

Subject:	Review of the Constitution		
Date of Meeting:	6 April 2017 9 February 2017 – Policy, Resources & Growth Committee		
Report of:	Executive Lead for Strategy Governance and Law		
Contact Officer:	Name:	Elizabeth Culbert	Tel: 29-1515
	Email:	elizabeth.culbert@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report proposes changes to the Council's Constitution for approval by Policy, Resources & Growth Committee and Council. The issues set out in the report have been considered by the cross party Constitution Working Group and Leaders Group.

2. RECOMMENDATIONS:**Policy, Resources & Growth Committee**

- 2.1 That the Policy, Resources & Growth Committee approves the recommendations set out at paragraphs 3.20 and 3.21 (Scheme of Delegations, including to Field Officers) and notes the information at paragraphs 3.8 and 3.9 (Officer Employment Procedure Rules).
- 2.2 That the Policy, Resources & Growth Committee recommends to full Council the proposed changes to the Council's constitution as set out at paragraphs 3.2 to 3.19 in the report and Appendices 1-3.

Full Council

- 2.3 That the proposed changes to the Council's constitution recommended in paragraph 2. 2 above be approved and adopted.

Both Policy, Resources and Growth Committee and Full Council

- 2.3 That the Chief Executive and Monitoring Officer be authorised to take all steps necessary or incidental to the implementation of the changes agreed by the Committee or Full Council and that the Monitoring Officer be authorised to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.4 That, subject to 2.5 below, the changes come into force immediately following approval by PR&G and full Council.

- 2.5 That the changes referred to in paragraph 3.6 (limiting the time for debates on reports for information) come into force following annual Council and that the changes referred to in paragraphs 3.19 to 3.23 (delegations regarding field offices) come into force as soon as the field officers are appointed.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Council is required to keep its constitution under review with a view to achieving efficiency, economy and effectiveness. The Cross-Party Constitutional Working Group (CWG) was set up to assist with this by considering proposals and advising the Council on proposed changes to the constitution. The current Members of the CWG are Councillors Dee Simson, Clare Moonan and Leo Littman. This report sets out the proposals agreed by the CWG and Leaders Group in December 2016 and January 2017.

Audit and Standards Committee

- 3.2 Revised terms of reference have been agreed by the Audit and Standards Committee Working Group, which met at the direction of the Audit and Standards Committee in November 2016.
- 3.3 The proposed new terms of reference are attached at Appendix 1 with tracked changes. The changes update the current terms of reference and bring them in line with current best practice in this area.

Council Procedure Rules

- 3.4 Amendments to committee reports are required to be submitted before 10am on the date of committee. Officers have raised concerns about substantive and complex amendments requiring legal and financial advice being submitted close to or after the deadline. This creates issues for the committee in being able to consider an amendment if the relevant financial or legal implications are not available.
- 3.5 In addition, where members seek to move oral amendments, this can make the proposals difficult to follow. It is therefore recommended that express provision be inserted into the Council Procedure Rules requiring the proposer to provide written copies of any late amendments. The proposed additional wording is shown at Appendix 2 with tracked changes.

Council meetings

- 3.6 The CWG considered a number of proposals regarding the timing and efficient running of Council meetings. The CWG supported the proposal to introduce a time limit of 15 minutes on the time allowed for consideration of reports for information (as opposed to decision) at full Council from the start of the next municipal year.
- 3.7 CWG noted the need to secure collaboration between the Groups, as well as the desire to ensure that Council meetings were more evenly spread throughout the year.

Review of the Officer Employment Procedure Rules

- 3.8 The terms and conditions of service for the Chief Executive are laid down by the Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities. With effect from 13 October 2016, a new model procedure for dealing with disciplinary matters became part of the Chief Executive's conditions of service.
- 3.9 As a result of these changes, it is necessary to review the Officer Employment Procedure Rules at Part 7.6 to ensure that disciplinary matters relating to the Chief Executive will be undertaken in accordance with the JNC model procedure. Policy, Resources & Growth Committee is asked to note that the Officer Employment Procedure Rules will be reviewed to ensure that they comply with legislative requirements and with the JNC Terms and Conditions of Service.

Budget and Policy Framework

- 3.10 Where a decision of committee has consequences for the Council's ability to manage within the budget it has allocated, there is currently no requirement that the relevant decision include specific detail setting out how the budget deficit will be met.
- 3.11 It is proposed that this be remedied by specifying a requirement that any committee making a decision which creates a financial commitment on the Council that sits outside the agreed budget and policy framework shall specify the detail of how the relevant commitment will be funded. Any alternative proposal must also be consistent with virement rules set out in the Council's Financial Regulations.
- 3.12 It is proposed that the additional wording set out at Appendix Three be included in the Scheme of Delegations to Committees and Sub-Committees and the Budget and Policy Framework Part 7.2.

