

# Special Advisory Group

24 November 2017

<b>Report title</b>	Changes to the Constitution	
<b>Cabinet member with lead responsibility</b>	Councillor Milkinder Jaspal Governance	
<b>Key decision</b>	No	
<b>In forward plan</b>	No	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Kevin O'Keefe, Governance	
<b>Originating service</b>	Governance	
<b>Accountable employee(s)</b>	Colin Parr	Head of Governance
	Tel	01902 550105
	Email	Colin.parr@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	Council, 13 December 2017	

---

## Recommendation(s) for action or decision:

The Special Advisory Group recommends that Council:

1. Adopts the new format of the Council's Constitution.
2. Adopts the changes to the current content as summarised in the report and detailed in Appendix 1 to this report.
3. Authorises the Director of Governance to implement the new format and the changes set out in Appendix 1 with immediate effect.
4. Note that further amendments to the Constitution will be presented in May 2018.

## **1.0 Purpose**

- 1.1 This report outlines the changes made to the constitution for approval by the Council. It is recommended that the Council agrees and adopts the revised Council's Constitution to ensure continuing lawfulness and effectiveness and that further amendments to the Constitution will be presented to Council in due course.

## **2.0 Background**

- 2.1 The Special Advisory Group received a report on the 17 March 2017 advising that the Constitution needed to be refreshed so that it was a logical and ordered document that accurately reflected the practices of the Council, supports the better governance of the Council and incorporates best practice.
- 2.2 As part of the iterative approach to maintaining the Constitution, the Constitution Review Group has highlighted a number of changes that need to be made. Some of these are in relation to operational changes within the Council's structures; others reflect changes in regulations and guidance. The Director of Governance is authorised in the Constitution to make amendments where it is administratively convenient to do so to reflect changes in legislation or organisational restructures.
- 2.3 The Constitution Review was an inclusive process, engaging Councillors and employees with the aim of producing a Constitution which is accessible, easy to use and fit for purpose and in appropriate formats.
- 2.4 Copies of the revised Constitution were deposited in the Members Rooms and Councillors were provided with an opportunity to comment on the revised Constitution from the 30 October to 10 November 2017.

## **3.0 Changes to the Constitution**

- 3.1 The Constitution has been split into the following six parts to ensure the Constitution is ordered into a logical format:
- Part 1 – Summary and explanation
  - Part 2 – The Constitution
  - Part 3 – Responsibility for functions
  - Part 4 – Rules for Procedure
  - Part 5 – Codes of Conduct and Protocols
  - Part 6 – Councillors' Allowances Scheme.
- 3.2 The Constitution has been refreshed to remove repetition, update terminology and where possible simplify the wording to make it clearer. The primary references remain in the Constitution and repetition has been removed to ensure the Constitution is succinct and information is contained in the relevant section.

3.3 The table below details the Articles/Sections to be changed:

<b>Section</b>	<b>Proposed</b>	<b>Rationale</b>
Part 2 - Articles 1-16	The articles have been amended as detailed in the appendix 1.	To accurately reflect the practices of the Council, remove repetition and make the language clearer.
Part 2 - Article 9	That the article on standards of conduct be deleted.	To remove repetition from the Constitution, relevant information is contained within the Terms of Reference for the Standards Committee in Part 3.
Part 2 - Article 10	That the article on the local partnership and local neighbourhood partnerships be deleted.	The Local Neighbourhood Partnerships have ceased to operate. There remains an overarching commitment for the City Council to engage with all Voluntary Community Sector and faith sector organisations.
Part 3 – Responsibility for functions	That the Cabinet portfolios be updated.	To ensure they reflect the current responsibilities of each portfolio area.
Part 3 – Delegations to Cabinet	That the following delegation be updated to:  9.2. To prepare, implement and review the operation of policies relating to recruitment and resourcing, disciplinary and grievance procedures, management of attendance, early retirement and redundancy.	That Health and Safety be removed as the function does not sit under People and Performance.

