

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

15th FEBRUARY 2018

REPORT OF SENIOR MANAGEMENT TEAM

CABINET DECISION

Leader of the Council – **Councillor Cook**

REVIEW OF THE COUNCIL'S CONSTITUTION

1. SUMMARY

All Local Authorities in England have a statutory duty under the Local Government Act 2000 to maintain an up to date Constitution and to make their Constitution publicly available.

In addition, Article 15 of the Stockton on Tees Borough Council Constitution imposes a duty on the Monitoring Officer:

"... on behalf of and in consultation with the Chief Executive, to monitor and review the operation of the Constitution on a regular basis, in order to ensure that the aims and principles of the Constitution are given full effect and that the Scheme of Delegation, Rules of Procedure, Codes and Protocols and all of the other constituent elements are up to date and reflect legislative changes, the outcome of reviews or inspections and decisions taken by the Council"

The purpose of this report is to outline to Cabinet the findings of the Monitoring Officer's annual review of the operation of the Constitution and to propose to Cabinet a timetable for the conclusion of the review and the process for consultation and approval by Members of an updated version of the Constitution.

2. RECOMMENDATION

It is recommended that Cabinet note the initial review of the constitution and approve the parameters and process for conclusion of the review of the Council's constitution as set out in paragraphs 7 to 16.

3. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one

which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

4. **Reasons for the Recommendations/Decision**

To update Members on the process for reviewing the constitution.

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RECOMMENDATION

1. It is recommended that Cabinet note the initial review of the constitution and approve the parameters and process for conclusion of the review of the Council's constitution as set out in paragraphs 7 to 16.

DETAIL

1. The Council adopted a new constitution for the Authority in October 2008 and since that time it has been reviewed and updated on an annual basis by the Monitoring Officer, with up-to-date versions maintained on the Councils website and intranet.
2. The Constitution has served the organisation extremely well, however in 2017, in order to fulfil the duty to carry out regular monitoring of the Constitution the Monitoring Officer determined that a more fundamental review may be appropriate in light of the fact that:
 - a. The current constitution had been in place in its current format since 2008 and therefore the latest version is in the form of the 2008 version as amended

by nine years of updates. The current constitution has, over time, become a little unwieldy, having 760 pages and 50 separate sections.

- b. Changes are required to reflect the creation of Tees Valley Combined Authority
- c. Updates are required to reflect the General Data Protection Regulations and other legislative updates.
- d. It was also recognised that the Senior Management changes had led to a loss in corporate knowledge about why things are where within the Constitution.

Consequently a more in-depth review has been carried out in 2017.

3. Following an initial internal desk-top exercise it was decided to engage external specialist advice in order to carry out a full health check of the constitution and seek proposals for ensuring any review encompasses best practice and improvements. Bevan Brittan were appointed in October 2017 to carry out an initial exercise. They are a law firm with significant experience of advising local authorities on governance and decision making and have undertaken many reviews of constitutions for council clients.
4. The initial scope of work was to:
 - a. Complete a statutory compliance checklist of the current constitution.
 - b. Consider ways in which the constitution could be re-structured to make it more easily understandable, usable and accessible for the public, Members, Officers and partners and stakeholders of the Council.
 - c. Consider ways in which the document could be made future-proof and more easily maintained.
5. Overall the statutory compliance check found the Council's Constitution to be largely legally compliant. A few areas were identified where further information is needed to be contained in the Constitution to meet the statutory requirements but these can be easily remedied and are no more than would be expected on any regular review.
6. The review identified ways in which the constitution could be re-structured and updated. The recommendations involve developments in four areas:
 - a. Form and Structure
 - b. Updating and future-proofing
 - c. Re-drafting of the Decision Making provisions
 - d. Re-drafting of the Budget Policy and Financial Procedure Rules
7. An overview of the recommendations in each of these areas is set out below, however as a general comment, it is worth highlighting, that the proposals made are more about the presentation and documentation of our current constitutional arrangements rather than suggestions to make substantive changes to processes or decision-making. Where any substantive changes are proposed these will be highlighted to Members through the Members Policy Seminar and Cabinet and Council processes outlined below in paragraph 16. We will ensure that all changes are carefully mapped so that Members can see where provisions have been moved to other parts of the Constitution or removed.

