

# **Cherwell District Council**

## **Council**

**17 October 2016**

### **Constitution – Proposed Amendments**

#### **Report of Head of Law and Governance**

This report is public

#### **Purpose of report**

To consider and adopt proposed amendments to the constitution. A similar report is being considered by South Northamptonshire Council on 19 October 2016.

#### **1.0 Recommendations**

The meeting is recommended to approve the following:

- 1.1 That the terms of reference of the Joint Commissioning Committee be amended to include the functions set out in section 3.2 of this report.
- 1.2 That the Monitoring Officer be given the delegated authority to suspend a Statutory Officer in addition to the Head of Paid Service.
- 1.3 That the Head of Paid Service and Monitoring Officer be given delegated authority to agree settlement agreements and financial settlements for Statutory Officers in consultation with the Leader of the employing Council.
- 1.4 That all references to the Joint Appraisal Sub-Committee be deleted from the constitution.
- 1.5 That the existing scheme of delegation to Directors and Heads of Service be amended to enable them to appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to anywhere within the salary band for the post provided this is within approved budgets.
- 1.6 That the Head of Law and Governance be requested to amend and update the constitution in light of the above resolutions and be given delegated authority to make any consequential amendments to the constitution.
- 1.7 That the membership and quorum for the Joint Employee Engagement Committee be amended as set out in section 3.8 of this report.

## 2.0 Introduction

- 2.1 From time to time, through operating the council's decision making framework and due to legislative change various issues are highlighted that require changes to the constitution or where the operation of the decision making framework could be improved through amendments to the constitution. This report details suggested amendments and requests council to agree to amend the constitution.

## 3.0 Report Details

### **Amendments to Joint Commissioning Committee Terms of Reference – Statutory Officer Disciplinary Policy**

- 3.1 Special procedures have been in place for many years regarding disciplinary action taken against statutory officers (Head of Paid Service, Monitoring Officer, Section 151 Officer and their deputies when acting in the statutory role), which involved the appointment of a designated independent person. As was reported to the Council meeting on 19 May 2015 (minute 16) this has been replaced via the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 by the duty to consult a panel comprising the independent persons who are part of the standards regime. These changes have already been incorporated within the constitution during 2015 with amendments made to the Officer Employment Procedure Rules and the Head of Transformation was given delegated authority to approve amendments to the statutory officer disciplinary policy. During this process and in the light of external legal advice it was highlighted that constitutional amendments were required to the terms of reference of the Joint Commissioning Committee. The reference to appointing the designated independent person where a complaint of misconduct requires to be investigated against the Head of Paid Service, Monitoring Officer or Section 151 Officer for either council should be deleted and the proposed amendments as set out below included:
- 3.2 The role and responsibilities of the Joint Commissioning Committee with regard to Statutory Officer disciplinary action is to:
- Deal with minor instances of unsatisfactory conduct at an early stage.
  - Ensure that the Statutory Officer clearly understands the standards of conduct expected of him/her.
  - Carry out, or make arrangements for, an investigation when any breach of discipline is alleged.
  - Ensure that the Statutory Officer subject to investigation is kept up-to-date with progress.
  - Decide, in the most serious cases whether or not to suspend or (where the Statutory Officer has already been suspended by the Head of Paid Service or Monitoring Officer under their delegated powers) to continue the suspension of the Statutory Officer, in accordance with the Statutory Officer disciplinary policy.

- Report to Full Council (of the employing authority) in respect of a recommendation to dismiss, having convened a Panel comprising Independent Persons in accordance with the Officer Employment Procedure Rules.

3.3 Additionally, it is recommended as a matter of good practice to ensure resilience and the avoidance of a potential conflict of interest that the Monitoring Officer should be given the delegated authority to suspend a Statutory Officer in addition to the Head of Paid Service and also that the Head of Paid Service and Monitoring Officer be given delegated authority to agree settlement agreements and financial settlements for Statutory Officers in consultation with the employing Council's Leader.

