

Audit and Governance Committee

2 April 2019

Is the final decision on the recommendations in this report to be made at this meeting?

No

Review of the Constitution April 2019

Final Decision-Maker	Full Council
Portfolio Holder(s)	Councillor David Reilly – Portfolio Holder for Finance and Governance
Lead Director	Lee Colyer – Director of Finance, Policy and Governance
Head of Service	Patricia Narebor – Head of Legal Partnership
Lead Officer/Author	Estelle Culligan – Principal Solicitor, Contentious and Corporate Governance
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. That Part 2, Article 10 (Suspension, Interpretation and Publication of the Constitution), Paragraph 10.3 be amended so that the words: “The Monitoring Officer will give a printed copy of this Constitution to each member of the Council upon delivery to him of that individual’s declaration of acceptance of office on the member first being elected to the Council” be replaced with: “All members are referred to the up to date version of the Constitution, which is maintained online. The Monitoring Officer will give a printed copy of the Constitution to a member of the Council if that member requests a copy”;
2. That Part 3, Section 7 (Audit and Governance Committee), Paragraph 7.1 be amended so that the words “5 independent members” be replaced with: “2 independent members”;
3. That Part 3, Annex C (Officer Scheme of Delegations), Table 1 (General Delegations to All Chief Officers), Paragraph 13 be amended so that the words: “Monitoring Officer £250” be replaced with: “Monitoring Officer £500”;
4. That Part 3, Annex C (Officer Scheme of Delegations), Table 2 (Delegations to the Chief Officers) be amended to add a new clause after paragraph 51 that reads: “To settle employment claims and other staff related payments in consultation with the Head of Paid Service and the Head of Human Resources, Customer Services and Culture, where it is in the best interests of the Council to do so.” and the subsequent paragraphs be renumbered as appropriate;

(Continued overleaf)

5. That Part 3, Annex C (Officer Scheme of Delegations), Table 2 (Delegations to the Chief Officers), Paragraph 60 be amended so that the words: “£50,000” be replaced with: “250,000”;
6. That Part 5, Annex 4 to the Code of Conduct (Code of Conduct for Employees) be amended to add a new clause after paragraph 11.4.2 that reads: “Any gift up to a de minimis equivalent financial value of £25, which can be accepted and does not need to be declared, up to a cumulative maximum of £100 in any one financial year.”
7. That Part 3, Section 9 (Investigatory Committee) be amended as set out at Appendix A to the report;
8. That an Independent Panel be established and the terms of reference as set out at Appendix B to the report be agreed. Said terms of reference to be added to Part 3 after section 10 and the subsequent sections be renumbered as appropriate; and
9. That the minor amendments made under the Monitoring Officers delegated authority set out at Appendix C to the report be noted.

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- Providing Value – A Constitution that is regularly reviewed and up-to-date enables efficiency and efficacy across a range of Council services.

Timetable	
<i>Meeting</i>	<i>Date</i>
Management Board	16 January 2019
Constitution Review Working Party	13 March 2019
Agreed for publication by Portfolio Holder	20 March 2019
Agreed for publication by Head of Service	20 March 2019
Constitution Review Working Party	21 March 2019
Audit and Governance Committee	2 April 2019
Full Council	24 April 2019

Review of the Constitution April 2019

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out and recommends several amendments to the Constitution following consultation with the Constitution Review Working Party.
 - 1.2 The proposed amendments fall into two categories: firstly from the outcome of a 'page-turn' exercise which will help the Council operate more smoothly; the second are related to the disciplinary policy for senior statutory officers, which come about as a result of legislative changes.
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2. INTRODUCTION AND BACKGROUND

