

REPORT TO	DATE OF MEETING
CABINET	02 FEBRUARY 2016

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
REVIEW OF THE COUNCIL'S CONSTITUTION	LEADER	Martin O'Loughlin	12

1. SUMMARY AND LINK TO CORPORATE PRIORITIES

The Constitution Task Group was established in 2010 to undertake a review of the Constitution by Governance Committee. Since 2010 the Constitution Task Group has conducted annual reviews of different sections of the Constitution and submitted reports to the Governance Committee and Cabinet prior to adoption of the proposed changes by Council at the start of each new municipal year. It is intended that this review will culminate in the adoption of a revised Constitution at the start of each municipal year.

This current review has looked at changes necessary to Contracts Procedure Rules (CPR's) & The 2015 Public Contracts Regulations, Revised Guidance for Audit / Governance Committees, Procedures for Call-In by the Scrutiny Committee and Changes to Statutory Dismissal Procedure for Protected Officers

Ensuring that the Constitution is up to date and applied effectively is a key element of the corporate governance of the Council and links to the corporate priority of being an efficient, effective and exceptional Council.

2. RECOMMENDATIONS

(1) That Council be recommend to adopt the proposed changes to the Constitution as recommended by the Governance Committee:-

(a) Contracts Procedure Rules (CPR's) & The 2015 Public Contracts Regulations.

That subject to an amendment of the wording of Contract Procedure Rule 39.4 relating to the development of an e-form, Council adopt the changes to the Contract Procedure Rules as illustrated in the Appendix to the Governance Committee report.

(b) Revised Guidance for Audit / Governance Committees

That the Terms of Reference for Governance Committee be replaced by the revised Terms of Reference set out be in Appendix 2 to the report to the Governance Committee.

(c) Procedures for Call-In by the Scrutiny Committee

That the Scrutiny Procedure Rules 4F of the Constitution be amended as follows:-

"15. Call-in

In the first paragraph by the addition of the words "the Chairman of the Scrutiny Committee or" after the word "where" and before the words "a minimum".

In paragraph (b) by the addition at the end of the paragraph of the words “The Chief Executive (or other designated officer) shall inform all members of the Council of the arrangements made for the Special meeting of the Scrutiny Committee to consider the call-in.”

In paragraph (c) by the addition at the end of the paragraph of the words “The reasons for the call-in and the name or names of the Councillors who requested the call-in shall be set out in the agenda for the meeting.”

(d) Changes to Statutory Dismissal Procedure for Protected Officers

That Council agree the proposed changes to the council’s procedure as detailed in the report to the Governance Committee and set out below:-

1. An Investigation Panel be convened to consider the seriousness of any complaint or allegation received, if there is a case to answer and whether an investigation is required.

The Panel to be comprised of:-

Leader, Head of HR, Monitoring Officer – for an allegation against the Chief Executive.
Leader, Head of HR, Chief Executive – for an allegation against the Monitoring Officer.

2. Commissioning of an Independent Investigation

The North West Employers Organisation or other appropriate body be contacted to assist in identifying a suitably experienced Investigator.

3. A Disciplinary Panel comprised of the Chairman of the council’s Standards Committee, the council’s Independent Person for Standards and a further Independent Person to be selected in advance of the Disciplinary Hearing

3. MAIN CHANGES AND REASONING

(a) Contracts Procedure Rules (CPR’s) & The 2015 Public Contracts Regulations

The 2015 Public Contracts Regulations came in to force on 26th February 2015. They replace the previous 2006 Regulations and transpose into UK law the 2014 EU Public Contracts Directive. The Regulations and the Directive set out the legal framework for public procurement. Contracts Procedure Rules (CPR’s) are the Council’s own internal procurement rules which Officers must follow, and it is therefore necessary to review and update CPR’s to take account of any changes required by the new 2015 Regulations.

In addition to implementing the new EU Directive, the UK Government has also taken the opportunity to incorporate a number of reforms for below EU threshold procurements. These reforms have arisen out of the Lord Young’s recommendations in his report on “Growing your Business” (May 2013). The reforms are set out in Part 4 of the new Public Contracts Regulations and are aimed at improving access to procurement opportunities for small businesses.

Full details and reasoning are set out in the report considered by Governance Committee on 25 November 2015.

(b) Revised Guidance for Audit / Governance Committees

The 2014-15 Annual Governance Statement contained an action to undertake a review to ensure the Governance Committee’s compliance with the latest CIPFA guidance “Audit Committees – Practical Guidance for Local Authorities and Police.” This sets out the functions and operations of Audit / Governance Committees in local authorities and represents CIPFA’s view of best practice.

