

AUDIT & GOVERNANCE COMMITTEE – 13 JANUARY 2016

CONSTITUTION REVIEW

Report by the Chief Legal Officer and Monitoring Officer

Introduction

1. On 8 December 2015, Full Council considered a report from the Monitoring Officer on changes already made, or proposed to be made, to the Constitution. In recent years, such a report has been made to Council on an annual basis.
2. In the event, Council deferred consideration of the potential further changes to enable this Committee to give a view in principle on them. The changes that were necessary following previous decisions had of course already been made at the request of Council under the Monitoring Officer's delegated powers.
3. The report originally considered by Council is included as an **Annex**. The Committee is therefore being asked to do two things:
 - Firstly to **note** the changes that the Monitoring Officer has already made to the Constitution to implement previous decisions taken by this Council
 - Secondly to **review** the governance benefits of the proposed changes to two sections of the Constitution so that the Monitoring Officer can determine if and how to take this forward with Full Council.

Updating the Constitution

4. The Constitution gives the Monitoring Officer the authority to make certain changes to the Constitution. In short, he 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 affecting an issue of principle. It also means exercising his delegated authority to make changes which are required to:
 - a) Comply with the law
 - b) Give effect to the decisions of Council (or Cabinet, Committees etc.)
 - c) Correct errors and otherwise for accuracy or rectification
5. Other changes will only be made by Full Council, following a recommendation of the Monitoring Officer.
6. In the normal course of events, therefore, this Committee has no formal role in the updating of the Constitution. However, in this case, Council has sought

the view of the Audit & Governance Committee before considering the Monitoring Officer's specific recommendation on potential further changes.

Consequential Amendments – changes already made

7. Earlier this year, Full Council made decisions which required the Monitoring Officer to update the Constitution. As normal, the Monitoring Officer was specifically asked to make the changes and these were subsequently made. A copy of the updated sections is in the Members' Resource Centre, with the amendments showing as track-changes.
8. The issues which Council determined related to the following:
 - 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
9. Members may recall that this Committee gave consideration to the first of these issues on 16 September 2015: a paper on 'governance issues' had been brought to the Committee consequent on the Chief Executive leaving the Council. The paper noted that it was Council's intention to make appointments to the posts of Head of Paid Service and Monitoring Officer. This Committee was satisfied with these arrangements and Council subsequently made the appointments.
10. This matter is therefore already concluded and is for noting only. Similarly, in July 2015, Full Council agreed to adopt new statutory changes to the processes for dismissing senior officers. The changes consequent on that decision have also been made, to comply with the law. As such, those changes are also only for noting.

Proposed amendments for clarity – views sought

Treatment of motions

11. 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 envisages action being undertaken as a result will involve some additional expenditure and in theory could preclude many proposed motions.
12. 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.

13. The Committee is asked to comment on the governance implications of this before Full Council makes a decision on the matter.

Protocol on Member-Officer Relations

14. 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.
15. 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".
16. 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.
17. The Committee is asked to comment on the governance implications so that the Monitoring Officer can determine if and how to refer the matter back to Full Council for decision.

Legal and procedural implications

18. There are no legal implications. The procedural implications are those within the Council's Constitution which enable the Monitoring Officer and Full Council to amend the Constitution. In this instance, the Audit & Governance Committee has been asked to give Council its views on the matters contained in paragraphs 11-17 of this report.

RECOMMENDATIONS

19. **The Committee 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) **comment to Council on the proposed changes outlined in paragraphs 12 and 15 of this report.**

NICK GRAHAM

Chief Legal Officer and Monitoring Officer

Background papers: Nil
Contact Officer: Glenn Watson
Principal Governance Officer

Tel: 01865 810283