- 2.1 Under the Tunbridge Wells Constitution, the Audit and Governance Committee is responsible for "oversight of the effectiveness of the Constitution and making recommendations for change. The Constitution Review Working Party meets as and when required to assist the Audit and Governance Committee with considerations of reviews of the Constitution prior to recommendations to Full Council and to act as a sounding board for the delegated decision making powers of the Monitoring Officer.
- 2.2 The CRWP met on 13 March 2019 in an informal capacity primarily to receive a briefing on a number of changes to be made under the Monitoring Officer's delegated authority; the other changes requiring approval were also touched on at that time. The CRWP further met on 21 March 2019 to discuss the specific proposals set out in this report.
- 2.3 The senior statutory officers are the Head of Paid Service, the Section 151 Officer (The Director of Finance, Policy and Development) and the Monitoring Officer (The Head of the Legal Partnership). They are subject to a statutory disciplinary and dismissal scheme contained within the Local Authorities (Standing Orders) (England) Regulations 2001. These regulations set out a procedure for disciplinary action and stated that dismissal of the statutory officers could only be in accordance with a recommendation in a report made by a Designated Independent Person (DIP). For TWBC, the procedure only affects the Chief Executive and the Section 151 Financial Officer as the Monitoring Officer is employed by Swale BC.
- 2.4 On 11 May 2015, the Local Authorities (Standing Orders) (Amendment) Regulations 2015 replaced the Designated Independent Person (DIP) provisions with a Panel process. Following this, the Joint Negotiating Committee (JNC) published an updated edition of the Chief Executives' Handbook, in which the model procedure for dealing with matters of discipline incorporates the new statutory process.

2.5 In summary, the changes to the procedure are:

- that the final decision to dismiss any of the senior statutory officers must be by resolution of full Council.
- that the Council appoints a standing Investigatory Committee to investigate all disciplinary issues involving any of the three statutory officers.
- that the Council appoints an Appeals Panel which can deal with all appeals on disciplinary decisions short of dismissal involving the statutory officers.
- that the Council appoints an Independent Panel which must include two Independent Persons. This Panel reviews and comments on any recommendation of the Investigatory Committee to dismiss a statutory officer.
- that, before taking a vote on whether to approve such a dismissal, full Council must take into account, in particular:
 - any advice, views or recommendations of the Independent Panel
 - the conclusions of any investigation into the proposed dismissal; and
 - any representations from the statutory officer who is the subject of the proposed dismissal

2.6 Although full Council must take the issues stated above into account, it is not bound by them. This is different to the current procedure, whereby the Council must appoint a DIP and must act in accordance with the DIP's report and recommendation.

2.7 TWBC's HR team is currently working to update the Council's Disciplinary Policy, which incorporates the model procedures.

3. PROPOSED CHANGES FROM THE PAGE-TURN EXERCISE

Printed copies of the Constitution (Recommendation 1)

3.1 Description: The Constitution currently requires that all new members be issued with a printed copy of the Constitution which is currently 348 pages long. This becomes out of date as soon as any amendments are approved and results in an unmanageable number of Constitutions in various degrees of completeness being in circulation. The Constitution is now available online which provides a definitive and always current version. Furthermore, all members have either a Council issued tablet or have opted to use their own device which will become mandatory for all meeting agenda, reports and minutes etc. in the new municipal year. The Constitution is also already available through the same devices. It is proposed that printed copies of the Constitution will only be issued on request.

3.2 Amendment: Part 2, Article 10 – Suspension, Interpretation and Publication of the Constitution, Paragraph 10.3:

“10.3 Publication

The Monitoring Officer will give a printed copy of this Constitution to each member of the Council upon delivery to him of that individual's declaration of

~~acceptance of office on the member first being elected to the Council.~~ All members are referred to the up to date version of the Constitution, which is maintained online. The Monitoring Officer will give a printed copy of the Constitution to a member of the Council if that member requests a copy.”

Independent Members (Recommendation 2)

3.3 Description: Full Council on 23 May 2018 agreed in principle (FC8/18) to reduce the number of independent members on the Audit and Governance Committee. The Committee has functioned well with only two independent members since. Therefore it is proposed to make this change permanent. This type of change could ordinarily be made under the Monitoring Officer’s delegated authority. However, the report to Full Council specifically set out that the decision was to come back to Full Council.

