

FULL COUNCIL – 11 DECEMBER 2018

CONSTITUTION CHANGES

Report by Director of Law & Governance

Introduction

1. This report seeks Full Council's agreement to incorporate several changes into changes to the Council's Constitution. The changes fall under two headings and are sought to bring greater clarity and to reflect decisions already taken by the Council. The Monitoring Officer has delegated authority to make changes to the Constitution to reflect the decisions of the Council, Cabinet and Committees and where changes are needed to bring clarity or to reflect legislation. Other changes require the approval of Full Council. In this case, the proposed changes are being brought to Full Council for approval. The background papers incorporating the governance documents to be included, are available to councillors in the Members' Resource Centre.
2. The **first change** proposed is to the Council's Officer Employment Procedure Rules, effectively to bring greater clarity to the arrangements for appointing the Council's senior managers. The proposed change brings the Council's terminology for its senior manager positions into line with the wording in the relevant Regulations and to be clear as to the relevant body or person responsible for making the appointment in each case. This will enhance accountability and avoid confusion that has arisen as to the definition of 'Chief Officers' and 'Deputy Chief Officers'.
3. For example, currently, the terms or reference of the Remuneration Committee are that it has a role in appointing Directors with no distinction made between 'Strategic Directors' and any other 'Directors'. This report proposes a distribution of responsibility that provides greater clarity. The choice of which posts should be appointed by the Remuneration Committee lies with the County Council itself and is not determined by regulations.
4. This matter is entirely separate from the arrangements agreed by Council for handling any joint management appointments arising from the Oxfordshire-Cherwell Partnership. The scenarios in this report are solely those that the Council is required to have in place for its own appointments where these occur outside of that context. It is proposed to insert **Annex 1** as an appendix to the Council's Officer Employment Procedure Rules.
5. The **second change** is an administrative one. This is to insert new provisions into the Council's Constitution to give effect to the decisions already taken by the Council regarding the partnership between this Council and Cherwell District Council. The changes proposed are the insertion of a protocol called the

'Roles of Members and Officers in Dealing with Conflicts of Interest' (which also comprises an Ethical Walls Procedure); and arrangement' and the terms of reference of the two new committees - namely the Joint Shared Service and Personnel Committee and the Joint Appeals Committee. The Audit and Governance Committee has already endorsed these at its meetings on 12 September 2018 (Item 8) and 14 November 2018 (item 10) respectively: these have been included as background papers and have been deposited in the Members' Resource Centre.

6. The **third change** is to adopt into the Constitution the 'Chief Executive Protocol' which sets out how the Joint Chief Executive will work effectively on behalf of both authorities. This governance protocol was endorsed by the Audit and Governance Committee at its meeting on 12 September 2018 (Item 8).

Background

A. Senior officer appointments

7. Prior to the Senior Management Review in December 2016 the Senior Management Team was made up of Directors. These Directors held both statutory and non-statutory roles and were considered Chief Officers for the purposes of the relevant Regulations.
8. Following the Senior Management Review, a new role of 'Strategic Director' was introduced and since that time it has been a little unclear as to whether the Strategic Director is a 'Chief Officer', with regard to regulations, and whether the Directors are 'Deputy Chief Officers'. It is timely for the Council to express more clearly the 'appointor' for such senior officer posts and how these align to the relevant Regulations.

Statutory Rules

9. The Local Authorities (Standing Orders) (England) Regulations 2001 say that, normally, appointments and dismissals and disciplinary processes are for the Head of Paid Service to determine. The posts excepted from this and subject to a 'cabinet consultation' procedure (see paragraph 10) are:

(a) the officer designated as the head of the authority's paid service;

(b) a statutory chief officer - which under the Local Government and Housing Act 1989 means:

- Director of children's services
- Director of adult social services
- Director of public health
- Section 151 Officer
- Monitoring Officer

(c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;

- Direct reports of the head of paid service (HOPS)
- A person for whom the HOPS is directly responsible
- A person who as respects all or most of their duties is *required to report directly or is directly accountable to the HOPS*
- A person who as respects all or most of their duties is *required to report directly or is directly accountable to Full Council or a committee or sub-committee*

(d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or

- A person who as respects all or most of their duties is required to report directly or is directly accountable to one of more of the...
 - Statutory chief officers
 - Non-statutory chief officers