Section	Proposed	Rationale
Part 3 – Delegations to Cabinet	<p>That following delegations be updated to:</p> <p>9.3 To prepare, implement and review the operation of the Council’s Equal Opportunities in Employment policy with particular reference to the needs of the minority ethnic community, minority groups, women and people with disabilities.</p> <p>9.4 To review and maintain the Council’s pay and grading structure and collective agreement. Ensure Pay Strategy Board oversee all pay and grading issues.</p>	<p>To ensure that minority groups are also captured at 9.3.</p> <p>Single status has been implemented, the Council now needs review and maintain.</p>
Part 3 – Delegations to Cabinet (Resources Panel)	<p>To delete point 8:</p> <p>To determine staffing restructures, changes to vacant posts or the establishment of new posts and to receive reports on those Human Resources matters set out in the Schedule of Human Resources Delegations.</p>	<p>The new SMR process takes out reporting to cabinet on staffing (as per schedule of HR delegations).</p>
Part 3 – Delegations to the West Midlands Joint Committee	<p>That the delegations for the West Midlands Joint Committee be deleted.</p>	<p>The West Midlands Joint Committee is an outside body to which appointments are made at Annual Full Council delegations are not required to be listed within the Constitution.</p>

<b>Section</b>	<b>Proposed</b>	<b>Rationale</b>
Part 3 – Terms of Reference Health and Wellbeing Board.	That the Terms of Reference for the Health and Wellbeing Board be amended.	To reflect the changes agreed by the Health and Wellbeing Board at their meeting on 30 November 2016.
Part 3 – Terms of Reference Equalities Councillor Champion	That the Terms of Reference be updated to reflect the creation of the Councillor Champion for Councillor Development and ICT.	To reflect the creation of Councillor Champion for Councillor Development and ICT as agreed by Council at their meeting on 20 July 2016.
Part 3 – Delegations to Local Neighbourhood Partnerships	That the delegations to the Local Neighbourhood Partnerships be deleted from the Constitution.	The Local Neighbourhood Partnerships have ceased to operate.
Part 3 - Delegations to employees	The explanatory notes for the use of the delegations at the beginning have been slightly expanded.	To serve as a reminder as to the limits of the delegations and to ensure decision making is carried out lawfully.
Part 3 – Delegations to the Managing Director	That the delegations to the Head of Paid Service be updated and amalgamated with the delegations to the Managing Director.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to Director of Finance	That the delegations to the Director of Finance be updated.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to the Director of Governance	That the delegations to the Director of Governance be updated.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to the Strategic Director of People	That delegations to the Strategic Director of People be updated.	To reflect the changes in responsibilities in line with the new management structure.

Section	Proposed	Rationale
		with the new management structure.
Part 3 – Delegations to the Director of Children’s Services	That Delegations for the Director of Children’s Services be created as the post holder will hold the statutory responsibility for Children’s Services.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to the Director of Adult Services	That Delegations for the Director of Adult Services be created as the post holder will hold the statutory responsibility for Adult Social Care.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to the Director of Education	That the delegations to the Director of Education be updated.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to the Strategic Director of Place	<p>That delegations to the Strategic Director of Place be updated.</p> <p>That the following additional delegations be added:</p> <p>K58 - To enter into an adoption agreement with a developer under section 38 of the Highways Act 1980.</p> <p>K59 - To confirm the adoption of the roads once the development is complete.</p> <p>K60 - To enter into agreements with developers under section 278 of the Highways Act 1980.</p>	<p>To reflect the changes in responsibilities in line with the new management structure.</p> <p>These are operational issues and by delegating to an officer these can be dealt with in a timely manner.</p>

