

THE COUNCIL'S CONSTITUTION

Cabinet Member Peter Hare-Scott
Responsible Officer Chief Executive

Reason for Report: To address issues raised by Cllr D F Pugsley and to provide a mechanism for future reviews of the constitution.

RECOMMENDATION(S): That the Audit Committee recommends that:

1. The Cabinet recommend to Council that the Personnel Panel be deleted from the constitution
2. The Cabinet approve the establishment of a Constitution Working Group to report to the Audit Committee on the need for review and updates to the constitution.

Relationship to Corporate Plan: An effective constitution aids good performance for the Council generally.

Financial Implications: None arising from this report.

Legal Implications: These will be addressed by the proposed working group.

Risk Assessment: Failure to maintain the constitution will detract from efficient decision making and the every day working of the Council.

1.0 Introduction

- 1.1 The Council's constitution is a living document that needs to be kept updated with changes that are made in the operation of the Council. There are a number of areas within the present constitution that are being questioned in addition to a number of areas that need to be updated.
- 1.2 A large section of the present constitution covers financial rules and standing orders that are being updated at the present time. Once reviewed by officers these will need to be endorsed by Members and the constitution updated accordingly.
- 1.3 The Standards Committee is no longer in existence and the work of managing the constitution on behalf of the Council now falls to the Audit Committee. In order to deal with this workload a separate working group would appear the most sensible way of managing the detailed considerations necessary in the future.

2 Personnel Panel

- 2.1 In the latest of a series of questions on the constitution Councillor Pugsley has proposed:-

- (a) **Council Motion No. 460 (Councillor D F Pugsley)** – consider the following motion referred by the Council to the Audit Committee:

"That this Council recognises that the present membership of the Personnel Panel is illegal."

Note: 1. Officers are disqualified from membership of the Council or its Committees or Sub-Committees (Local Government Act 1972, sections 80 and 104).

2. Personnel Panel is a Committee of the Council (See, for example, the Constitution, p. 72).

3. Personnel Panel - Membership - The Head of Paid service, the Head of Human Resources, the Cabinet Member for the Working Environment and Support Services, plus two other Members of the Authority (Constitution, p. 51).

- (b) **Decision making by Council bodies** - To consider the statement that "The constitution does however provide that decisions can be taken by other bodies established by the Council including the Personnel Panel and Council bodies acting as Tribunals and officers can be members of these bodies," and the authority for it - chapter and verse.

Note: a word-search in the Constitution for "Personnel Panel" (11 instances) and for "other bodies" (17 instances) does not throw up any such provision. Article 13.08 **Decision making by Council bodies acting as Tribunals** requires them to apply the European Convention on Human Rights, but says nothing about the Personnel Panel or its membership.

- (c) The following question has been received from Cllr D F Pugsley:

"The Monitoring Officer seems to have reduced the quorum for the Personnel Panel from 5 to 3 (I think, without telling us: it was 5 in April; it is 3 now). On what authority in our Constitution was that alteration made?"

2.2 The issues surrounding the Personnel Panel need to be considered in the wider context of the purpose, function and need for the panel rather than trying to narrowly define the legitimacy against statutory provisions.

2.3 The Personnel Panel remains in the constitution but should have been removed when the Council moved to the executive model of governance. There are references that need updating in terms of the powers of the Chief Executive as Head of Paid Service and the role of the Personnel Panel. The Chief Executive does not consider grading issues as these have been superseded by the introduction of Job Evaluation and grievances are heard internally by an Appeals Panels with a right of appeal to the Personnel Panel.

- 2.4 The constitution is similarly in need of updating on the issue of officer appointments. There is no role on appointing staff below Chief Officer level by the full Council. There is a right of appeal by staff to the Personnel Panel on disciplinary matters including dismissal, grievances and regarding sickness absence. This is the only role of the Personnel Panel at the present time and as this is an additional step within the internal appeal process and before any further appeal to an Employment Tribunal, it is considered that it is appropriate to remove the Panel and the function.
- 2.5 This will result in any appeal against dismissal etc being heard by an Appeal Panel of the Chief Executive and the Head of Human Resources and Development (or their nominated representatives). Persons who sat on the original hearing panel will not sit on the appeals panel. Any subsequent appeal will be to an Employment Tribunal. This will reduce the length of time and process for the employee and employer in the future.

3 Future Constitutional Amendments

- 3.1 With the addition of the constitution maintenance to the work of the Audit Committee it may be helpful to establish a working group of the Audit Committee to give more detailed consideration to future changes and amendments.
- 3.2 The working group should be chaired by a member of the Audit Committee but could include other members of the council with an interest in the matter.
- 3.3 If the Audit Committee are minded to support this move then they may like to consider identifying a suitable member to chair the working group. Other interested members can be requested to come forward to join the Working Group.
- 3.4 The Working Group should also include tasks such as the review of Article 4 of the Constitution, clarifying the powers of the council and other bodies.

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Circulation of the Report: Management Team and Cllr Peter Hare-Scott

List of Background Papers: None