10. For the purposes of Oxfordshire County Council posts these are:

- Head of Paid Service
- *Statutory chief officers*
 - Director for Children’s Service
 - Director for Adult Services
 - Director of Public Health
 - Director of Finance
 - Monitoring Officer
- *Non- statutory chief officer*
 - Strategic Director of Communities (reports to HOPs)
 - Strategic Director of Resources (ditto)
 - Director of Digital and ICT (ditto)
 - Director of Human Resources (ditto)
 - Assistant Chief Executive (ditto)
- *Deputy Chief Officer*
 - The direct reports of the above (who as respects all or most of their duties is required to report directly or is directly accountable to them; **unless** such posts are clerical or are otherwise support services). Includes...
 - Chief Fire Officer (by virtue of reporting to Strategic Director for Communities)

11. Under the Council’s Constitution there is a regulatory process whereby Cabinet members are consulted in relation to both the appointment of Chief Officers and Deputy Chief Officers. This is to identify whether they have any objection or concerns which must be reported back to the Officer or Body that is making the final appointing decision.

The proposal

12. **Annex 1** sets out the proposed relationship between our senior management structure and the statutory definitions of 'Chief Officer' and 'Deputy Chief Officer' as well as the proposed appointing body/person going forward.
13. The proposal is that the Remuneration Committee would be the appointing body for 'Strategic Directors' and 'Statutory Chief Officers' only (apart from the Monitoring Officer, which would remain with Full Council).
14. For non-statutory chief officers and directors who come under the definition of Deputy Chief Officer, the appointor would be the Head of Paid Service. It remains that the Cabinet consultation procedure would be utilised as required by regulations for all posts covered by paragraph 6 (a)-(d) above.
15. Under the Council's pay policy statement there is still a requirement that salaries and packages for new posts which attract an annual payment of £100k or over must be approved by Full Council. That arrangement stems from Government guidance.
16. A separate statutory process exists for the appointment of the Director of Public Health, whereby the local authority must make an appointment jointly with the Secretary of State for Health. The 'cabinet consultation' process would still occur before an appointment is made.

B. Changes in relation to the Cherwell-Oxfordshire Partnership

17. **Three** amendments to the Constitution are envisaged under this heading:
 - Inserting terms of reference of the agreed Joint Committees and Partnership Working Group
 - Adoption of the protocol on the Roles of Members and Officers in Dealing with Conflicts of Interest
 - Adoption of a Chief Executive Protocol
18. In Summer 2018, the Council entered into a joint working arrangement with Cherwell District Council. This arrangement is governed by a formal "s113 Agreement" agreed by both councils.
19. The Section 113 Agreement envisaged the setting up of a Partnership Working Group, Joint Committees and a process for managing potential conflicts of interest between staff of both authorities who may work on joint projects or services. A Joint Chief Executive has been appointed and a protocol has been proposed to set out the expected means of working to the benefit of both authorities.

Joint Committees

20. On 11 September this year, Full Council agreed to the setting up of two formal joint committees – a Joint Shared Services and Personnel Committee and a Joint Appeals Committee. The functions being:

Joint Shared Service and Personnel Committee – to take decisions on certain staffing matters arising from and necessary for implementing, the shared service approach;

Joint Appeals Committee – to hear and determine staffing appeals arising from the shared service proposals.

21. Council delegated to the Audit and Governance Committee the determination of the terms of reference of both bodies and these were agreed at the meeting of the Committee on 14 November 2018 (Item 10). The Committee also endorsed the terms of reference of the agreed Partnership Working Group on 12 September 2018 (Item 8).

'Roles of Members and Officers in Dealing with Conflicts of Interest'

22. Under the joint working arrangements, a Joint Chief Executive oversees the staffing of both authorities. Whilst the officers will be managed under one Joint Chief Executive, the two Councils will remain two distinct local authorities with different membership and political priorities. It is perhaps inevitable that conflicts between the two Councils may arise, whether that be a conflict in an operational issue (e.g. a fire safety concern about a Cherwell District Council property or an environmental health issue for a maintained school); or in the strategic approach to an issue (such as a differing view about any proposed corridor to the Oxford to Cambridge expressway).
23. It is anticipated that there will be rare occasions where it is not possible to reconcile the interests of two organisations with their respective legal responsibilities. The Ethical Walls arrangements set out a framework within which such a conflict would be managed. In short form, in any given circumstance, it would involve the Monitoring Officer alerting all the relevant officers and ring fencing them, establishing clearly to which local authority they will report over that issue. Those officers would then be instructed to liaise with any other officers, of either council, as if they were working with a third party, with all the consequences of protecting information and maintaining confidentiality.
24. The arrangements will be overseen by the Monitoring Officer and ultimately the Chief Executive who will seek to address any issues that might arise from the conflict. Officers will only be advising members and officers on their side of the Wall. Similarly, reports to formal meetings of either Council will reflect those arrangements.
25. In order to give some transparency and structure to this important area of governance, a protocol on "The Roles of Members and Officers in Dealing with Conflicts of Interest" that may arise in the operation of the partnership. This also comprises an Ethical Walls Procedure setting out how officer conflicts will be managed. The Audit and Governance Committee has endorsed the sufficiency of the protocol and procedure at its meeting on 12 September 2018 (Item 8)

and the suggestion is that this is formally adopted into the Council's Constitution.