Section	Proposed	Rationale
Part 3 – Delegations to Service Director – City Services	That the delegations be deleted.	To reflect the changes in responsibilities in line with the new management structure.
Part 3 – Delegations to the Service Director of Public Health	That delegations to the Service Director of Public Health be updated.	To reflect changes in responsibilities.
Part 3 – schedule of Human Resources delegations	<p>That the delegations be updated as amended in the appendix.</p> <p>Changed format to remove reports to members and combine delegations and controls.</p> <p>Updated terminology to reflect current structures – i.e. JNC Chief Officer to Senior Management and Head of HR Operations to Head of HR.</p> <p>Updated all controls to state in accordance with HR policies and procedures.</p> <p>Included approval of VR in excess of current scheme criteria in consultation with portfolio holder.</p> <p>Included flexible retirement approvals where the strain on the pension fund is in excess of 2 years in consultation with portfolio holder.</p> <p>Included grievances from employees.</p>	To reflect delegations that currently sit with Human Resources and removed those that no longer relevant or managed under Human Resources – i.e. Car User Allowances and Long Service Awards

Section	Proposed	Rationale
	<p>Removed extension of lodging allowances up to 12 months in special cases.</p> <p>Removed agreeing new essential car user allowances.</p> <p>Removed Management of the Long Service Awards.</p>	
Part 4 - The Forward Plan	<p>That the Forward Plan section be amended as detailed in the appendix and amalgamated into the Full Council Meetings Procedure Rules.</p> <p>The key decision criteria be increased from £200,000 to £250,000.</p>	<p>To ensure requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and to ensure the Constitution is ordered in a logical format.</p> <p>To ensure decisions can be made in a timely manner.</p>
Part 4 – Employee Employment Procedure Rules	<p>Clarified the appointment of Head of Paid Service, Monitoring Officer, Section 151 Officer and Strategic Directors.</p> <p>The makeup of Special Appointments Committee (SAC) and the decision going to full council for approval (no longer needed for Full Council to establish a SAC).</p> <p>Clarified the appointment of Directors and Service Director. The makeup of the SAC.</p>	<p>To provide clarification on the employment procedure rules.</p> <p>Ensured it is in line with the current senior manager terms and conditions.</p> <p>To ensure that SACs can be established in a timely manner.</p> <p>In line with the current senior manager terms and conditions.</p>



Section	Proposed	Rationale
	<p>Added that SAC must have completed the unconscious biased training.</p> <p>Clarified the disciplinary action for the Head of Paid Service, Monitoring Officer and Section 151 Officer.</p> <p>Clarified the position on dismissal of the Head of Paid Service, Monitoring Officer and Section 151 Officer following</p> <p>The removal of designated independent persons to an Independent Panel.</p> <p>Only dismissals of the 3 officers can be made Full Council.</p> <p>Added a table showing the appointments and conditions for different posts.</p> <p>Added a table showing disciplinary investigations and conditions for different posts.</p> <p>Added Disciplinary Procedure for Head of Paid Service, Monitoring Officer and Section 151 Officer.</p>	<p>In line with the Council's recruitment practices.</p> <p>In line with the Local Government (Standing Orders) Regulations 2015 amendments.</p> <p>In line with the Local Government (Standing Orders) Regulations 2015 amendments.</p> <p>In line with the Local Government (Standing Orders) Regulations 2015 amendments.</p> <p>In line with the Local Government (Standing Orders) Regulations 2015 amendments.</p> <p>Tables and Procedure included to add further clarity to the different conditions for appointing and dismissing in light of the 2015 amendments.</p>
Part 4 - Financial Procedure Rules	Capital Budgets: the approved budget is the most recent budget over the period of the capital programme that has	To recognise that capital budgets, span multiple years.