#### **Joint Appraisal Sub-Committee**

3.4 At its meeting on the 21 July 2016 the Joint Commissioning Committee agreed a revised process for the appraisal of the Chief Executive in light of recommended best practice. As a result of the revised procedures there is no longer a need for a Joint Appraisal Sub Committee, which is now obsolete and therefore it is recommended that all references to the Joint Appraisal Sub-Committee are deleted from the constitution.

#### **Appointment to existing posts**

3.5 Currently Heads of Service have delegated authority to appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to the middle of the band provided this is approved by the Head of Paid Service, or the relevant Director, and the Head of Finance and Procurement. This provision has created some operational difficulties with regard to delays to appointment and in some cases the withdrawal of candidates through having to achieve additional authority to make an offer at any level other than the minimum level within the salary band. The employment market is currently very competitive with some areas such as planning, finance, facilities management and surveyors proving particularly challenging in recruitment terms. The origin of this provision was to ensure value for money and budgetary control for the council but was never intended to hamper effective recruitment. Given this it is proposed that the delegation for Directors and Heads of Service be amended as set out below:

3.6 'To appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to anywhere within the salary band for the post provided this is within approved budgets.'

#### **Joint Employee Engagement Committee – Employee Representation**

3.7 The Joint Employee Engagement Committee currently consists of 3 Cherwell councillors, 3 South Northamptonshire councillors, 3 employee representatives from Cherwell and 3 employee representatives from South Northamptonshire. The employee side has traditionally consisted of trade union representatives however for some time now there have been problems with quoracy on the South Northamptonshire trade union side where there is no branch executive and at the most recent meeting on the council side as well. In order to improve employee consultation and engagement the councils have recently set up a Joint Employee Council, that is comprised of representatives of all services and staff groups within the council and the trade unions. It was intended that the Joint Employee Council would appoint representatives to the Joint Employee Engagement Committee to

ensure that all staff (those who are union members and those who are not) are represented and assist with the issues of quoracy.

- 3.8 Consequently it is proposed that the employee representation is amended to 2 representatives from Cherwell's recognised trade union, 1 representative from South Northamptonshire's recognised trade union and 3 members appointed by the Employee Council. It is further recommended that members of the Joint Employee Council, be able to substitute for the trade union representatives if they cannot find a substitute from their trade union. Additionally it is proposed that the quorum for the meeting is amended to 2 representatives from the Council side, (1 from Cherwell and 1 from SNC) and 2 Employee representatives (be they from the recognised unions and/or the Joint Employee Council).

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The proposals in this report are designed to ensure that the councils have in place a constitution which is fit for purpose and enables efficient and effective governance.
- 4.2 While there are obsolete officer post references in the constitution this does not cause any legal issues as there is a provision in the scheme of delegation that makes clear that delegated authority moves to the new post with responsibility for the relevant function in the event of a post title change. Once stage 2 of the senior management restructure is complete it is intended to make the necessary changes to post titles throughout the constitution then.

## **5.0 Consultation**

- 5.1 Consultation has taken place with relevant officers on the proposed constitutional amendments and where indicated elected members.

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To agree the recommendations as set out in the report

Option 2: To amend the recommendations as set out in the report

Option 3: To reject the recommendations as set out in the report.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 There are no financial implications arising directly from this report

Comments checked by: Paul Sutton, Chief Finance Officer - 0300 003 0106

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### **Legal Implications**

- 7.2 This is a report of the Head of Law and Governance all legal implications are contained in the report.

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### **Risk Implications**

- 7.3 It is a matter of good governance that the Council should ensure that the constitution is kept up to date. The measures in this report mitigate risk to the council through ensuring this is the case.

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## **8.0 Decision Information**

### **Wards Affected**

All

### **Links to Corporate Plan and Policy Framework**

None directly

### **Lead Councillor**

Councillor Barry Wood, Leader of the Council

### **Document Information**

<b>Appendix No</b>	<b>Title</b>
None	
<b>Background Papers</b>	
None	
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