

## **CITY COUNCIL – 14 MAY 2018**

### **REPORT OF THE LEADER OF THE COUNCIL**

#### **AMENDMENTS TO THE CONSTITUTION**

##### **1 SUMMARY**

- 1.1 The Local Government Act 2000 requires the Council to keep its Constitution up to date. The amendments to be reported and/or agreed are outlined below.
- 1.2 Councillors may wish to make reference to the current Constitution, which can be viewed online via the following link <http://beta.nottinghamcity.gov.uk/about-the-council/nottingham-city-councils-constitution/>. If you have any difficulty accessing the Constitution, please contact Constitutional Services on 0115 8764301.

##### **2 RECOMMENDATIONS**

- 2.1 In relation to disciplinary and dismissal arrangements for particular statutory officers:
- (a) to approve the establishment of an Investigating and Disciplinary Committee(IDC), an Appeals Committee and an Independent Panel, as required by the amended Local Authorities (Standing Orders) (England) Regulations 2001 to conduct disciplinary proceedings relating to the Chief Executive, the Chief Finance Officer and Monitoring Officer. More detail on these committees can be found in paragraphs 5.2;
  - (b) to note that appointments to the IDC and the Appeals Committee will be sought from the Political Groups via the in-year appointments process;
  - (c) to approve the amendment of the Appointments and Conditions of Service (ACOS) Committee's Terms of Reference as outlined in paragraph 5.3;
  - (d) to approve the amendment of the Officer Employment Procedure Rules as outlined in paragraph 5.4;
  - (e) to approve the amendment of Council's terms of reference as outlined in Paragraph 5.5 and 5.9;
  - (f) to approve the amendment of the Terms of Reference for the Appointments and Conditions of Service (ACOS) Committee and the Audit Committee to enable these committees to manage grievances relating to or raised by the Chief Executive as outlined in paragraphs 5.6 – 5.7.
- 2.2 To amend Planning Committee Terms of Reference (as detailed in Appendix C) to:
- (a) clarify the remit of the Planning Committee as being for all those non-executive functions of the Planning Authority listed in the Functions Regulations;
  - (b) include Ward Councillor speaking rights, as agreed by the Committee.
- 2.3 To adopt the Code of Conduct for Co-opted Members, attached as Appendix D, to this report, and note that reference to Co-optees will be deleted from the current Councillor Code of Conduct.

- 2.4 To note that the City Council's representation on the Nottinghamshire Police and Crime Panel has been reduced to two.
- 2.5 To amend Financial Regulations to include dispensation for non-executive spend, and the reporting methods for this, as detailed in Appendix E.
- 2.6 To approve a reduction in membership on the following committees:
  - (a) Overview and Scrutiny Committee from 14 (13:1) to 12 (11:1);
  - (b) Health Scrutiny Committee from 14 (13:1) to 12 (11:1);
  - (c) Appointments and Conditions of Service Committee from 11 (10:1) to 8 (7:1).
- 2.7 To change the title of the Area 7 Committee to Wollaton and Lenton Abbey, to reflect that it covers both Wollaton East and Wollaton West.
- 2.8 In relation to the Health and Wellbeing Board:
  - (a) to note that the Terms of Reference for the Health and Wellbeing Board Commissioning Sub Committee were amended at the Health and Wellbeing Board in March 2018, as detailed in Appendix C;
  - (b) to delegate authority to the Director of Legal and Governance to approve the Clinical Commissioning Group membership and joint Chair of the Health and Wellbeing Board Commissioning Sub Committee.
- 2.9 To amend the table of delegated functions in the Licensing Committee/Panels Terms of Reference to reflect amendments to the Licensing Act, as detailed in Appendix C.
- 2.10 To amend Standing Order 4(e) to allow any independent Councillors (ie those not part of a political group) to submit one question to be answered at Council meetings.
- 2.11 To note the Standards Hearings Sub Committee Terms of Reference, detailed in Appendix C, established by the Standards Committee in September 2017 to formally consider complaints that Councillors or co-opted members have breached the code of conduct.
- 2.12 To note the Joint Committee on Strategic Planning and Transport Terms of Reference, detailed in Appendix C, which were approved by the Committee.
- 2.13 To note that the Members' Allowance Scheme has been amended to reflect the application of 2% pay increase, as detailed in paragraph 3.8 and Appendix F.
- 2.14 To note the executive change to the Scheme of Delegation approved by the Leader, as detailed in Appendix G.
- 2.15 To approve the non-executive changes to the Scheme of Delegation, as detailed in Appendix G.
- 2.16 To approve the amendments to the relevant parts of the Constitution as required by the above changes.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 The Local Government Act 2000 requires the Council to keep its Constitution up to date.
- 3.2 Arrangements for any disciplinary procedures in relation to the Chief Executive, Chief Finance Officer and Monitoring Officer are outlined in the Local Authorities (Standing Orders) (England) Regulations 2001. The Regulations have been amended and a revised national agreement has been reached on procedures that should be followed. In order to comply with the agreement and Regulations, the establishment of three new committees of Council and amendment to the ACOS Committee's Terms of Reference and the Officer Employment Procedure Rules is required.
- 3.3 The Code of Conduct sets out the conduct expected of individuals when they are acting in their capacity as a councillor or co-opted member of a Council committee. To make sure the Code of Conduct for co-opted members is clearly relevant, a specific Code of Conduct for Co-opted Members has been developed.
- 3.4 Financial Regulations currently only specify the processes for dispensation in relation to executive spend, but the Council has a number of non-executive committees that are also responsible for budgets. To ensure the processes are clear, dispensation procedures have been included for non-executive spend.
- 3.5 The Health and Wellbeing Board Commissioning Sub Committee Terms of Reference were amended by the Health and Wellbeing Board to ensure they reflect changes to areas of responsibility.
- 3.6 The table of delegated functions in the Licensing Committee/Panels Terms of Reference need to be amended to reflect changes made to the Licensing Act.
- 3.7 Standing Orders are being amended to permit independent councillors to submit one question per Council meeting to ensure that all councillors have equal rights.
- 3.8 In January 2017 Council agreed all recommendations for amendments to the Members' Allowances Scheme made in a report of the Independent Remuneration Panel. The Panel recommended, and Council agreed, that increases in Councillors' allowances should be indexed to increases in employees' pay. A 2% increase has been applied to employee pay from 1 April 2018. The same rate will therefore be applied to Councillors' allowances and the scheme will be amended to reflect the revised allowances.
- 3.9 Scheme of Delegation 208 needs to be amended to capture standalone requests to modify or discharge planning obligations which are not related to an extant planning application, which were missed when the delegation was originally drafted.

