

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee

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WARD(S): All

PART I FOR DECISION

RECOMMENDATIONS OF MEMBER PANEL ON THE CONSTITUTION - REVIEW 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 in this report 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.

Equalities Impact Assessment

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

5 **Supporting Information**

- 5.1 Since the last Report to the Committee on 18 July 2018 on revisions to the Constitution, there has been impetus for further miscellaneous revisions. Draft revisions have been considered and approved by the Panel Member on the Constitution at their meetings on 12 September 2018, 14 January 2019 and 26 February 2019.
- 5.2 The draft revisions considered and approved by the Member Panel were upon the following topics:
- 5.2.1 Provisions relating to Children’s Care Proceedings
 - 5.2.2 Application of the Ethical Framework to Officers who are not employees
 - 5.2.3 Settlement Agreements
 - 5.2.4 Declaration of Members’ Interests
 - 5.2.5 Amendments to facilitate a policy on maternity, paternity, and adoption leave for Members
 - 5.2.6 Amendments to the Whistleblowing Code recommended by internal auditors
 - 5.2.7 Policy on acceptance of donations and sponsorships.
 - 5.2.8 Amendment to Terms of Reference – Joint Parenting Panel
- 5.3 **Provisions relating to Children’s Care Proceedings**
- 5.3.1 As a result of an intervention last year by a Member of the Council on behalf of a constituent in connection with care proceedings being taken by the Council to protect children who the Council have statutory duties to protect, it has come to light that unlike some other Councils Slough Borough Council does not have any provision within its Constitution relating to Members’ rights to information in relation to such proceedings.
 - 5.3.2 Part 12 of the Family Procedures 2010 lay down strict rules in respect of information relating to proceedings involving children. Essentially, Information can only be disclosed with the leave of the court. This is not restricted to documents filed with the court but covers any information relating to these proceedings and the children involved. Generally Members cannot see any such information without the leave of the Court, even when he or she is representing a constituent and seeking or receiving such information risks any party disclosing or receiving such information being found to be in contempt of court.
 - 5.3.3 Members of the Committee are, therefore, asked to consider and agree to the insertion of a new paragraph 16(j) in the Local Code Governing Relations Between Elected Members and Council Employees in Part 5.4 of the Constitution in the following revised terms :

“(j) Care Proceedings

Part 12 of The Family Procedure Rules 2010 lay down strict rules in respect of information relating to care proceedings. Information can only be disclosed with the leave of the court or in circumstances permitted by those rules and subject to any directions made by the Court. This is not restricted to documents filed with the court but covers any information relating to these proceedings. Members can, therefore, only see any such information as is permitted by Part 12 of the Family Procedure Rules 2010 where he or she is representing a constituent.”

- 5.3.4 It is considered that the amendment proposed above will provide helpful guidance for Members and Officers in relation to any situations where the Member is seeking to intervene with the Council on behalf of a constituent in relation to care proceedings in which the constituent is involved.

5.4 Application of Ethical Framework to Officers who are not Employees

- 5.4.1 All employees of the Council working under a contract of employment are “Officers” of the Council. It is, however, possible for persons who are not employees of the Council, such as interims and contractors, also to be “Officers” of the Council in certain circumstances when discharging duties on behalf of the Council. This was established in the high Court in the case of Pinfold North Limited -v- Humberside Fire Authority [2010] LGR 995.
- 5.4.2 Paragraph 9 of Article 12 of the Council’s Constitution provides that Officers will comply with the “Officers” Code of Conduct and the Protocol on “Officer”/Member Relations set out in Part 5 of the Constitution. What is meant to be referred to here is the Local Code of Conduct for Employees in Part 5.3 and the Local Code Governing Relations Between Elected Members and Council Employees in Part 5.4 of the Constitution.
- 5.4.3 These Codes, however, impose obligations on “employees” and make no reference to “officers”. It is doubtful, therefore, whether these codes apply to interims and contractors who are not employees but are “officers” of the Council.
- 5.4.4 In order to avoid any doubt that the obligations on council employees under these Codes should also apply to interims and contractors who are officers of the Council it is proposed that paragraph 9 in Article 12 of the Constitution be amended to read as follows:

“9 Conduct

Officers will comply with the Local Code of Conduct for Employees in Part 5.3 and the Local Code Governing Relations Between Elected Members and Council Employees in Part 5.4 of this Constitution.”

5.5 Settlement Agreements

- 5.5.1 At their meeting on 28 September 2017 full Council resolved that all redundancy/ severance packages over and above an individual’s statutory / contractual entitlement will be approved by full Council.

