

Cherwell District Council

Council

27 February 2023

Updates to Constitution

Report of Monitoring Officer

This report is public

Purpose of report

The Constitution is the document by which, in accordance with the law, the Council exercises all its powers and duties. It is essential that it is reviewed to ensure it remains fit for purpose.

Following the decoupling from Oxfordshire County Council and implementation of the new senior management structure the Scheme of Delegation and Contract Rules of Procedure were identified as a priority for review and amendment and the action to do so was included in the Council's Annual Delivery Plan. There are also changes proposed for some of the committees identified in this report.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the amendments to the Constitution referred to in this report and its appendices (to follow).
- 1.2 To delegate authority to the Monitoring Officer to make the amendments to the Constitution, including a delegation to make textual amendments to address any inconsistencies or correct any cross-referencing errors arising from or as a consequence of the amendments (insofar as the Monitoring Officer does not already have such a delegation).

2.0 Introduction

- 2.1 Amongst the duties of the Monitoring Officer is responsibility for monitoring and reviewing the operation of the Constitutions, and for recommending ways in which it can be amended.
- 2.2 Changes to the Constitution may only be made with the approval of the Council and/or by the Monitoring Officer arising from decisions of the Council or the

Executive; where legislation requires a change in wording or terminology; or to make minor or consequential amendments.

3.0 Report Details

Officer Scheme of Delegation

- 3.1 The Officer Scheme of Delegation is set out at Part 3 of the Constitution and sets out the extent to which the powers and duties of the Council are delegated to officers under the Local Government Act 1972, the Local Government Act 2000 and all other powers enabling delegation to officers. It is adopted with the intention of giving a streamlined, clear and simple decision-making process.
- 3.2 The current scheme does not reflect the senior management structure. The new Monitoring Officer has made changes that makes the wording much clearer and more succinct and to ensure that the Scheme is future-proof.
- 3.3 The update to the scheme reflects this and also contains additional provisions to ensure the smooth functioning of the Council and the efficient delivery of its services with the necessary delegated authority to officers to perform their roles and responsibilities. It also contains a limitation to the exercise of such powers where reserved for either the Council or the Leader of the Executive.
- 3.4 The Scheme now also includes a formal delegation for the Shareholder Representative. The role is currently performed by the Corporate Director of Resources following the departure of the interim Chief Operating Officer.
- 3.5 Appendix 1 (to follow) provides the amended version of the Scheme of Delegation with changes clearly marked.

Contract Procedure Rules

- 3.6 Following decoupling, the Council is in the process of recruiting to its internal procurement and contracts unit, with the new procurement manager also starting soon. The updated Contract Rules (Appendix 2 – to follow) have been amended to be more succinct for officers to follow and will be further amended once the procurement guidance documents are available on the procurement intranet pages.
- 3.7 The thresholds have been revised accordingly to reflect the leaner structure of the Council.
- 3.8 The Procurement Steering and Core Groups are now merged to form a single Procurement and Contracts Group and the terms of reference have been amended accordingly.

Changes to Personnel Committee Terms of Reference

- 3.9 The Terms of Reference to the Personnel Committee are amended to delete the following aspects, since the decoupling means that the joint arrangement and shared costs are no longer applicable. The changes reflect the position that such

delegations are reserved for the Head of Paid Service under their statutory duty, rather than for the Personnel Committee.

- To approve the creation of new posts where this will be an increase to the establishment and there is no budget and the costs will not be shared
- To receive and act on recommendations of the Council and Employee Joint Committee.
- To agree any restructuring involving more than ten posts and/or compulsory redundancies where costs are not shared or not going to be shared.
- To further delete the words “where the post is not shared” as appropriate.