3.4 Amendment: Part 3, Section 7 – Audit and Governance Committee, Paragraph 7.1:

“7.1 Membership:

8 members of the Council

~~5~~ 2 *independent members*

2 members of a parish or town council wholly or mainly in the Council’s area”

Monitoring Officer’s approval limit in cases of maladministration (Recommendation 3)

3.5 Description: Increases the limit to which the Monitoring Officer may make payments or provide other benefits in cases of maladministration from £250 to £500. The requested change is to bring the approval limit in line with that of other senior officers.

3.6 Amendment: Part 3, Annex C – Officer Scheme of Delegations, Table 1 – General Delegations to All Chief Officers, Paragraph 13:

“13. To make payments or provide other benefits in cases of maladministration in accordance with Section 92 of the Local Government Act 2000 (as amended) as follows:

<i>Chief Executive</i>	<i>£1,500</i>
<i>Directors</i>	<i>£1,000</i>
<i>Monitoring Officer</i>	£250 <u>500</u>
<i>Heads of Service</i>	<i>£500”</i>

Section 151 Officer’s approval of staff related payments (Recommendation 4)

3.7 Description: Adds delegated authority for the Section 151 Officer to settle employment claims and other staff related payments and renumbers the subsequent paragraphs as appropriate. Requested change is within the normal responsibilities of a Finance Director.

- 3.8 Amendment: Part 3, Annex C – Officer Scheme of Delegations, Table 2 – Delegations to Chief Officers, New paragraph 52:

“52. To settle employment claims and other staff related payments in consultation with the Head of Paid Service and the Head of Human Resources, Customer Services and Culture, where it is in the best interests of the Council to do so.”

Monitoring Officer’s approval limit to settle court proceedings (Recommendation 5)

- 3.9 Description: Increases the limit to which the Monitoring Officer may settle court or tribunal proceedings from £50,000 to £250,000. Requested change reflects the seniority of the Head of Legal and Monitoring Officer and allows flexibility to take decisions in a wider variety of legal cases.
- 3.10 Amendment: Part 3, Annex C – Officer Scheme of Delegations, Table 2 – Delegations to Chief Officers, Paragraph 60:

“60. To settle any action in any court or tribunal in which the Council is a party or where legal proceedings are indicated providing that any settlement exceeding £250,000 will be subject to prior consultation with the S151 Officer, and the Leader or Deputy Leader of the Council except in cases of urgency where the settlement is made on the advice of Counsel.”

Value of disclosable gifts for officers (Recommendation 6)

- 3.11 Description: Adds an exception to declarable gifts for officers where the value is less than £25. Approving and recording all trivial gifts is time consuming and an unnecessary control. Items of a token value and promotional nature are already exceptions to declaration and this statement of equivalent financial value helps to clarify the code.
- 3.12 Amendment: Part 5, Annex 4 to the Code of Conduct – Code of Conduct for Employees, New paragraph 11.4.3:

“11.4.3 Any gift up to a de minimis equivalent financial value of £25 does not need to be declared, up to a cumulative maximum of £100 in any one financial year.”

4. PROPOSED CHANGES FROM LEGISLATIVE CHANGES

Investigatory Committee (Recommendation 7)

- 4.1 Description: The regulations state that the Investigating and Disciplinary Committee must be a politically balanced committee. The model procedure suggests that it comprises five members. The committee may need to meet at short notice to consider allegations and take decisions urgently, including whether there is a clear case to answer and whether there is a need to suspend a statutory officer immediately. The committee has an important role in considering the report of any independent investigator which it might appoint to

carry out the initial investigation. The committee will also be making recommendations directly to Council, therefore it is important that it is not a sub committee of any other committee, but is a standing committee in its own right. The model procedure states, that where a Council operates a Cabinet and Leader model of governance, a member of Cabinet should sit on the Investigatory Committee. The Council already has a standing Investigatory Committee, set out in Part 3 of the Constitution, but the committee requires some amendments to its terms of reference.

4.2 Amendment: Part 3, Section 9 Investigatory Committee:

Section to be amended, details as set out at Appendix A to the report.

