

CITY COUNCIL – 9 MARCH 2015

REPORT OF THE LEADER

CONSTITUTIONAL UPDATES

1. SUMMARY

- 1.1 The Local Government Act 2000 requires the Council to keep its constitution up to date. Amendments are necessary to reflect updates to the Constitution since September 2014 and to reflect the proposals in this report.
- 1.2 Councillors may wish to refer to the constitution, Version 7.14, which can be viewed on line via the following link:
<http://www.nottinghamcity.gov.uk/article/24275/Nottingham-City-Councils-Constitution>.

2. RECOMMENDATIONS

It is recommended that Council:

- 2.1 notes the changes that I have agreed to the terms of reference for the Executive Board Commissioning Sub Committee, and its new name, Commissioning and Procurement Sub-Committee, following inclusion of procurement decision making in the remit of the sub-committee (see Appendix 1);
- 2.2 notes the change to the terms of reference for the Appointments and Conditions of Service Committee to reflect changes to pension arrangements, agreed by the Monitoring Officer (see Appendix 2);
- 2.3 notes the delegation I have agreed to enable colleagues to apply the Advanced Payment Code of the Highways Act 1980 (see paragraph 5.4 and Appendix 3);
- 2.4 notes the delegation I have agreed in relation to flood management (see paragraph 5.5 and Appendix 3);
- 2.5 approves an addition to the terms of reference of the Trusts and Charities Committee to enable urgent decisions to be made between scheduled meetings (see paragraph 5.6);
- 2.6 approves the proposed changes to the membership and voting arrangements for the Health and Wellbeing Board as outlined in paragraph 5.7.
- 2.7 approves an amendment to the Council's petition scheme to require petitions triggering a formal debate to clearly and primarily relate to the City Council's functions and its administrative area (see paragraph 5.8);
- 2.8 adopts a policy to:
 - (a) require an enhanced Disclosure and Barring Service check of all city councillors immediately after their election and maintained thereafter through their term of office on the grounds that all councillors have the potential to serve or be substitutes on a committee discharging education or social care functions or may become members of the Executive; and

(b) disbar any councillor who does not undertake the checks referred to in (a) above, or whose check discloses matters which, in the opinion of the Corporate Director for Children and Adults and Monitoring Officer, may present a risk to children and vulnerable adults, from all offices and membership of committees, sub committees, panels or outside bodies, appointments to which are made by the Leader, Council or other body of the Council (see paragraphs 5.9 to 5.13);

2.9 adopts the revised Code of Conduct for Members and Co-opted Members set out in Appendix 4 (see paragraph.5.15) and the revised terms of reference for the Standards Committee set out in Appendix 5.

3. REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

3.1 The Local Government Act 2000 requires Council to keep its constitution up to date.

4. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

4.1 The Constitution ensures clarity of rights and duties to enable the Council to conduct its business lawfully and in line with Council policy. Not to update the Constitution is therefore not an option.

5. BACKGROUND

5.1 The Constitution needs to be updated from time to time to reflect changes in legislation and to ensure clarity of rights and duties. This report is submitted further to a report presented to Council on 8 September 2014.

5.2 The terms of reference of the Executive Board Commissioning Sub Committee have been updated to include responsibility for procurement and the Committee has been renamed Commissioning and Procurement Sub Committee (see Appendix1).

5.3 The terms of reference for the Appointments and Conditions of Service Committee need to be updated following changes to the Local Government Pension Scheme (LGPS) governed by the LGPS Regulations 2013 and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. The Monitoring Officer has agreed these changes under delegated authority (see Appendix 2).

5.4 I have agreed a delegation to provide relevant officers with the authority to apply sections 219-225 of the Highways Act (Advanced Payment Code). This enables the Council to ensure that, before work begins to erect new buildings in private streets, sums of money equivalent to that needed to construct the roads serving the buildings are deposited, or secured via surety, by developers. This in turn will ensure that roads serving the development can be completed to a suitable standard for future adoption (see Appendix 3).

5.5 I have agreed a delegation to provide relevant officers with the authority to discharge the Council's functions, duties and powers under Part 1 and Schedule 1 of the Flood and Water Management Act 2010 and consent works on ordinary watercourses (see Appendix 3).

