

<b>Meeting:</b>	<b>Audit and governance committee</b>
<b>Meeting date:</b>	<b>Tuesday 8 May 2018</b>
<b>Title of report:</b>	<b>2018 Constitution Review</b>
<b>Report by:</b>	<b>Solicitor to the Council</b>

## **Classification**

Open

## **Decision type**

This is not an executive decision

## **Wards affected**

(All Wards);

## **Purpose and summary**

To consider the suggested amendments to the council's constitution proposed by the constitution review working group for recommendation to Council.

## **Recommendation(s)**

**That:**

- (a) having regard to the work undertaken by the constitution working group, the revised constitution as set out at appendices 2 to 9, be recommended to full Council for adoption, with implementation with effect from annual council in May 2018;**
- (b) authority be delegated to the solicitor to the council to make technical amendments (grammatical, formatting, and consistency) necessary to finalise the revised constitution;**
- (c) the revised whistleblowing policy at appendix 11 be adopted with immediate effect; and**
- (d) the revised standards complaint procedure is adopted with implementation to take effect on new complaints received from annual council in May 2018.**

## Alternative options

1. To reject the proposed amendments and retain the current constitution and policies unamended: this is not recommended because the amendments have been proposed in order to either:
  - a) Improve clarity; or
  - b) Improve the efficiency and effectiveness of the council's governance arrangements
2. To propose alternative or additional amendments; it is open to the committee to propose that consideration be given to alternative or additional amendments. However additional time may be required in order for the working group to assess the impacts of any such proposals and to consult with the working group as necessary.

## Key considerations

3. The working group was established by audit and governance committee on 29 November 2017 to "To oversee a review of the constitution, ensure that opportunities for members to engage in the review process are appropriate and communicated effectively, and recommend any changes to the committee ensuring that any such recommendations align to the design principles. The intention is to conduct a review to ensure the constitution remains fit for purpose and is operating as intended to meet the agreed design principles."
4. Members of the constitution review working group were Councillors Anderson, Bowen, Chappell, Harvey, James, Jinman, A Johnson, Newman, Norman, Swinglehurst and Wilcox.
5. Consultation with members using survey monkey took place between 5 December 2017 to 14 January 2018. Consultation with officers took place via email between the 4 January to 24 January 2018.
6. The working group consideration process involved the deliberation of questions posed from members and officers during the consultation process. The group met on six occasions (18 December 2017, 16 February 2018, 12 March, 28 March, 5 April and 23 April) to consider these and their recommendations are documented in appendix 1.
7. The working group has continued to have regard to the design principles for a revised constitution which were approved by audit and governance committee in November 2015, and which sought to ensure that:
  - a) Members and officers perform effectively in clearly defined functions and roles
  - b) Member engagement and participation is maximised, including the involvement of all members in the development of key policies
  - c) Decision making is informed, transparent and efficient
  - d) The council welcomes public engagement and makes accountability real
8. The working group also considered the whistleblowing policy and undertook a SWOT (strengths, weaknesses, opportunities and threats) analysis. The working group suggestions which ensure that the document is fit for purpose and up to date have been considered by the council's trade unions and an internal continuous performance improvement process (CPIP) group and is at appendix 11 for consideration. The document seeks to be simple to interpret and use.

9. As a number of the consultation responses also made reference to the current code of conduct complaints process, the working group considered the current process and a revised procedure is at appendix 10 for consideration. The council's appointed independent person for standards also raised queries on the standards process as part of the annual governance statement.
10. The changes recommended by the working group have been tracked into the sections of the constitution that are affected by the changes. In summary the main changes are;
  - Questions – public questions and members questions:
    - i. Change to deadline for receipt of questions
    - ii. Publication of answers to questions prior to the meeting
    - iii. Supplementary questions “live” in meeting only
    - iv. Word limit increased to 140
    - v. Remove limit on six public questions per municipal year
    - vi. Written responses within 14 days
    - vii. Monitoring officer authorised to re-direct question to relevant committee
  - All three scrutiny committees able to scrutinise the budget and policy framework items relevant to their remits with General Scrutiny Committee retaining whole budget oversight.
  - Details of code of conduct annual report specified, to include details of unitary, town and parish council names
  - A new right of appeal to the standards panel for members found to have breached the code by the monitoring officer and where no breach is found, by complainants where new information is available,
  - Health and Wellbeing Board
    - Additional membership with full voting rights
    - Updated the functions to align with the terms of reference of the board
  - Planning redirection
    - Ward member involved in discussion
    - Written decision provided
  - Re-introduction of limit on motions to three per council meeting
  - Personal explanation to include misquoted
  - Gender neutral references to persons in the constitution
11. There is also a new whistleblowing policy and standards complaint process.
12. It is planned that all these changes will be communicated to members and officers via briefing notes and publication on the internet. The whistleblowing policy will be cascaded via the normal information channels for officers and specific training can be provided where necessary.
13. The effectiveness of these changes will be reviewed as part of preparing the annual governance statement and annual code of conduct report.

