

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee

DATE: 18 July 2018

CONTACT OFFICER: Sushil Thobhani, Service Lead Governance & Deputy Monitoring Officer

(For all enquiries) (01753) 875036

WARD(S): All

PART I **FOR DECISION**

REVISION OF THE CONSTITUTION

1 Purpose of Report

The purpose of this report is to seek the approval of the Committee to revisions of the Council's Constitution and the agreement of the Committee to place these revisions before the Council for approval.

2 Recommendation(s)/Proposed Action

The Committee is requested to approve the revisions to the Council's Constitution set out as tracked changes in the document appended to this Report (to follow) and to agree to these revisions being placed before the Council for approval.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. The adoption of the revisions to the Council's Constitution recommended in this report will serve to enhance the delivery of these priorities through good governance procedures.

4 Other Implications

(a) Financial

There are no direct financial implications arising from this report.

(b) Human Rights Act and Other Legal Implications

There are no Human Rights Acts implications arising from this report. Local Authorities have a statutory duty to prepare, keep up to date and publicise a constitution, whose contents are partly prescribed by statute and partly matters of local content, within a statutory framework.

(c) Equalities Impact Assessment

There is no identified need for an EIA arising from the subject matter of this Report.

5 Supporting Information

- 5.1 It is necessary to revise the Council's Constitution for the following reasons:
- 5.1.1. There has been a restructure of the Council's senior management. This has resulted in the deletion of many named posts which are referred to in the Council's Constitution. New posts have been created which need to be referred to in the Constitution. Responsibility for some of the Council's functions has been reassigned between directorates of the Council. New terminology has been adopted by the Council. All these changes need to be reflected in the Constitution.
 - 5.1.2 Certain statutory provisions referred to in the Constitution have been repealed, amended or replaced by new provisions. The Constitution needs to be amended to reflect these changes.
 - 5.1.3 to make the alterations required to delegate functions to the Head of Legal Practice at the London Borough of Harrow, as resolved by Council at their meeting on 24 April 2018, in connection with the delegation of the Council's legal services function to that Borough.
 - 5.1.4 As a result of the review of the Council's governance arrangements requested by the Council on 19 December 2017, which is the subject of a separate report to this Committee today, certain recommendations are made in this report for changes to the Constitution which are considered will help to improve the Council's governance and enhance the purposes of the Constitution set out in Article 1 of the Constitution.
 - 5.1.5 To make amendments to the Constitution to give effect to the Council's decision at its meeting on 24 April 2018 to discharge their functions as a corporate trustee of charitable assets through a committee of the Council
 - 5.1.6 There is an urgent need to clarify the procedures for appointments of Service Leads due to the need to recruit to Service Lead positions in the Regeneration Directorate.
- 5.2 The restructure of the Council's senior management has resulted in the positions of "Directors" to replace the former "Strategic Directors". The positions of "Assistant Directors" have been deleted. Under the new structure the functions of Assistant Directors have largely been reassigned to the new positions of "Service Leads" under the new structure. The former directorate of "Customer & Community Services" has been deleted and its functions reassigned between the new directorates under the new structure. Also, the Council has now changed the use of the term "Commissioner" for Members of the Cabinet holding portfolios to the term "Lead Member". Accordingly, the bulk of the proposed revisions to the Constitution are to deal with the changes necessitated by this senior management restructure and use of new terminology. The particular revisions in this regard are, therefore, purely formal and self-explanatory.
- 5.3. The revisions required to the Constitution as a result of statutory changes are:
- 5.3.1 to alter the reference to the Local Government Commission to the Local Authority Boundary Commission and to remove the reference to the

Secretary of State in paragraph 1 of Article 2 of the Constitution in order to take account of alterations made by the Local Democracy, Economic Development and Construction Act 2012.