- 5.5.2 This resolution proved difficult to enforce in practice principally because it effectively required every settlement agreement to be approved by full Council regardless of the seniority of the Officer concerned, his or her role and its importance within the Council and the circumstances surrounding the need for the settlement agreement.
- 5.5.3 As most settlement agreements are usually required to be completed in circumstances of urgency it is was not practical to await the next available meeting of full Council to approve settlements and the these therefore needed to be effected by way of decision by the Chief Executive under the urgency provisions in the Council's Scheme of Delegation to Officers which permit the Chief Executive to act in cases of urgency to discharge all Council side functions. It was considered that it was not appropriate for this to become the default process in circumstances where settlement agreements needed to be completed.
- 5.5.4 Council therefore reconsidered the matter at their Extraordinary Meeting on 18 December 2018 where they resolved to rescind their previous resolution and agreed to adopt new procedures whereby payments in connection with termination of employment of officers in excess of £60,000 above statutory or contractual entitlements in any individual case require the approval of full Council and that the amounts of all payments in connection with termination of employment be reported to the Council annually. Council also instructed the Service Lead for Governance to arrange for any necessary changes to the Constitution to give effect to give effect to such new procedures
- 5.5.5 It is considered that the new procedures for settlement agreements resolved upon by Council can be given effect to by way of amendment of Rule 8.27 in the Council's Financial Procedure Rules in Part 4.6 of the Constitution. It is proposed therefore that Rule 8.27 be amended by way of the insertion of the additional wording shown in bold italics to read as follows:

"8.27 The Directors will refer to the Service Lead People and to the section 151 officer matters relating to the application of salary and wage scales and other conditions of service including any payments in relation to redundancy, early retirement or any other payments associated with an employee's termination of employment, and no commitment in these matters shall be entered into without their joint agreement. ***Any payments in connection with termination of employment in excess of £60,000 above statutory or contractual entitlements in any individual case requires the approval of full Council. The Service Lead People and the section 151 Officer shall report annually to full Council the amounts of all payments in connection with termination of employment.*** The Service lead People and s151 officer shall be jointly empowered to automatically apply non-discretionary salary and wage awards, expenses and other allowances approved by the various joint negotiating councils."

5.6 Declaration of Members' Interests

- 5.6.1 The Monitoring Officer has been re-considering the parts of the Councillors' Code of Code in Part 5.1 of the Constitution dealing with declaration of interests with a view to making these provisions more clearly understandable and easier to operate in practice.
- 5.6.2 It is considered that these provisions are unduly difficult to understand because of multiple use of terms for interests i.e. disclosable pecuniary interests, pecuniary, direct, indirect, personal, prejudicial, sensitive, professional and non-disclosable. It is proposed that Members' interests be simplified into two types, namely, "disclosable pecuniary interests" which are required to be declared and failure to disclose which could amount to the commission of a criminal offence, and "personal interest". The draft proposed revisions to the Councillors' Code of Conduct are appended to this Report for consideration by the Panel.
- 5.6.3 It is considered that the adoption of these revised proposals will lead to an easier understanding of the subject of declaration of interests and to a better operation of the system for declaration of Members' interests.

5.7 Amendments to facilitate a policy on maternity, paternity and adoption leave for Members

- 5.7.1 At a forthcoming meeting Cabinet are likely to consider a report which is intended to recommend to full Council a parental leave policy for Councillors. This will entitle Members of the Council to take maternity, paternity, shared parental and adoption leave from their duties as Councillors.
- 5.7.2 It is considered that certain necessary and consequential amendments to the Constitution will be required to facilitate the implementation of such a policy, if it is recommended by Cabinet and accepted by the Council.
- 5.7.3 Section 85 of the Local Government Act provides that if a Member of a local authority fails throughout a period of six months from the date of his or her last attendance to attend any meeting of the authority he or she shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.
- 5.7.4 At present the Constitution contains no provision as to any approved reasons for failure to attend any meeting of the authority. It is suggested, therefore, to facilitate the proposed policy, if adopted, that paragraph 3(b) of Article 2 of the Constitution be amended to include a new sub-clause (iv) in the following terms :
- “(iv) Members will not fail to attend any meeting of the Council without a valid reason. Absence during a period when a Member is exercising an entitlement to maternity leave, paternity leave, joint parental leave or adoption leave in accordance with a policy approved by the Council for such purposes shall be deemed to be absent for a valid reason during such period”.***
- 5.7.5 Paragraphs 2.5 to 2.8 inclusive of the Overview and Scrutiny Procedure Rules in Part 4.5 of the Constitution, which apply to all Committees, Panels

Working Parties and the Cabinet by virtue of Article 8 of the Constitution, provide for a procedure to deal with the absence of members from meetings. To facilitate the implementation of the proposed policy, therefore, it is suggested that :

5.7.5.1 a new sub-paragraph 2.9 is added to the Overview and Scrutiny Procedure Rules in Part 4.5 of the Constitution in the following terms :

“ 2.9 Rules 2.5 to 2.8 inclusive above shall not apply in any circumstances where a Member is exercising an entitlement to maternity leave, paternity leave, joint parental leave or adoption leave in accordance with a policy approved by the Council for such purposes.”

5.7.5.2 Article 8 of the Constitution is amended by replacing the reference to “Paragraphs 2.5 to 2.8 inclusive ” in the last paragraph of that Article with a reference to “Paragraphs 2.5 to 2.9 inclusive”.

