

COUNCIL – 8 DECEMBER 2015

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 updates Council on amendments to the Constitution that have been made consequential on previous decisions of the Council. This is for information only. It also seeks approval of two minor changes, both of which effectively seek to clarify and update existing provisions.

Consequential Amendments

4. This report updates the Council on the consequential amendments that resulted from two decisions already taken by Council. In each case, track-change versions of the Constitution, reflecting these changes, have been placed in the Members' Resource Centre. These are:
 - Senior management changes: namely, to reflect the leaving of the Chief Executive and the appointment of a new Head of Paid Service and Monitoring Officer
 - Senior manager dismissal: the procedures required in law to be reflected in the Constitution and consequent on Council's decision in July 2015

Senior management changes

5. The Constitution must reflect the changes made by the Council to its senior management structure. Members will recall that on the leaving of the Chief Executive, it was agreed that, to comply with legal requirements, new persons were appointed to the positions of Head of Paid Service and Monitoring Officer. It was also agreed not to recruit a chief executive at that time but that a senior management review be carried out to determine an appropriate

structure for the Council. The changes made to the Constitution now simply reflect these decisions. As such, references to ‘Chief Executive’ have been removed, to avoid confusion and to increase clarity for the public and members of the *current* structure. This does not prejudge the outcome of the senior management review which, when concluded, will require further amendments to the Constitution to reflect that final outcome. The changes therefore reflect the changes to the roles of Head of Paid Service and Monitoring Officer.

Senior manager dismissal

6. In July this year, Council was informed that the Government had issued Regulations to change the procedures which must be followed if a council wishes to discipline or dismiss its statutory officers – that is, the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. As a result, Council formally agreed, as the Regulations required, to adopt the new procedures.
7. The new procedures are, in short, that Full Council now takes the final decision on whether to dismiss any of the three statutory posts (Head of Paid Service, Monitoring Officer and Chief Finance Officer) but must now consider the advice, views or recommendations of a panel consisting of at least two independent members before determining the matter.
8. The government has yet to issue guidance on the expected format of *detailed* procedures. The lack of clarity relates to whether the Panel should be a standing committee or should only be convened as and when such a dismissal is contemplated. Either is permissible. As such, it has not been possible yet to reflect such detail in the Constitution and therefore the legal requirement has been met by incorporating the broad statutory procedure into the Council’s Officer Employment Procedure Rules, at Part 8.4 of the Constitution. This means that a panel would need to be convened in the event that such a dismissal is contemplated.
9. As on previous similar occasions, the Oxfordshire Monitoring Officers’ group is liaising to consider the emerging best practice and therefore a further report will be brought to Council in the New Year, hopefully with the benefit of guidance from the government.

Amendments for clarity

Treatment of motions

10. The Council Procedure Rules (Part 3.1 of the Constitution) govern how motions proposed at Full Council shall be 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 is considered that this is too restrictive as in one sense, any motion that asks

envisages action being undertaken as a result will involve some additional expenditure and in theory could preclude many proposed motions.

11. It is therefore proposed that the wording be amended to say “additional **significant** expenditure”. However, to do so immediately begs the question as to what ‘significant’ means. Following consultation with group leaders, it is suggested that a reasonable level for ‘significant’ would be £10,000. This would provide sufficient flexibility for motions below that threshold not to be ‘ruled out’ if challenged on the basis of current wording.
12. Full Council is asked to approve that amendment and the level of £10,000.

Protocol on Member-Officer Relations

13. It is essential to the good governance of the Council, and to public confidence in it, that there is a good and constructive relationship between democratically elected councillors and employees. Both are subject to respect codes of conduct within the Council’s Constitution. However, the key principles of mutual respect and integrity are set out further in the Protocol on Member-Officer Relations (at Part 9.6) of the Constitution.
14. The protocol is not intended to cover every eventuality, but at certain points it needs to be illustrative of the underlying principles. One such is the principle that close personal familiarity between members and officers can damage mutual respect and indeed public confidence, giving rise to suspicions of favouritism. It is suggested that, to illustrate this, paragraph 9 of the Protocol should include an example, namely: “For instance, it is not generally appropriate for officers and councillors to request or accept each other as ‘Friends’ on social media such as Facebook”.
15. While this is not a known issue for the County Council, it is nonetheless helpful to highlight the potential pitfalls of social media, however well-meaning such contacts may otherwise be. The perception of familiarity can itself be damaging.
16. Full Council is asked to approve that amendment.

Legal and procedural implications

17. The legal and procedural implications have been dealt with in the report under the relevant headings.

RECOMMENDATIONS

18. Council is RECOMMENDED to:

- (a) note that changes have been made to the Constitution to give effect to the Council's previous decisions on:**
 - (i) senior management structures (Council Minute Reference 56/15; and**
 - (ii) senior officer dismissal procedures (Council Minute Reference 43/15);**
- (b) agree the proposed change to the Council Procedure Rules outlined at paragraph 11 of this report; and**
- (c) agree the proposed change to the Protocol on Member-Officer Relations outlined at paragraph 14 of this report.**

NICK GRAHAM

Chief Legal Officer and Monitoring Officer

November 2015