- 5.3.2 to delete reference to Section 31 of the Local Democracy, Economic Development and Construction Act 2009 in paragraph 9 of Article 6 of the Constitution and substitute reference to Section 9FB of the Local Government Act 2000 as Section 31 has been repealed and Section 9FB inserted by the Localism Act 2011.
 - 5.3.3 to delete sub-paragraph (b) in paragraph 2 of the Article 10 of the Constitution as the provisions cited there have been repealed by the Localism Act 2011.
 - 5.3.4 to delete the references to sub-section 4 of Section 34 of the Social Security Act 1998 in function 3 as this provision has been repealed and the reference to Section 87 in function 6 the first column of Table 1 in part 3.3 of the Constitution to replace the latter with a reference to Section 94 of the School Standards and Framework Act 1998, which is the correct reference.
 - 5.3.5 to delete the reference to Part V of the Town and Country Planning Act 1990 in function 1 of the Planning Committee in Table 2 in part 3.3 of the Constitution as this part has now been repealed and to delete the reference to Section 23 of Education Reform Act 1988 in function 4 of the Employment and Appeals Committee as this section has now been repealed.
- 5.4 The changes proposed to the Constitution as a result of the delegations of the Council's legal services function to the London Borough of Harrow consist of the delegation to the Head of Legal Practice at Harrow of those functions previously delegated under the Constitution to the post of Head of Legal Services of the Council, which post has now been deleted as a consequence of the senior management restructure.
- 5.5 The changes proposed to the Constitution as a result of the review of the Council's governance arrangements, which are the subject of a separate report to this committee today, are:
- 5.5.1 To provide that the Chief Executive and Head of Paid Service should serve as the Returning Officer and Acting Returning Officer for local and Parliamentary elections respectively to accord with practice elsewhere.
 - 5.5.2 to amend paragraphs 2.5 to 2.8 inclusive of Part 4.5 of the Overview and Scrutiny Procedure Rules to remove the automatic disqualification of members for failure to attend three consecutive meetings of the Committee or its panels in order to comply with a recent ruling of the High Court in the case of R (on behalf of Harvey) –v- Ledbury Town Council which declared such disqualification unlawful under the Localism Act 2011 but to provide for such failure to be reported to respective party leaders to enable them to consider any action at Group level. It is also proposed to extend such amended rule to all committees, subcommittees and panels of the Council.
 - 5.5.3 to amend paragraph 23 of the Overview and Scrutiny Procedure Rules to provide that regard must be had to which of the Cabinet or Council would be responsible for any function which would enable action to be taken on

the recommendations of Reports of Overview and Scrutiny Committee and Panels, when any decision is made by the Head of Democratic Services as to where any such report submitted to him or her is referred.

- 5.5.4 to amend paragraph 11 of the Code of Conduct for Councillors and Officers in Relation to Planning and Licensing Matters in Part 5.2 of the Constitution to provide expressly that no person shall seek to influence or control the contents or recommendations of an officer report and that any attempt to do so should be reported to the Monitoring Officer. This is to provide assurance to Officers that no improper pressure may be applied by senior management to planning officers in relation to planning matters where the Council may have an interest.
 - 5.5.5 to amend paragraph 16 of the Local Code Governing Relations between Elected Members and Council Employees in Part 5.4 of the Constitution to provide expressly that Members are entitled to be treated the same as members of the public when requesting information which any member of the public could request.
 - 5.5.6 to amend paragraph 17 of the Local Code Governing Relations between Elected Members and Council Employees in Part 5.4 of the Constitution to provide expressly that in the event that a Member feels that he or she cannot raise a matter with any of the Statutory Officers because the matter concerns all of those officers then the matter may be raised with officers who would deputise for those officers in their absence.
- 5.6 The changes proposed to the Constitution as a result of the Council's decision to discharge their function as a corporate trustee of charitable assets through a committee of the Council consist of proposed amendments to Table 2 in Part 3.4 of the Constitution dealing with the Responsibilities of the Council to add details of the new Trustee Committee and its terms of reference to that table of Council functions.
- 5.7 The changes proposed to the Constitution to clarify the procedures for the appointment of Service Leads arises as a result of the queries raised in connection with the pending appointments to Service Lead posts in the Regeneration Directorate. It is considered that the posts of Service Leads constitute "deputy chief officers" within the meaning of that term in the Local Government & Housing Act 1989 and hence, under paragraph 4 of Part 4.7 of the Constitution, must be appointed by a committee or sub-committee of the Council in the same manner as Directors and statutory officers. This was not appreciated in connection with the appointments of Service Leads previously. It is considered that appointments of Service Leads should be carried out in the same manner as those of other Officers who are not Directors or Statutory Officers as there is no requirement for such officers to be appointed in the same manner as Directors and Statutory Officers under the Local Authorities (Standing Orders) Regulations 1993. It is proposed, therefore, to delete the references to "Deputy Chief Officers" in paragraph 4 of Part 4.7 of the Constitution.

6 Comments of other Committees

The changes to the Constitution proposed in this Report, save that which is the subject of paragraph 5.7 above, have been formally considered and approved by the Member Panel on the Constitution. The need for the change proposed in paragraph 5.7 was only appreciated after the last meeting of the Member Panel of the Constitution and it is

proposed to consult the Panel members informally about this proposed change before any action is taken with regard to it.

7 **Conclusion**

The revisions to the Council's Constitution recommended by this Report will enhance good governance for the foreseeable future by providing a clearer and more robust updated guide for Members and Officers in the conduct of the Council's affairs.

8 **Appendix**

A - Draft track changed version of the Constitution – TO FOLLOW

9 **Background Papers**

None