

Title of report: Amendments to Constitution

Meeting: Council

Meeting date: Friday 8 March 2024

Report by: Chairman of Audit & Governance Committee

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

A report to propose amendments to the constitution in relation to: the Members Code of Conduct and functions of the Standards Panel; functions of Audit and Governance Committee; co-opted member recruitment to Children and Young People Scrutiny Committee; and functions of Planning and Regulatory Committee.

Recommendation(s)

That Council approves changes in the Constitution:

a) in Appendix 1 to enable:

- (i) a change to the Standards Panel and process used to better enable concurrent oversight of the Code of Conduct standards arrangements; and**
- (ii) a change to the Code of Conduct, in relation to Disclosure of Non-Registerable Interests, to reflect case law on this issue;**

b) in Appendix 2 to enable oversight by Audit and Governance Committee of the council's arrangements for Complaints, Companies and RIPA.

c) in Appendix 3 to enable amendment to the co-opted membership of Children and Young People Scrutiny Committee.

Alternative options

1. Council may choose not to approve the proposals and agree that functions will remain as currently described in the Constitution.

Key considerations

Appendix 1 - Reporting and oversight by Standards Panel

2. Council has delegated to Audit and Governance Committee responsibilities including, at Part 3 of the Constitution, section 3.5.14, the responsibility to promote and maintain high standards of conduct by members and co-opted members of the Council, through the Code of Conduct and its arrangements.
3. Audit and Governance Committee met on 12 December 2023 and [resolved to recommend](#) to full Council to change the Constitution as set out in Appendix 1. The proposals at (a) above reflect the resolutions made by Audit and Governance Committee.
4. Section 3.5.14 (f), describes Committee's specific responsibility to review on an annual basis the overall figures and trends from Code of Conduct complaints which will include the number of upheld complaints by reference to individual councillors within unitary, town and parish councils and when a code of conduct complaint has been upheld by the Monitoring Officer or Standards Panel, to promptly to publish the name of the councillor, the council, the nature of the breach and any recommendation or sanction applied.
5. The Constitution defines the responsibilities of the Standards Panel at Part 3, section 3.5.16. This includes at section 3.5.19 a responsibility to undertake a twice a year sample review of decisions made by the Monitoring Officer under the Code of Conduct complaint process.
6. The Monitoring Officer has responsibility for the implementation of the Code of Conduct, which is included in the Council's Constitution at Part 5 section 2. This means that, except in circumstances where a decision is referred to the Local Government Ombudsman, or a claim of judicial review is made, there is no appeal against the decision of the Monitoring Officer nor against a determination of the Standards Panel following a hearing.
7. It is considered that the role of Standards Panel to retrospectively undertake sample reviews of decisions made by the Monitoring Officer 6 or 12 months after the event, does not achieve any useful outcome. There is an important and useful element of oversight necessary by the Standards Panel but this isn't considered to be as effective (or could be more effective) by a change to the procedure used. Council has delegated initial decision making to the Monitoring Officer who must consult with the Independent Persons before making a decision. In the absence of an appeal process, it is considered that oversight by Standards Panel gives an important quality check to the processes.
8. However, it is considered that receiving the views of the Standards Panel 6 or 12 months after the decision is not particularly helpful. The Audit & Governance Committee already has an annual obligation to comment on the process, trends and resourcing. Feedback from Standards Panel on specific cases so long after the event, is not considered particularly effective or useful.
9. This report therefore proposes that the Constitution is amended at Part 3, paragraphs 2.8.27 and 3.5.19, to remove the twice/annual review of the Monitoring Officer's decisions by the Standards Panel.