Section	Proposed	Rationale
	<p>been approved by the relevant person in accordance with the Financial Procedure Rules.</p> <p>If it appears that a Budget Manager is likely to exceed the annual or total budget of one of his/her capital schemes he/she shall raise this with the Section 151 Officer (or his/her deputy) and take corrective action at the earliest opportunity.</p> <p>Where all of the following apply, an overall increase or decrease in the Council's total budget may be approved by Cabinet and not require the approval of Council:</p> <ul style="list-style-type: none"> <li>(i) There is no increase or decrease in the net budget;</li> <li>(ii) New or additional external income has been identified which was not included in the approved budget;</li> <li>(iii) Such income has conditions attached by the person providing the income that constrain its possible range of uses;</li> <li>(iv) The Section 151 Officer agrees that approval may be granted by Cabinet.</li> </ul> <p>Where approval to a supplementary budget is sought for the purpose of grant payment to an outside organisation or individual, this</p>	<p>To recognise that capital budgets span multiple years and that variances on capital budgets need to be considered over the life of the project and also in relation to the phasing of expenditure.</p> <p>To enable timely decisions in relation to new external funding received by the council.</p> <p>When the Council is in receipt of new external funding which is in turn passed on to third parties, the process to secure a supplementary budget and also to gain approval to pay grant over to a third party has been confusing and time consuming.</p> <p>The changes proposed are designed to bring clarity about the process and to enable decisions to be made in</p>

Section	Proposed	Rationale
	<p>should be explicitly identified in the Cabinet report and approval.</p> <p>No person shall commit the Council to expenditure on grants to any outside organisation or individual not individually identified in the approved budget.</p> <p>Where a payment of grant is not individually identified in the approved budget, the Cabinet (Resources) Panel shall have delegated authority to approve the payment of grants to individual recipients, only where all of the following apply:</p> <p>(a) there is an appropriate heading in the approved budget;</p> <p>(b) such heading clearly refers to payment of grants, but not to specific recipients.</p> <p>Where new external funding is received for the purpose of payment of grant to an outside organisation or individual, approval should be sought to this payment through the supplementary budget process.</p>	<p>a timely fashion in order to maximise the opportunity provided through external funding.</p>
<p>Part 4 - Contract Procedure Rules</p>	<p>Head of Procurement changed to Service Director Commercial Services.</p> <p>Clarified who in the Procurement team should be contacted i.e. relevant</p>	<p>Various responsibilities clarified to roles to reflect current structures.</p>

Section	Proposed	Rationale
	<p>Procurement Category Manager.</p> <p>Chief Accountant changed to Director of Finance. Replaced Head of HR with HR Business Partner.</p> <p>2.1 &amp; 2.2 - Pecuniary Interests section updated to clarify this is applicable to agency, interim and temporary staff.</p> <p>Value of on-going contracts should be considered over four years</p> <p>3.4 – Requirement to gain approval from Cabinet (Resources) Panel to commence a procurement has been amended to requesting delegated approval.</p> <p>3.6.1 – The prequalification questionnaire has been replaced with the Standard Selection Questionnaire.</p> <p>3.10 - Removed requirement for Cabinet Member for Governance approving agency staff above a day rate of £350 and replaced by approval by Human Resources Business Partner for engagements with a day rate above £500.</p>	<p>Reinforcement of the process for advising of Pecuniary interests.</p> <p>Clarification of valuing on-going contracts added.</p> <p>Practically the requirement to gain approval to commence a procurement can result in delay to progressing a project. Delegated authority will ensure that a contract requires Portfolio holder approval prior to award.</p> <p>Crown Commercial Service have replaced the mandatory pre-qualification questionnaire with the Standard Selection Questionnaire.</p> <p>Obtaining Cabinet Member approval prior to engaging agency staff has provided practical difficulties. Also due to tax legislation changes the</p>

Section	Proposed	Rationale
	<p>A report will be provided quarterly to the Cabinet Member for Governance</p> <p>3.10.6 – Requirement for HR Business Partner approval for permanent employment of temporary staff.</p> <p>4.3.2 –Responses to requests for quotations can be received by email.</p> <p>7 - New section added “Exclusion of Providers from contracts” which gives power to exclude organisations that are bankrupt, in administration, failed to pay taxes, business rates or in breach of other agreements with the Council.</p> <p>8.8 – Actions to be taken in the event of repeated non-compliances.</p> <p>10 - Social Care Contracts section changed to relevant Director or nominee giving approval to make placements outside of contracted/usual arrangements.</p> <p>12 - New section added “Loans, advance payments and similar arrangements” reiterating that these types of arrangements should not be entered into without Director of Finance/Section 151 Officer authorisation.</p>	<p>use of agency staff has decreased significantly.</p> <p>This will establish a control for the appointment of staff where fees from agencies may be payable.</p> <p>Clarification that it is acceptable to receive quotations by email.</p> <p>This will ensure that contracts are not awarded when the provider or associated organisations or people have failed to comply with appropriate agreements.</p> <p>A recent audit report identified that there was a need for greater clarity on actions to be taken.</p> <p>Updated to reflect current structure.</p> <p>Clarifies the controls and process for obtaining approval in advance for these types of arrangements.</p>