This review has now been undertaken and has established that the Committee is fully compliant with the new guidance with the exception of two areas: Terms of Reference; and Skills and Knowledge.

The latest CIPFA guidance incorporates a revised terms of reference. Internal Audit have carried out an assessment of the new requirements and although they are more detailed and prescriptive, it was found that the Governance Committee is already operating in line with the model terms of reference. However the Governance Committee recommends adopting the revised Terms of Reference set out in the report.

Full details and reasoning are set out in the report considered by Governance Committee on 27 January 2015.

(c) Procedures for Call-In by the Scrutiny Committee

At the meeting of the Governance Committee held on 25 November 2015 Councillor Foster referred to the recent Call-in by the Scrutiny Committee indicating that he felt that many members of the council had not been aware of the Call-in. During the discussion at that meeting the committee was unclear whether or not all appropriate procedures had been followed or if there was an omission in the procedure rules relating to Call-in. It was agreed that the Constitution task group would review the arrangements/procedure for a decision to be called-in.

The Task Group met on the evening of 17 December 2015 and reviewed the procedures for Call-in and concluded that all the procedures as set out in the Constitution had been complied with but was of the opinion that in the interests of transparency the procedures could be clarified and improved upon.

Full details and reasoning are set out in the report considered by Governance Committee on 27 January 2015.

(d) Changes to Statutory Dismissal Procedure for Protected Officers

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require Local Authorities to agree a new process for the dismissal of an employee in the posts of Head of Paid Service, Monitoring Officer and Section 151 Officer. These employees for the purpose of the report are known as Protected Officers.

The key change is that the decision to dismiss a Protected Officer must now be made by way of a vote at a meeting of the Council. Prior to this change, a Designated Independent Person was able to make a recommendation, [without the need for it to be considered by a meeting of the Council] to dismiss a Protected Officer.

Another issue that needs to be addressed is the need to establish a Disciplinary Panel with responsibility for proposing a recommendation to dismiss a Protected Officer, to the Council.

Whilst guidance from DCLG is not fully explicit, the Council has the option of either establishing a Disciplinary Panel that is made up entirely of independent persons or a Disciplinary Panel comprising of independent persons and an elected member[s].

It should be noted that this process only applies where a dismissal is being considered and that the principles of the council's existing Disciplinary Procedure apply to the Protected Officers as well.

Full details and reasoning are set out in the report considered by Governance Committee on 27 January 2015.

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these. The risk assessment which has been carried out forms part of the background papers to the report.

FINANCIAL	There are no financial implications at this stage.		
LEGAL	<p>Contract Procedure Rules This review of Contract Procedure Rules is necessary to ensure the requirements of the 2015 Public Contracts Regulations are caught and addressed by the Council's internal rules. Fit for purpose Contracts Procedure Rules will help to ensure that the Council meets its legal obligations in the Procurement Process.</p> <p>Revised Guidance for Audit/Governance Committees Whilst the relevant report did demonstrate compliance with the latest recommended best practice for audit / governance committees nevertheless it was considered desirable to adopt the latest CIPFA guidance in terms of adopting revised terms of Reference for Governance Committee.</p> <p>Call-in Procedure Only minor changes to wording are proposed here primarily for clarification purposes</p> <p>Changes to Statutory Dismissal Procedures The proposed changes to Statutory Dismissal Procedure for Protected Officers are designed to reflect the new legislative requirements. The legislation requires that there should be at least two independent persons on any Disciplinary Panel. An Independent Person would have to be someone appointed by a council in that role under the standards regime further to the provisions of the Localism Act. The Council has one current independent person.</p>		
RISK	Ensuring that the Constitution is up to date and applied effectively is a key element of the corporate governance of the Council. Accordingly, any failure to keep the Constitution fit for purpose could present a risk.		
THE IMPACT ON EQUALITY	In considering the changes to the Constitution the Task Group has regard to its impact on equality and strives to make the Council's Governance arrangements as accessible and open and transparent as possible.		
OTHER (see below)			
<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Crime and Disorder</i>	<i>Efficiency Savings/Value for Money</i>
<i>Equality, Diversity and Community Cohesion</i>	<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Health Inequalities</i>
<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>	<i>Staffing, Training and Development</i>	<i>Sustainability</i>

BACKGROUND DOCUMENTS

Constitution