10. This will be replaced by:

- a. notification to all members of the Panel on a confidential basis of all decisions as they are made by the Monitoring Officer (whether at the Initial Assessment or post-Investigation stage). This will give the Committee an understanding of decisions as they are being made rather than waiting 6 months; and
- b. there will be no requirement for an exempt meeting to discuss the decisions. Each member can simply contact the Monitoring Officer should they have any questions; and
- c. the Chair of the Panel can request the Monitoring Officer to convene a formal meeting should a specific matter need to be discussed; and
- d. the Audit and Governance Committee receiving a report on a 6 month basis in respect to processes, trends and resourcing.

11. The consultation with the Independent Persons on all decisions will continue and remains fully effective if the proposal is approved. The Council has to appoint Independent Persons under section 28 of the Localism Act 2011, to work with the Monitoring Officer to support them with Code of Conduct complaints and standards issues. Independent Persons are people who are neither councillors or officers of the Council.

12. It is also recommended that Part 3 section 5 is amended to provide for the Independent Persons to be invited to attend any Audit and Governance Committee meeting when the agenda includes consideration of any report pertaining to Committee's functions concerning the Code of Conduct, at Part 3, section 3.5.14 of the Constitution.

13. The proposals will also streamline the actions and responsiveness of Standards Panel and will improve budget efficiency by removing an existing area of duplication of reports and unnecessary formal meetings.

14. Members can be reassured that the current provision for Standards Panel to undertake 6 or 12 monthly sample reviews of decisions made by the Monitoring Officer under the Code of Conduct complaint process is not necessary as a matter of law and is not an approach mirrored in other councils that we have found. Instead of dip sampling some decisions 6 or 12 months after the event, the proposal is to give all members of the Standards Panel oversight of all decisions as they happen.

Composition of Standards Panel

15. Part 2 Article 8 - 2.8.24 of the constitution describes the composition of Standards Panel.

16. The amendments proposed in Appendix 1 enable a more efficient functioning of Standards Panel and ensures that the Chair is a member who has voting rights.

17. Part 3 Section 5 - 3.5.19 of the constitution describes the functions of Standards Panel and the proposed amendment at 3.5.20 clarifies that the Independent Person and parish councillor (as co-opted members) may take part in any discussion but do not have a vote where a decision is to be made by the Standards Panel.

Ordinary Registerable/Non Registerable Interests and Bias

18. Part 5 Section 2 of the constitution at 5.2 - Appendix B at Paragraph 9 refers to the 'Disclosure of Non-Registerable Interests'.

19. In relation to the recommended amendment to the Code of Conduct regarding Disclosure of Non-Registerable Interests, members are advised that this proposal flows from a review of the Code and noting the decision of the High Court in the case of [CPRE \(Somerset\), R \(On the Application Of\) v South Somerset District Council](#) [2022] EWHC 2817 (Admin). This case exposed a risk to members, inherent in the Council's adopted Code, which is addressed by the amendment. The court considered that the current wording in the Code in respect to whether a matter 'affects' an interest was more restricted than bias under the common law. The effect is that a member would not be in breach of the Code even if the member's decision was clearly biased. The change to the Code of Conduct aligns it to the law on this point.

Appendix 2 - Reporting and oversight by Audit & Governance

20. Audit and Governance Committee already receives an annual review of the Council's Information Requests and Complaints. Appendix 2 and the proposal at (b)(i) above more accurately reflects this part of Audit and Governance Committee's terms of reference.
21. Paragraph 13.5 of the Council's [Regulation of Investigatory Powers Act 2000 \(RIPA\) Policy](#) requires an annual report to be presented to Audit and Governance Committee, so that the committee can ensure that RIPA use is consistent with the policy and that the policy remains fit for purpose. Appendix 2 and the proposal at (b)(ii) therefore accurately reflects the intention of Council to include this within Audit and Governance Committee's terms of reference.
22. On 12 January 2023, Cabinet resolved to [set up a Shareholder Committee](#) and resolution d) included that Audit & Governance should have oversight of the Shareholder Committee. As such the recommendation is to include this within the Terms of Reference for Audit and Governance Committee.