Section	Proposed	Rationale
Part 5 – Employee Code of Conduct	<p>The employee code of conduct has been updated as detailed in Appendix 1.</p> <p>Reiterated that failure to follow the code of conduct could result in disciplinary action.</p> <p>Added section on principles and the core behaviours – PRIDE.</p> <p>Added to the standards section to include customer care standards (every contact counts) and dress code.</p> <p>Added section on avoiding personal familiarity with service users and customers.</p> <p>Added section on Use of Council Assets – complying with the council’s Use of IT and Social Media Policy and Information Governance Framework.</p> <p>Added section on Whistleblowing.</p>	<p>To reflect best practice and future practice of the council.</p> <p>To reinforce the importance of the Code of Conduct</p> <p>In line with Corporate Plan:</p> <ul style="list-style-type: none"> <li>• reinforce PRIDE and what is expected of employees</li> <li>• reinforce the importance of customer service</li> </ul> <p>To reinforce the requirement of professionalism</p> <p>To ensure employees are directed to other important policies and procedures, such as whistleblowing, ICTS and Information Governance.</p>
Safeguarding Adults: Roles and Responsibilities	That the Safeguarding Adults: Roles and Responsibilities be deleted.	The Head of Safeguarding advised it would be inappropriate to include this information in the Constitution as practice and expectations change.
Protocol on use for the Mayor’s casting vote	That the protocol be amalgamated into the Full	To ensure the Constitution is ordered in a logical format.

Section	Proposed	Rationale
	Council Meetings Procedure Rules.	
Management Structure	That the management structure be deleted, Article 12 has been amended to ensure the relevant information is contained within the article.	To remove repetition and the relevant information is contained within Article 12.
The approach to dealing with petitions at Council	That the approach be amalgamated into the Full Council Meetings Procedure Rules.	To ensure the Constitution is ordered in a logical format.

#### **4.0 Financial implications**

- 4.1 There are no costs associated with the recommendations in this report. The proposals do include small changes to financial procedure rules regarding the timely approval of supplementary budgets to respond to emerging funding opportunities and the payment of grant to outside organisations and individuals.

[GE/06102017/X]

#### **5.0 Legal implications**

- 5.1 The Council is required by Section 37 of the Local Government Act 2000 to prepare and publish a Constitution which contains its standing orders relating to decision-making, finance and contracts. The Council is also required to keep its Constitution updated. The Director of Governance is authorised under the constitution to make amendments which more accurately reflect legislative and organisational changes.

[RB/06102017/J]

#### **6.0 Equalities implications**

- 6.1 The Council must, in the exercise of its functions, have due regard to the need to:
- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.2 The Constitution seeks to ensure that, in its decision-making and its operations, the Council fully complies with the public-sector equality duty.

6.3 An equalities assessment has been carried out on the Constitution, having due regard for equalities implications and there were no specific implications linked to the recommendations in this report.

## **7.0 Environmental implications**

7.1 There are no environmental implications arising from this report.

## **8.0 Human resources implications**

8.1 There are no human resources implications arising from this report.

## **9.0 Corporate landlord implications**

9.1 There are no corporate landlord implications arising from this report.

## **10.0 Schedule of background papers**

10.1 Please click onto the following link to access an electronic copy of the tracked changes Constitution and proposed final version of the Constitution [link to access appendices](#).