Form and Structure

8. The review proposes that the Council's constitution could be improved through the use of more modern language, web links, graphics and a re-structuring. The

current structure comprises a general summary, then a set of introductory chapters then substantive sections, as a result, things are said three times, often in slightly different ways and it is difficult to be certain that the full picture is being presented on any issue without exhaustive searching. It is proposed that these sections could be cut down and assimilated into a clearer document. As part of this exercise the constitution could be rigorously edited to remove repetition and to make it more user friendly. It is proposed that we remove the Articles from the constitution. This will reduce repetition as much of the Articles are replicated elsewhere and parts can be removed altogether. There is much in the constitution which is important for the Council to have somewhere but need not be contained in this document. Policies and procedures can be referenced through web links which would make the whole document less daunting and unwieldy and, if they are not a formal part of the constitution, allows them more easily to be updated/refreshed. For example, Part 8 – Essential Supporting Documents could be removed or referred to by a hyperlink to a section of the Council's website.

9. A summary of a draft revised structure for the constitution and possible items for removal is included at Appendix 1.

Updating and future-proofing

10. The review identified a few specific areas where the constitution requires further update, for example with regard to the Tees Valley Combined Authority. The items identified are all straightforward factual amendments. However the review also makes a general recommendation that the document could be shorter and less detailed to reduce the administrative burden of updating the Constitution every time there is a change in Local Authority arrangements or legislation. The drafting could be future-proofed so that changes in post holders, legislation etc should not, of themselves, trigger a redraft. There are a number of parts of the constitution where specific officers are named and this will place a significant administrative burden on the Council to keep all references up to date. Whilst it can be useful to name senior officers, it is not recommended to refer to a large number of officers by name. The officer structure could appear on the Intranet (updated as necessary) and then linked to the constitution. The version in the constitution could be restricted to the top three tiers of staff with post titles and without names. Similarly the exhaustive list of relevant legislation could be replaced with a general reference to all relevant legislation thus reducing the burden of maintaining an up to date list in the constitution itself.

Decision making provisions

11. The review recommends that the sections in the constitution dealing with Responsibility for Functions and the Council Functions could be updated to make the approach to decision making clearer. The review recommends separating out delegations to make it clear exactly what is being delegated to whom and by whom. The current approach of using tables to describe the arrangements is very detailed and difficult to follow. It is proposed that a set of general principles covering all delegations and adopting a cascade approach is set out, covering:
 - a. Delegations to the Head of Paid Service
 - b. Delegations to Chief Officers
 - c. Delegation to named Directors with statutory functions
 - d. Arrangements for local schemes of delegation within Directorates can then be established and maintained outside of the constitution but within the parameters set for each director.

12. The review recommends that the Council may wish to amend the threshold for Key Decisions. It is currently £100,000, which is low for a unitary council. The review also highlights that the definition of Key Decision could be simplified and made clearer.
13. The review also recommends that the plans and strategies included in the policy framework section of the Responsibility for Functions section is reviewed and updated. Consideration should be given to reducing the number of plans and strategies included to the statutory minimum in order to reduce the need for both Council and Cabinet approval to such plans and strategies and in order to ensure that the list is kept up to date.
14. The review recommends that certain standard decisions are deconstructed and mapped stage by stage through the decision making process to agree a shared approach and to test the application of the constitution so that changes/refinements can be clearly understood. An agreed set of simple flow charts covering typical decisions and explaining the route map could be prepared as a separate document to the constitution to ensure clarity for Members and officers.

Budget, Policy and Financial Procedure Rules

15. The review recommends that the Budget, Policy and Financial Procedure Rules (BPFPR's) would benefit from re-drafting to bring together a table of all key financial limits in one place. This would help to identify then reduce duplication and facilitate making changes quickly and effectively across the whole document.

Next steps

16. It is proposed that these recommendations for updating the constitution are presented to Members at a Members Policy Seminar (MPS) on 19th February 2018. Following the Members Policy Seminar it is proposed that the updated version of the Constitution is drafted, taking into account any matters raised at the MPS. It is proposed that the revised constitution will then be brought back to Cabinet on 19th April 2018 to seek a recommendation for approval at Council on 25th April 2018.

FINANCIAL AND LEGAL IMPLICATIONS

17. There are no material financial or legal implications arising from this report. The cost of the review of the Constitution is covered by the ongoing revenue budget for the HR, Legal and Communications Directorate.

RISK ASSESSMENT

18. This report is categorised as low to medium risk.

EQUALITIES IMPACT ASSESSMENT

19. It is not considered that this report gives rise to any requirement for an assessment to be undertaken.

COUNCIL PLAN IMPLICATIONS

20. Organisational and operational effectiveness.

CONSULTATION

21. The proposals for consultation of the Constitution are as set out in paragraph 16.

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Background Papers: None

Ward(s) and Ward Councillors: Not Ward Specific

Property Implications: None