Proposal to remove the requirement to consult a valuer before officers exercise their authority to enter into leases

- 3.13 In April 2009, the Cabinet Member for Housing authorised the Council to lease accommodation for up to 10 years for the purposes of providing long term temporary accommodation for households who were homeless, including those who ASC and Children's services had a duty to provide accommodation for.
- 3.14 Authority to negotiate the final heads of Terms with each landlord was delegated to the Director ASC & Housing in consultation with the Council's Valuer (as well as the Head of Law and Finance and Property). However, this process is prone to cause delay.
- 3.15 Both Housing and Property & Design agree that the expertise in relation to appropriate valuation of leases for temporary accommodation rests with the Housing Service.
- 3.16 It is proposed that the requirement relating to consulting the Council's Valuer before officers exercise their authority to enter into leases for up to 10 years is

removed. It is recommended that authority be given to amend the Constitution in these terms subject to the following assurances:-

- The lease templates used are agreed by Legal Services;
- The leases are sealed by Legal Services at completion;
- Internal Audit review a sample of the leases twice per year;
- The proposed rent is signed off by the Acquisitions Manager and the payments signed off by the Head of Temporary Accommodation & Allocations.

Incorporation of PREVENT duty to Schemes of Delegation

- 3.17 It is proposed to incorporate reference to the PREVENT duty for local authorities to the Scheme of Delegation to Committees and Sub-Committees (Neighbourhoods, Communities and Equalities Committee) and the Scheme of Delegations to Officers (Executive Director Neighbourhoods, Communities and Housing). This duty was introduced by s26 of the Counter Terrorism and Security Act 2015 and it requires local authorities, in the exercise of their functions, to have 'due regard to the need to prevent people from being drawn into terrorism'.

Changes to the NCE Committee

- 3.18 The CWG proposed that the name of the Neighbourhoods, Communities and Equalities Committee be amended to include the word 'Inclusion' so that the Committee would be named the Neighbourhoods, Inclusion, Communities and Equalities Committee (NICE).

Scheme of Delegations to Officers, including Field Officer delegations

- 3.19 It is proposed that new 'Field Officer' posts be created to carry out enforcement and inspection activities across the full range of Council functions. This will enable officer resources to be maximised so as to increase overall effectiveness.
- 3.20 The Field Officers will be cross-cutting and will be required to exercise the authority's enforcement powers on behalf of more than one Director. This necessitates a different approach to the Council's delegations from the current approach whereby officers are authorised to act by their Executive Director.
- 3.21 The Constitutional Working Group considered the available options for amending the Scheme of Delegations to Officers. It took the view that the optimum approach is for the Scheme of Delegation to Officers to delegate relevant enforcement powers directly to Field Officers, this on the basis that they exercise their powers in accordance with the direction and guidance of the Executive Director (or other lead officer) who has responsibility for the function being delivered. This solution aims to provide delegations which are clear and robust whilst ensuring that direction and quality assurance is still given by officers with relevant specialist expertise.
- 3.22 The Committee is recommended to grant to the Field Officers delegated powers to take enforcement action in relation to all of the Council's functions, subject to any instruction given by the Chief Executive or relevant Executive Director, this

on the basis that any such delegations will be enacted as and when the arrangements for the Field Officers are in place.

- 3.23 The Committee is further recommended to grant to the Monitoring Officer delegated authority to make a small number of minor additional amendments to the Scheme of Delegations where in the view of the Monitoring Officer these serve to clarify the nature and extent of the delegations in the Scheme, including by describing them in a functions-based way.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The Committee or Council could decide not to implement the changes set out in the report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The Cross Party Constitutional Working Group have been consulted and Leaders group considered the proposals set out in the report.

6. CONCLUSION

- 6.1 The proposals reflect the Council's ongoing efforts to review and streamline its processes in an ongoing way so as to achieve both financial savings and increased efficiency. It is therefore recommended that they are pursued.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The challenging financial environment for Local Government means that when approved budget plans are withdrawn or deferred by committee, for whatever reason, the financial commitment this creates becomes increasingly difficult to manage in year. Similarly, the creation of other new financial commitments in-year also requires careful consideration. In both cases, to improve financial resilience and ensure the Council's budget position remains balanced, the Council's constitution should be amended as proposed above to ensure that decisions are not made that are outside of the approved Budget and Policy Framework. In effect, all decisions that would create a financial commitment should be accompanied by alternative funding proposals to maintain the Council's financial position. Any alternative proposals should be consistent with the Council's Financial Regulations, particularly in respect of virement (budget transfer).

Finance Officer Consulted: Nigel Manvell

Date: 22/01/17

Legal Implications:

- 7.2 PRG and where specified in the report, full Council, have the authority to make the changes to the Council's constitution as set out in the report. The intention is for the proposals to be implemented with immediate effect unless otherwise indicated.

Lawyer Consulted: Elizabeth Culbert

Date: 18/01/17

Equalities Implications:

7.3 None

Sustainability Implications:

7.4 None

Any Other Significant Implications:

7.5 None identified

SUPPORTING DOCUMENTATION

Appendices:

1. Amended Terms of Reference for Audit and Standards Committee with track changes
2. Amended Council Procedure Rule 15.4 (Notice of Amendments)
3. Amendments to Budget and Policy Framework Rules