Chief Executive Protocol

26. The 'Chief Executive Protocol' sets out the status of the Joint Chief Executive, how the Joint Chief Executive will work effectively on behalf of both authorities and includes provisions as to the appraisal process. It sets out which responsibilities remain with Cherwell District Council (as employer) and which will be undertaken jointly. The Protocol was been approved by the Audit and Governance Committee on 12 September 2018 (Item 8).

The proposal

27. It is proposed that the following be incorporated into the Council's Constitution:
- a. the terms of reference of the Joint Committees
 - b. the protocol on Roles of Members and Officers in Dealing with Conflicts of Interest (and the Ethical Walls Procedure appendix)
 - c. the Chief Executive's Protocol

To note – Sub-Committee of the Audit & Governance and Performance Scrutiny Committees

28. Council should note that the Audit and Governance and Performance Scrutiny Committees have decided to form a joint committee through which they can carry out their respective functions with regard to the progress of the Cherwell-Oxfordshire partnership. The Monitoring Officer will be making a change to the Constitution to reflect this. No decision is required from Council in relation to this.

Legal and Financial Implications

29. Councils are required to have a Constitution and it is important that this is kept up to date and that it reflects both the decisions and the decision-making processes of the authority. This is to the benefit of the public, councillors and staff. There are no financial implications arising from the subject of this report.

RECOMMENDATIONS

30. Council is **RECOMMENDED** to:
- (a) agree that the proposed senior officer appointment arrangements set out at Annex 1 be incorporated into the Council's Constitution;
 - (b) agree that the following be incorporated into the Council's Constitution:
 - (i) terms of reference of the Partnership Working Group, Joint Shared Service and Personnel Committee and the Joint Appeals Committee;

- (ii) the protocol on the 'Roles of Members and Officers in Dealing with Conflicts of Interest';
 - (iii) the Chief Executive Protocol.
- (c) Ask the Monitoring Officer to make the changes accordingly to the Constitution and the Council's Pay Policy Statement.

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Background paper: The 'Section 113 Agreement' established between Oxfordshire County Council and Cherwell District Council.

December 2018

Senior posts and proposed appointor

The appointor in each case must advise the Proper Officer of the person it is intended to appoint so that he/she can consult Cabinet members for any comment. No appointment can be made until any comments from the Cabinet members have been considered by the appointor.

NB The Regulatory description reflects current position based on existing roles and reporting lines

Post	Regulatory Description	Appointor under Constitution
Head of Paid Service	Head of Paid Service	Full Council
Director for Children's Service	Statutory Chief Officer	Remuneration Committee
Director for Adult Services	Statutory Chief Officer	Remuneration Committee
Director of Public Health	Statutory Chief Officer	Advisory Appointments Committee*
Director of Finance	Statutory Chief Officer	Remuneration Committee
Monitoring Officer	Statutory Chief Officer	Full Council
Strategic Director of Communities	Non-statutory Chief Officer	Remuneration Committee
Strategic Director of Resources	Non-statutory Chief Officer	Remuneration Committee
Strategic Director for People	Non-statutory Chief Officer **	Remuneration Committee
Assistant Chief Executive	Non-statutory Chief Officer	Head of Paid Service
Director of Law and Governance	Non-statutory Chief Officer	Head of Paid Service
Various posts – i.e. those reporting to the HOPS, Statutory and Non-Statutory Chief Officers	Deputy Chief Officers (includes Chief Fire Officer)	Relevant chief officer e.g. HOPS, Strategic Director or Director

* The Health and Social Care Act 2012 requires that each local authority must, acting jointly with the Secretary of State for Health, appoint an individual to have responsibility for its new public health functions, known as the director of public health. An "Advisory Appointments Committee" must be set up in line with Faculty of Public Health guidance, with County Council, Public Health England and Faculty of Public Health representation.

**Although the post of Strategic Director for People is currently filled by the Director of Public Health, the *position* of Strategic Director for People is a non-statutory chief officer position, reporting to the Head of Paid Service.