5.8 Amendments to the Whistleblowing Code recommended by internal auditors

5.8.1 Towards the end of last year the Council’s internal auditors carried out an audit of the Council’s procedures and processes for dealing with whistleblowing complaints. A fuller report on their findings will be brought to the Committee’s next meeting. Encouragingly, in the meanwhile, they found that the Council’s Whistleblowing Code in Part 5.5 of the Constitution is clear and easy to understand, it is comprehensive and it promotes a strong message to readers that the Council are encouraging of genuine whistleblowers.

5.8.2 There are three items, however amongst their recommendations, which need amendments to the Constitution to implement.

5.8.3 Firstly, their report points out that Paragraph 9.5.6 of the Whistleblowing Code in Part 5.5 of the Constitution says that Council employees should not, in any circumstances, approach the media/press. The internal auditors point out that this can be perceived to be contrary to the Public Interest Disclosure Act 1998 where an employee may make disclosure to other parties in certain circumstances. It is suggested, therefore, that sub-paragraph 9.5.6 be deleted from the Code.

5.8.4 Secondly, the internal auditors point out that the Anti Bribery Policy within the Counter Fraud and Corruption Strategy in Part 5.7 of the Constitution clearly states that the Council does not tolerate bribery and refers to criminal sanctions that may be imposed but does not refer to disciplinary sanctions and the fact that bribery would amount to gross misconduct which would lead to dismissal of staff. It is suggested, therefore, that paragraph 2.2 of the Anti-Bribery Policy within the Counter Fraud and Corruption Strategy in Part 5.7 of the Constitution be amended to include additional wording at the end as follows:

“Apart from any criminal sanctions that may apply any employee found guilty of bribing another or of accepting a bribe will be considered to be guilty of gross misconduct and liable to be dismissed with immediate effect.”

- 5.8.5 Lastly, the internal auditors point out that the definition of fraud presently used within the Counter Fraud Response Plan does not mirror that as defined within the Fraud Act 2006, omitting key aspects of the definition such as dishonesty. It is suggested, therefore, that the existing definition in the Strategy, which is in the following terms:

“an intentional false representation, including failure to disclose information or abuse of a position that is carried out to make gain, cause loss or expose another to a risk of loss”

in paragraph 3.1 of the Anti-Fraud and Corruption Response Plan in the Anti Fraud and Corruption Strategy and Policy in Part 5.7 of the Constitution be replaced with the following words:

“dishonestly making an untrue or misleading statement to another person knowing that the statement might be untrue or misleading or dishonestly failing to declare information to another person which one has a legal duty to disclose or dishonestly abusing a position one occupies where one is expected to safeguard the financial interests of another person all with intention of making a gain for oneself or causing loss to another”.

5.9 Policy on acceptance of donations and sponsorships

- 5.9.1 At their last meeting on 13 December 2018 the Committee considered a report on the subject of blind donations. Following consideration of the Report the Committee directed the Service Lead Governance to formulate a policy on blind donations.
- 5.9.2 The Committee noted the contents of the Report which pointed out that the principal concerns around blind donations related to the fear that donations could be a device to evade money laundering regulations and as cover for fraudulent and corrupt activities. Accordingly, it is considered that the appropriate manner to deal with this issue would be to seek to incorporate a policy on donations and sponsorship within the Counter Fraud and Corruption Strategy in Part 5.7 of the Constitution.
- 5.9.3 It is suggested, therefore, that a new paragraph 1.6 be added to the Anti-Fraud Policy Statement in Section 1 of the Counter Fraud and Corruption Strategy in Part 5.7 of the Constitution in the following terms:

“ 1.6 We recognise that donations to the Council and sponsorship of Council events in money or in kind may be used as a means to launder funds contrary to money laundering regulations and as a cover for fraudulent or corrupt practices and may bring the Council into disrepute. As a consequence we have adopted a policy on donations and sponsorships as a part of this Counter Fraud and Corruption Strategy which is set out in Section 6 of

this document which we will apply to donations to and sponsorship of Council events in money or in kind.”

and a new policy on Donations and Sponsorships in should then be inserted as a new Section 6 to that Strategy. A consequential amendment should then also be made to the table headed “Section” at the front of the Counter Fraud and Corruption Strategy to include an additional line at the end saying :

“ 6. Policy on Donations and Sponsorships”.

5.10 Terms of Reference – Joint Parenting Panel

5.10.1 The Joint Parenting Panel reviews its Terms of Reference annually and has recommended that the Terms of Reference of the Panel be amended to include young people’s attendance at meetings. It is proposed that the following is added to the Terms of Reference:

“3.4 Attendance at meetings

Representatives of Looked After Children and Care Leavers will be invited to attend at the start of each meeting to present their hot topics or any matters the Panel seeks their views on.”

6 Comments of other Committees

The changes to the Constitution proposed in this Report have been formally considered and approved by the Member Panel on the Constitution.

7 Conclusion

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

8 Appendix

Appendix - Draft revisions to Members’ Code of Conduct regarding declaration of Members’ Interests

9 Background Papers

None