Independent Panel (Recommendation 8)

4.3 Description: The regulations state that the Independent Panel must comprise at least two independent persons who must be the Independent Person appointed to oversee code of conduct complaints for the Council and at least one other Independent Person. This other Independent Person can be appointed by the Council or could be someone who carries out the same function for a neighbouring authority. It is proposed that Michael O'Higgins, the Council's Independent Person and Barbara Varney (Independent Person for both Swale BC and Maidstone BC) are asked to comprise the panel, and that the requirement to sit on the panel is included in the role description for any future recruitment of the Independent Person.

4.4 Amendment: Part 3, New section 11:

Section to be added, details as set out at Appendix B to the report.

Other minor changes made under the Monitoring Officer's delegated authority for noting (Recommendation 9)

4.5 Article 9 of the Constitution - Legislative Changes - states that any part of the Constitution may be amended by the Monitoring Officer where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer so decides or the legislation (where relevant) so provides. Details of further minor changes necessary to implement the changes in legislation are set out in Appendix C to the report for noting.

5. AVAILABLE OPTIONS

5.1 Approve the changes

5.2 Decline some or all the proposed changes.

5.3 Recommendations 7 and 8 are deemed to be in accordance with best practice in implementing the legislation. Failure to agree these items would require an alternative proposal which satisfies the statutory process.

6. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 6.1 It is recommended that all the aforementioned proposals are approved. The proposed changes have been put forward by the relevant service area as being necessary or desirable to facilitate more efficient processes or to comply with statutory changes.
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7. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 7.1 The Constitution Review Working Party considered the proposals on 21 March 2019 and all but one recommendation was supported. Recommendation 5 (Monitoring Officer's approval limit to settle court proceedings), which had been proposed by the Director of Finance, Policy and Development, was not supported due to the size of the increase and a lack of consultation on the proposal.
- 7.2 However, Audit & Governance Committee members may wish to continue to recommend the amendment to Full Council for further debate on the basis of consistency, bearing in mind that a limit of £250,000 would bring it in line with the threshold for a key decision ie Cabinet level. Additional information on the limits exercised by other local Councils will be updated at the Committee meeting.
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8. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 8.1 Subject to approval by the Audit and Governance Committee, the proposed changes will be submitted to Full Council.
- 8.2 If Full Council is minded to approve the changes, the Constitution will be deemed to have been amended with immediate effect. The relevant documents will be updated and published on the website in due course.
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9. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	The Monitoring Officer has authority to periodically review and suggest changes to the Constitution under Article 9 of the Constitution. The review has been undertaken with the input of the Chief Executive and the Director of Finance	Estelle Culligan, Principal Solicitor Corporate Governance 21 March 2019
Finance and other resources	There are no significant implications in relation to Environment and Sustainability as a result of the recommendations set out in this report.	

Staffing establishment	There are no significant implications in relation to Staffing, beyond those identified in the body of the report, as a result of the recommendations set out in this report	
Risk Management	There are no significant implications in relation to Risk Management as a result of the recommendations set out in this report.	
Data Protection	There are no significant implications in relation to Data Protection as a result of the recommendations set out in this report.	
Environment and Sustainability	There are no significant implications in relation to Environment and Sustainability as a result of the recommendations set out in this report.	
Community Safety	There are no significant implications in relation to Community Safety as a result of the recommendations set out in this report.	
Health and Safety	There are no significant implications in relation to Health and Safety as a result of the recommendations set out in this report.	
Health and Wellbeing	There are no significant implications in relation to Health and Wellbeing as a result of the recommendations set out in this report.	
Equalities	There are no significant implications in relation to Equalities as a result of the recommendations set out in this report.	

10. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Proposed amendments to the terms of reference for the Investigatory Committee.
- Appendix B: Proposed new terms of reference for the Independent Panel.
- Appendix C: Other minor amendments to the Constitution made under the Monitoring Officer's delegated authority and required to be reported to Full Council on account of them being due to legislative changes (Article 9.3.4).

11. BACKGROUND PAPERS

- Chief Executives' Handbook in which the model procedure for dealing with matters of discipline incorporates the new statutory process:
http://www.emcouncils.gov.uk/write/Chf_Exec_Handbook_13Oct16.pdf