph 90) specifies that the delegated limit for officers to write off debts is £10,000 in any one case; otherwise "approval shall be required from the Cabinet". In some circumstances, the act of settling legal proceedings as envisaged in the scheme of delegation will necessarily involve detailed negotiations in order to reach a settlement in the public

interest; routinely to involve Cabinet in such circumstances is impractical and counterproductive.

6. It is therefore suggested that it would be appropriate to harmonise these requirements while retaining the necessary financial principles within the Procedure Rules. As such it is proposed that the write-off limits should continue to apply except in the cases where the Chief Legal Officer is involved legal proceedings where integral negotiations may require an effective write-off in the public interest. Any such write off would need to be discussed and agreed with the Chief Finance Officer before conclusion and Cabinet should be informed of the outcome. It is suggested that the amended text to paragraph 90 of the Financial Procedure Rules should be (new text in **bold**):

“For the purposes of the General Operational Powers of the County Director and Directors set out in Part 7.2 of the Constitution, the limit for the writing off of uncollectable debts (including bad debts) in any one case is £10,000. Over this limit, approval shall be required from the Cabinet **except in cases where the Chief Legal Officer is involved in the settlement of legal proceedings. In such cases, where an associated write off is involved, the write off will be approved in advance by the Chief Finance Officer. Cabinet will then be informed of the outcome. In any such circumstance, if the Chief Finance Officer considers that Cabinet’s approval for the write off should be sought in advance, this will be arranged.**”

7. The views of the Audit & Governance Committee were sought on this matter in January 2017 and the Committee was supportive of this change as an effective means of improving efficiency and good governance.

Amendments to be made as a consequence of the Senior Management Review – for noting

8. Any changes to the senior management structure arising from the Senior Management Review will require consequential amendments to the Constitution. The Monitoring Officer will make these changes under delegated powers. Mostly these will simply be changes to reflect new post titles. They are likely to require potential amendments mainly to the following:
- Article 13 – Officers: the description of the principal areas of responsibility for senior managers
 - Part 7.1 – Management Structure: an outline of the County Council Leadership Team
 - Part 8.4 – Officer Employment Procedure Rules: procedures for appointment to and dismissal from certain senior management posts

Amendments made during the year under delegated authority – for noting

9. Annex 1 to this report lists the changes made to the Constitution during the year by the Monitoring Officer under his powers. Each of these was either consequential on a decision of the Council, was required for legal reasons or was needed in order to bring greater clarity to the provisions in question.

Legal and procedural implications

10. There are no legal implications and the procedural implications relate to the respective provisions in the Council's Constitution which have been outlined in paragraphs 1, 2, 4, 6 and 8 in this report.

RECOMMENDATIONS

11. **Council is RECOMMENDED to:**
 - (a) **agree the proposed change to the Council Procedure Rules outlined at paragraph 6 of this report (Financial Procedure Rules, write off provisions);**
 - (b) **note that the Monitoring Officer will make any consequential amendments to the Constitution arising from the senior management review;**
 - (c) **note the changes already made to the Constitution by the Monitoring Officer under delegated powers since the last annual Constitution Review report to Council (as outlined in Annex 1 to the report).**

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March 2017

Constitution Review

Amendments made during the year under delegated authority

Amendments simply to reflect change of post title (to County Director)

Part 2, Article 10: Health and Wellbeing Board

Part 2, Article 13: Officers

Part 4.4: Delegated Decisions by individual cabinet members

Part 6.2: Overview and scrutiny procedure rules

Part 7.2: Scheme of Delegation

Part 8.2: Financial Procedure Rules

The above changes were consequential on the decision of Remuneration Committee on 6 April 2016 (Minute No12/16).

Part 3.1: Council Procedure Rules

Paragraph 13.5.1 (ii)(a) to reflect Council's decision to amplify the meaning of 'significant expenditure' in the context of treatment of motions. The definition of significant had been recognised as "expenditure of £10,000 or more".

The above change was approved by Full Council on 5 April 2016 – Minute No. 14/16.

The Council Procedure Rules govern how motions proposed at Full Council are handled. Rule 13.5.1 (ii)(a) sets out that in the case of a non-executive function, Full Council will (except at the February or budget-setting meeting) "debate and determine the motion" unless the motion if carried would lead to certain outcomes. One of these is that any such approved motion would "involve additional expenditure". It was considered by Full Council that this was too restrictive and the wording was therefore amended to give greater definition and flexibility.

Part 4.1: Membership of Cabinet and Shadow Cabinet

To reflect the change in Cabinet Membership (addition of Cllr Harrod) and the changes to the names of two portfolios (to Children's Services and Education respectively).

Part 8.3: Contract Procedure Rules (*Competitive Quotes and Tenders Section*)

Paragraphs 5.4 (i) and (ii): minor amendments to the threshold levels of required to meet changes to the EU directive thresholds applicable from 1 January 2016 to 31 December 2017.

Part 9.1, Annex 1: Members who are also members of a district council in Oxfordshire

List updated to reflect the outcome of the May 2016 city/district council elections.