### **4 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 4.1 Not updating the Constitution is not an option as it is required by the Local Government Act 2000 to ensure clarity of rights and duties to enable Council to conduct its business lawfully and in line with Council policy.

## **5 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

### **5.1 Disciplinary Procedures, including Dismissal, Relating to Chief Officers**

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, together with the recently agreed National Salary Framework and Conditions of Service Handbooks for Chief Executives, require changes to existing disciplinary and dismissal procedures in relation to the Head of Paid Service (Chief Executive). The newly revised Conditions of Service Handbook for Chief Officers suggests using the process described in the Chief Executive Handbook for Disciplinary Procedures including dismissal for the Section 151 Officer and Monitoring Officer.

The new procedure was considered for approval by the ACOS Committee on 7 November 2017 but, for information, a summary of the disciplinary and dismissal procedure contained in the Chief Executive national agreement is attached at Appendix A to this report. This forms the basis of the new procedure in respect of the Chief Executive, Section 151 Officer and Monitoring Officer.

The changes also require the creation of three standing committees of Council and amendments to the ACOS Committee Terms of Reference and Officer Employment Procedure Rules which require approval by Council.

### **5.2 Three standing committees are required for the following purposes in relation to Chief Officer disciplinary proceedings:**

#### **a) Investigating and Disciplinary Committee (IDC)**

To consider whether an allegation against the Chief Executive, Section 151 Officer or Monitoring Officer, requires further investigation, to manage the investigation and ultimately make recommendations for dismissal to Full Council. It is recommended that this Committee is politically balanced and made up of five Councillors, one of whom should be a member of the Executive. The terms of reference for this committee are outlined in Appendix C to this report.

#### **b) Appeals Committee**

To consider any appeals made by the Chief Executive, Section 151 Officer or Monitoring Officer regarding any actions short of dismissal imposed by the IDC. It is recommended that this Committee is politically balanced and made up of five Councillors, one of whom is a member of the Executive. The members cannot also be members of the IDC. The terms of reference for this committee are outlined in Appendix C to this report.

#### **c) Independent Panel**

Where the IDC recommends dismissal, a meeting of the Independent Panel will be convened to consider the independent investigator's report and make recommendations to Council to be considered alongside the recommendations of the IDC. The membership of this Panel is to be two Independent Persons, one of whom has already been appointed by Council as part of the Councillor Complaints procedures. The second member will be sought from another local authority should the need arise for this Panel to meet. The terms of reference for this panel are outlined in Appendix C to this report.