Appendix 3 - Co-Optees in Children & Young Persons Overview & Scrutiny

23. On 14 Nov 23 CYP O&S considered a [report](#) on co-opted member recruitment. The committee noted the difficulty in recruitment of co-opted members.
24. Paragraph 4.5.7 of the Constitution has included additional qualification restrictions on co-opted members in that it specifies the number and origin for a parental governor. As an example it states that 1 governor must be from the primary sector where the [2001 regulations](#) simply state that between 2 and 5 parent governors must be appointed.
25. The Constitution also enables the committee to appoint to 2 further co-optees but again that these have to be from a qualifying skill or experience area (teaching and support by social workers).
26. CYP O&S noted that the further qualifications added by council was restricting the potential pool of candidates and unanimously voted to recommend to Council to remove the additional qualifying restrictions.
27. Appendix 3 contains the proposed changes to the Constitution. The effect is that CYP O&S can appoint 3 parent governors (removing the requirement that they must be from a particular sector) and that the 2 additional co-optees do not need to have a particular skill or experience.
28. Children and Young People Scrutiny Committee met on [14 November 2023](#) and resolved to recommend to full Council to change the Constitution with regard to the recruitment of co-opted members: Appendix 3 reflects the resolutions made by Children and Young People Scrutiny Committee.

Community impact

29. The proposals do not have any community impact, nor do they link to other local or national strategies or policies. They are proposals that fall within Council's powers to make local arrangements.

Environmental Impact

30. The proposals do not have any environmental impact.

Equality duty

31. 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.

32. 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 policies and in the delivery of services. Equalities data is collected with the complaints form.

Resource implications

33. The changes to the reporting to Standards Panel may have resource implications if the change is adopted. The requirement for less formal meetings (2 Standards Panels) will free up officer and member time and resources. However, the new arrangements could lead to more contact time between officers and members, and even more formal meetings (albeit shorter and more focused). This will be monitored and even if there is more contact time, it is considered necessary for the benefits of focused feedback which is provided as it happens.

Legal implications

34. Under Section 28 of the Localism Act 2011, local authorities must have in place 'arrangements' under which allegations that an elected or co-opted councillor of the authority or of a town or parish council within the principal authority's area has failed to comply with the authority's Code of Conduct can be considered and decisions made on such allegations.

35. It is for the Council, as principal authority to decide the details of the arrangements, as a matter of local choice.

Risk management

36. There are no risks arising directly from the report.

Consultees

37. At its meeting on 12 December 2023, Audit and Governance Committee considered the proposals in Appendix 1. Committee made the following resolution:

That Committee:

- (a) Considered and approved the proposals in principle; and
- (b) recommended to full Council to change the Constitution as set out in Appendix 1.

38. The Independent Persons were consulted before Audit and Governance Committee on 12 December 2023 and discussions centred on the purpose of review, being that of considering trends that will inform allocation of appropriate resources to the process, as well as identifying any areas for development and training that might reduce the number of complaints received, rather than a detailed review of the Monitoring Officer's decisions.

39. The Group leaders were also consulted before Audit and Governance Committee on 12 December 2023. A response was received from group leaders and where possible the recommendations were amended in consideration of the views expressed. The response included elements that are wider than the subject matter of this report which is principally around transparency and reporting. That included redrafting the guidance and arrangements adopted by the Council so that it is clearer but would not be changing the procedure. If the proposals in this report are adopted by Council, the proposed redrafting can incorporate Council's resolutions and can be published in accordance with consequential changes to process upon approval by the Monitoring Officer.

40. Group Leaders were consulted on this report on 19 February 2024.

Appendices

Appendix 1 - Changes to the Constitution

Appendix 2 - Amendment to Standards Procedure

Appendix 3 – Amendment to Co-Optees in Children and Young People Scrutiny Committee

Background papers

None identified

Useful links:

[Constitution Section 5 - Other functions.](#)

[Constitution Part 2 Article 8-The audit and governance committee.](#)