

## AUDIT AND GOVERNANCE COMMITTEE – 11 JANUARY 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 one change for this Committee's endorsement before submission to Full Council for approval; and
  - Lists certain changes already made by the Monitoring Officer under his delegated powers, *for noting*.

#### Potential change

##### *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 in 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.**”**

### **Amendments made during the year under delegated authority**

7. 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.
8. Of course, during the course of the new year, the Monitoring Officer will also make any amendments that are consequential on the implementation of any agreed senior management structures. These will be similarly tabulated and reported in future.

### **Legal and procedural implications**

9. 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 and 6 in this report.

### **RECOMMENDATION**

#### **10. The Committee is RECOMMENDED to:**

- a) **endorse the proposed change to the Council Procedure Rules outlined at paragraph 6 of this report (Financial Procedure Rules, write off provisions);**
- b) **agree to the Monitoring Officer proposing the change for Full Council’s approval; and**
- c) **note the changes made to the Constitution by the Monitoring Officer under delegated powers since December 2015 (i.e. since the last annual Constitution Review report to Council).**

## 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

#### **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".

#### **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.