## **Community impact**

14. The recommendations supports the achievement of the council's corporate plan priority of securing better services, quality of life and value for money. The constitution is a key part of the council's governance arrangements and sets out how the council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The format of the content of any

amendments to the constitution should help make these arrangements clearer to understand and how the public can effectively engage with them.

## **Equality duty**

15. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority 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 or under this 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.
16. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

## **Resource implications**

17. None arising from the recommendations. The council already makes provision within its existing budgets to enable publication of the constitution on its website and to ensure that members and officers have the training necessary to ensure awareness and understanding of the requirements within the constitution.
18. The introduction of a right of appeal to the standards panel for code of conduct complaints against councillors in certain circumstances will create a new resource implication, which will include democratic support officer time and expenses for panel members. It is estimated that nine meetings of the panel may be required during a municipal year but this can be accommodated within existing staff resources and budgets, but it will have to be kept under review.

## **Legal implications**

19. The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in The Local Government Act 2000 (constitutions) (England) Direction 2000 which have been complied with when preparing the amendments.

## **Risk management**

20. If the council's constitution is not accurate, up to date and understood then there is a risk that governance arrangements are not clear and robust leaving the council open to judicial review, contractual challenge or financial risk. The proposed amendments seek to mitigate that risk. In addition the audit and governance committee will continue to maintain

oversight of the constitution, once adopted, and should any further amendments be necessary will make recommendations to full Council accordingly.

## **Consultees**

21. All elected members and officers were consulted on whether there were any issues following the adoption of the Constitution in May 2017. The working group considered the issues raised and a summary of the working groups responses is attached at appendix 1.
22. The trade unions and CPIP were consulted on the whistleblowing policy and their comments which are attached at appendix 13 have been considered and included in the whistleblowing policy at appendix 11.
23. The appointed independent person has previously raised concerns about the annual code of conduct report and this concern has been addressed with names of the council's being recommended as reported in the annual code of conduct report.
24. As part of the annual governance statement issues to consider were also provided as set out in appendix 14. Of the five issues raised three were considered by the working group and have resulted in recommended changes to the procedure. The protocol explaining how Herefordshire council will deal with referrals to the police was agreed by this committee on 20 September 2017 and this has now been included into the standards procedure rather than being a standalone document. The right of appeal was extensively discussed and is now included in the procedure. As is publicity in the annual code of conduct report and the publication of decisions from the standards panel. The powers of the group leaders are separate to the procedure and exist already. It is intended to report on non-compliance in the annual code of conduct report to this committee, as there is no enforcement available under the Localism Act 2011,

## **Appendices**

Appendix 1 - Working Document

Appendix 2 - Draft Part 2 Article 8

Appendix 3 - Draft Part 3 Section 1 Council Functions

Appendix 4 - Draft Part 3 Section 4 Scrutiny Functions

Appendix 5 - Draft Part 3 Section 5 Other Functions

Appendix 6 - Draft Part 4 Section 1 Council and Committee Meeting Rules

Appendix 7 - Draft Part 4 Section 8 Planning Rules

Appendix 8 - Draft Part 4 Section 9 Employment Rules

Appendix 9 - Draft Part 5 Section 8 Public participation guide

Appendix 10 - Draft 2018 Standards Process

Appendix 11 – Draft Whistleblowing Policy

Appendix 12 – Constitution Consultation Responses

Appendix 13 – Whistleblowing Policy Consultation Responses

Appendix 14 – Independent Person’s comments on standards complaints process

## **Background papers**

None identified.