### **5.3 The Terms of Reference for the ACOS Committee currently includes, at point (j), the power to appoint an independent person to investigate matters of misconduct and capability involving the Head of Paid Service, Section 151 Officer and Monitoring Officer. Under the new arrangements this is to be a responsibility of the Investigating**

and Disciplinary Committee. It is therefore recommended that point (j) of the ACOS Committee's terms of reference is deleted.

- 5.4 The Officer Employment Procedure Rules, contained with Part Four of the Constitution outline arrangements for disciplinary action, including dismissal, against Chief Officers. These now require updating and it is proposed that paragraphs 4.3 to 4.6 are replaced with a new appendix consisting of Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) detailing the revised procedure which complies with the amended regulations and the Chief Executive National Salary Framework and Conditions of Service Handbook. Schedule 3 is attached as Appendix B to this report.
- 5.5 Council's Terms of Reference currently refer to the old procedure in relation to the dismissal of the Chief Executive. It is recommended that point m) of Council's terms of reference is amended to read:  
"considering any recommendation from the Investigation and Disciplinary Committee for the dismissal of the Chief Executive, having first taken into account the views of the Independent Panel in accordance with The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;"
- 5.6 **Grievance Procedures Involving the Chief Executive**  
In addition to amending the procedures relating to disciplinary and dismissal action involving the Head of Paid Service, Monitoring Officer and Section 151 Officer the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, together with the recently agreed National Salary Framework and Conditions of Service Handbooks for Chief Executives also requires amendments to Grievance Procedures.
- 5.7 To comply with the requirements it is recommended that the terms of reference of the Appointments and Conditions of Service Committee (ACOS) are amended giving it responsibility for considering any Grievances relating to or raised by the Chief Executive. It is also recommended that the terms of reference for the Audit Committee are amended, giving it responsibility for considering any appeals made by an employee against decisions by the Appointments and Conditions of Service Committee relating to a grievance made against the Chief Executive. It is further recommended that the terms of reference for both bodies are amended to ensure that councillors involved at different stages of the process have not previously considered the issues as members of another committee.
- 5.8 The Regulations and Handbook recommend that any appeals made by the Chief Executive against a decision of ACOS to be considered by Council. It is therefore recommended that provision for this is added to the terms of reference for Council.

## **6 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY)**

- 6.1 The report has no financial implications. Support for the committees will be provided from within existing resources.

## **7 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

- 7.1 With effect from 11 May 2015, the Local Authorities (Standing Orders) (England) Regulations 2001 were amended requiring that specified amendments be incorporated into the standing orders of local authorities regarding disciplinary action (in particular, dismissal) in relation to the head of paid service, chief finance officer and monitoring officer. The core elements of these amendments were incorporated into the standing orders. The current proposed change incorporates the required changes to standing orders in their entirety.
- 7.2 The core statutory requirement of the revised standing orders is that the head of paid service (Chief Executive), chief finance officer (Section 151 Officer) and monitoring officer may not be dismissed by way of disciplinary action without having ascertained the advice, views or recommendation of a panel of at least 2 independent persons (the panel being a committee appointed under section 102(4) of the Local Government Act 1972 and the independent persons being persons appointed by the authority under section 28(7) of the Localism Act 2011).
- 7.3 It is a matter for each local authority (subject to any relevant trade union/employee consultation) to decide the appropriate disciplinary procedure to be adopted to ensure compliance with the prescribed standing orders. Under the Council's Constitution, it is the role of Appointments and Conditions of Service Committee to decide upon/formulate disciplinary procedures in relation to employees of the Council. The three committees/panels referred to at paragraph 5.2 above are the specific committees/panels that will be required in the event that ACOS adopts the form of disciplinary procedure (for the Chief Executive, Chief Finance Officer and Monitoring Officer) as agreed by the Joint Negotiating Committee for Chief Executives of Local Authorities. The recommendations at paragraphs 2.1 to 2.4 above should be subject to ACOS adopting the proposed disciplinary and grievance procedures as referred to above and will be subject to relevant consultation processes with recognised trade unions and employees.

Advice provided by John Bernard-Carlin (Team Leader (Housing, Employment & Education Team,) Legal Services)

## **8 EQUALITY IMPACT ASSESSMENT (EIA)**

- 8.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because the report does not propose and changes to existing policy. An EIA was considered by the ACOS Committee as part of its consideration of the new policy.

## **9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

- 9.1 None

## **10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

10.1 Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

10.2 National Salary Framework and Conditions of Service Handbooks for Chief Executives

10.3 Local Government Act 2000

10.4 Localism Act 2011

**COUNCILLOR JON COLLINS  
LEADER OF THE COUNCIL**