Changes to the Appeals Panel Terms of Reference

- 3.10 The Terms of Reference are amended to change the Council’s current ‘appeals against dismissal’ procedure, adjusting the process to be officer led up to Assistant Director level and held with Appeals Committee for the Head of Paid Service, Corporate Directors and Statutory Officers, as opposed to all of these being held with the Appeals Committee.
- 3.11 It is essential that appeals against dismissal are handled in as timely a way as possible following the decision to dismiss being made; and that these appeals are chaired independently of anyone who was involved in the initial decision to dismiss.
- 3.12 This amendment will also address the following:
- Operational complexity – many appeals against dismissal involve complex operational arrangements, which are more appropriately dealt with at a management level.
 - Timeliness – an officer led process can be arranged and held in a timely manner. Situations such as dismissal can be stressful for employees so it is in their interests to move the process forward as swiftly as possible. Members’ diaries are already busy and getting a panel together invariably extends the time this process takes.
 - Actions following appeal – following the outcome of the appeal, should the appellant wish to take their process further to an Employment Tribunal, the Member Chair, and potentially appeal panel members, will be required to attend the Tribunal to provide evidence (as the representative of the Council who held up the decision to dismiss). Modifying this process removes this burden from the Member Appeals Panel; unless appeals are required following the dismissal of either Corporate Directors and above, or Statutory Officers.
 - Trends in the public sector – the majority of well-run councils are predominantly operating an officer-led process for appeals against dismissal, with Members needing to hold appeals for the most senior managers and statutory officers.
 - Legal advice - decisions to dismiss should never be taken without legal advice to ensure that the decision being taken is sound and whilst risk can never be fully

mitigated in circumstances such as these, it will be reduced. Further legal advice should be sought at the point of appeal.

- Appeal process - employees who find themselves in a dismissal situation will continue to be offered an opportunity to appeal the decision and should they wish to do so; the panel selected in such circumstances will have the relevant operational background but would be independent of the case up to that point.

Changes to Shareholder Committee Terms of Reference

3.13 The Shareholder Committee is a sub-committee of Executive. It therefore does not form part of the proportionality calculations.

3.14 The membership of the Shareholder Committee is currently three Executive members, which means that all Shareholder Committee members must be in attendance for meetings to be quorate. Following consultation with the Committee and the Shareholder Representative, the membership is increased to five members from the Executive.

Updates to the Accounts, Audit and Risk Committee Terms of Reference

3.15 In the light of Chartered Institute of Public Finance and Accountancy (CIPFA) guidance the Terms & Reference are updated and amended in addition to the existing one, as follows:

- 1) To monitor the arrangements and preparations for financial reporting to ensure that statutory requirements and professional standards can be met.
- 2) To publish an annual report of the work of the committee, including a conclusion on the compliance with the CIPFA Position Statement.
- 3) To provide free and unfettered access to the Accounts, Audit and Risk Committee chair for the head auditors, including the opportunity for a private meeting with the Committee.
- 4) To consider reports on the effectiveness of financial management arrangements, including compliance with CIPFA's Financial Management Code.
- 5) To consider whether the annual evaluation for the Annual Governance Statement fairly concludes that governance arrangements are fit for purpose, supporting the achievement of the authority's objectives.

4.0 Conclusion and Reasons for Recommendations

4.1 The Constitution is the document by which, in accordance with the law, the Council exercises all its powers and duties. It is essential that it is reviewed to ensure it remains fit for purpose.

5.0 Consultation

Relevant Service Areas
Chairs of the Committees on Terms of Reference amendments.

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: A full review of the Constitution. This will commence later in the year.

Option 2: Not to adopt the agree the recommendations. This is not recommended as it is important that the Constitution is kept up to date.

7.0 Implications

Financial and Resource Implications

7.1 There are no direct financial or resource implications arising from this report.

Comments checked by: Michael Furness, Assistant Director of Finance & Section 151 Officer, 01295 221845, Michael.Furness@cherwell-dc.gov.uk

Legal Implications

7.2 Every local authority is under a duty to prepare and keep up to date its Constitution under s.9P of the Local Government Act 2000.

Comments checked by:
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Risk Implications

7.3 The risk of not making changes is that the decision-making of the authority, and its reputation as a business-like and transparent organisation suffers through a lack of challenge and development.

Comments checked by:
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Equalities and Inclusion Implications

7.4 The Constitution is reviewed generally to ensure that the format is easily accessible. This is an important step in ensuring that access to the democratic process is equitable. The report does not otherwise raise any implications for equality and diversity.

Comments checked by:
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Sustainability Implications

7.5 There are no sustainability implications arising from this report.

Comments checked by:

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8.0 Decision Information

Key Decision

Financial Threshold Met: N/A

Community Impact Threshold Met: N/A

Wards Affected

All

Links to Corporate Plan and Policy Framework

N/A

Lead Councillor

N/A

Document Information

Appendix number and title

- Appendix 1 – Officer Scheme of Delegation (tracked change and clean versions) – to follow
- Appendix 2 – Contract Rules of Procedure (tracked change and clean versions) – to follow

Background papers

None

Report Author and contact details

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