5.6 There are occasions where urgent decisions need to be made by the Trusts and Charities Committee in between scheduled meetings. To enable efficient decision

making an addition to the Committee's terms of reference is proposed as follows:

(g) to approve expenditure for urgent or necessary works, repairs or other actions, up to the value of the maximum threshold for an Officer Decision, by the Chair and Vice-Chair, in consultation with an Opposition Councillor, with such approvals reported to the next meeting of the Trusts and Charities Committee.

- 5.7 It is proposed that membership and voting arrangements for the Health and Wellbeing Board are amended to reflect organisational and personnel changes within individual organisations as follows:
- a) add the Nottingham City Council Strategic Director for Early Intervention as a non-voting member of the Health and Wellbeing Board; and
 - b) add the Nottingham City Council Director for Adult Social Care as a voting member of the Health and Wellbeing Board (taking the Director for Adult Social Services vote), leaving the Nottingham City Council Corporate Director for Children and Adults with one vote (as the Director for Children's Services).

The Health and Social Care Act 2012 requires that the core membership of Health and Wellbeing Boards must include the Director of Adult Social Services and the Director of Children's Services. Currently, in Nottingham City Council these statutory roles are held by the same post holder (Corporate Director for Children and Adults) and therefore until now that post holder has had two votes on the Board. Splitting these votes as described in b) above will enable better representation of relevant issues so that the Corporate Director for Children and Adults has one vote (as Director of Children's Services) and the Nottingham City Council Director for Adult Social Care is added to the membership as a voting member, taking the Director of Adult Social Services vote.

- 5.8 The Local Democracy and Construction Act 2009 made it a statutory duty for Council's to adopt a formal petition scheme. The Localism Act 2011 repealed that duty as an unnecessary burden on Councils' resources but this Council has, to date, chosen to retain its scheme in order to support and encourage democratic engagement with citizens. I consider, however, that sensible boundaries should be applied to this and, so, am recommending that the scheme be amended so that petitions meeting the required threshold to trigger a debate at a Council meeting must clearly primarily relate to the City Council's functions and its administrative area.
- 5.9 There is no legal requirement for any councillor to undergo checking via the Disclosure and Barring Service (DBS) solely by virtue of their position as a councillor. However, it has been the Council's practice to request that all councillors have a DBS check. It is timely, in advance of the election of new councillors, and in the light of the Rotherham reports, to review current arrangements to ensure that all appropriate steps are taken for the safeguarding of children and vulnerable adults and that such arrangements are as robust as they can be.
- 5.10 Councils have discretion, under the provisions of the Rehabilitation of Offenders Act regulations, to carry out enhanced checks on any councillors occupying positions which it deems to be 'discharging' social services and education functions. The Council is able to construe this as meaning 'all councillors' on the basis that they may potentially be members or substitutes of such committees or become members of the Cabinet. It is proposed that Council should exercise this discretion and agree as policy that all councillors should be required to have such a DBS check immediately on being elected and maintain it thereafter for their term of office. This will strengthen the

Council's governance arrangements and public confidence in councillors.

- 5.11 In addition, Council is asked to agree as part of the policy that any councillor who has not complied with the requirement to have a DBS check within one month of being elected, or fails to maintain a valid DBS check, or whose check discloses matters which, in the opinion of the Corporate Director for Children and Adults and the Monitoring Officer, may present a risk to children and vulnerable adults, is disbarred from all offices and membership of committees, sub committees, panels or outside bodies, appointments to which are made by the Leader, Council or other body of the Council.
- 5.12 It is proposed that management of the process for implementing and monitoring DBS checks for councillors will transfer from Democratic Services to Children and Adult Services with immediate effect.
- 5.13 The Constitution will need to be amended to reflect that appointments, as described in paragraph 5.11, above are subject to the requirements of the Council's DBS policy.
- 5.14 I am also aware that Overview and Scrutiny arrangements are under review and I would support any changes which reinforce our safeguarding functions.
- 5.15 Changes are required to the Code of Conduct to reflect national requirements, particularly in relation to Members' Interests. In the light of national concerns, I recently asked the Monitoring Officer to draft some new provisions expressly dealing with safeguarding of children, young people and vulnerable and elderly adults and I recommend these be adopted. Councillors will note that these include provisions for failure to comply with requests for a councillor, or co-opted member, to have carried out a DBS check (at whatever level required) to be a Code breach, as will failure to attend mandatory safeguarding training. I have asked the Monitoring Officer and the Returning Officer to make prospective candidates for the forthcoming elections aware of this.

6. FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

The proposals in this report have no significant financial implications for the Council. The existing budget provision for DBS checks for 55 councillors will transfer from Democratic Services to the Children and Adults Department .

7. RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

- 7.1 The Council would be in breach of its statutory duty if it did not update its constitution and it is essential that there is clarity for councillors, colleagues, partners and citizens about rights and duties. The proposal to adopt a policy in respect of DBS checks for councillors is intended to further strengthen governance and in particular the appropriate safeguarding of children, young people and vulnerable and elderly adults in the City.

8. EQUALITY IMPACT ASSESSMENT (EIA)

- 8.1 An equality impact assessment of this proposal is not required as it does not involve new or changing policies, services or functions, or financial decisions which will have

an effect on services.

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 The Council's Constitution version 7.14

**COUNCILLOR JON COLLINS
LEADER OF THE COUNCIL**

Commissioning and Procurement Sub-Committee Terms of Reference

Purpose

To approve and oversee the delivery of the Council's commissioning and procurement work programme.

Responsibilities

- a. To review the implementation of the Commissioning Framework and Procurement Strategy across the City Council;
- b. to evaluate the impact of the Commissioning Framework;
- c. to evaluate the impact of the Procurement Strategy;
- d. to approve the Council's annual commissioning work programme;
- e. to approve the Council's annual procurement plan;
- f. to approve procurement, commissioning and de-commissioning proposals, including at key decision level, identified for review in the annual work programme and occasional urgent decisions not included in the work programme;
- g. to review, by exception, outcomes achieved and delivery against the Nottingham City Council Commissioning Framework's Guiding Principles;
- h. to review, by exception, outcomes achieved and delivery against the Nottingham City Council Procurement Strategy Guiding Principles;
- i. to approve and oversee the commissioning and implementation of the third sector Area Based Grant programme and any other voluntary sector grants of £25,000 and above.

The Committee is accountable to the Executive Board.

The Committee meets monthly and the membership comprises:

- The Portfolio Holder whose remit includes Commissioning (if not included in a portfolio listed below)
- The Leader of the Council
- The Portfolio Holder whose remit includes Procurement
- The Portfolio Holder for Adults and Health
- The Portfolio Holder for Children's Services
- The Portfolio Holder for Community Safety, Housing and Voluntary Sector
- The Portfolio Holder for Leisure and Culture

The Chair of the Committee will be the portfolio holder whose remit specifically includes Commissioning.

If the Chair of the Health and Wellbeing Board is not a member under any of the above categories, s/he will be a non-voting co-opted member.

Standing invitations, with speaking but not voting rights, are made to representatives of the Voluntary Sector, namely Nottingham Community and Voluntary Service and Nottingham Equal

The quorum for this Committee has been fixed at 2.

Executive Commissioning and Procurement Committee Members (6)

(No substitutes allowed)

Councillor Jon Collins

Councillor Dave Liversidge

Councillor Nick McDonald

Councillor David Mellen

Councillor Alex Norris

Councillor David Trimble

Standing invitations to:

Safdar Azam, Nottingham Equal

Helen Kearsley-Cree, Nottingham Community and Voluntary Service (NCVS)

Appointment and Conditions of Service Committee Terms of Reference

Amendments to paragraphs (g) and (h) to meet the requirements of LGPS Regulations 2013 and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. Deletions shown as struck through and additions shown in bold.

- (g) to determine redundancies, ill health retirements, flexible retirements and terminations of employment by mutual agreement on grounds of business efficiency, under the 85 year rule, in the interests of the efficient exercise of the Council's functions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ('the DCR') and any exercise of discretions to increase total LGPS ~~membership~~ **pension** and award additional LGPS ~~membership~~ **pension** for the Chief Executive, Deputy Chief Executive, Corporate Directors and Directors subject in the event of a proposed dismissal to relevant notification to the proper officer, and the Executive and relevant consultation with nominated elected members and relevant approval as specified in the Officer Employment Procedure Rules (Part 4);

- (h) to determine flexible retirements and terminations of employment by mutual agreement on the grounds of business efficiency, terminations of employment under the 85 year rule, in the interests of the efficient exercise of the Council's functions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ('the DCR') and any exercise of discretions to increase total LGPS ~~membership~~ **pension** and award additional LGPS ~~membership~~ **pension** for any employee who is part of the Senior Leadership Management Group below the level of Director. The Committee also determines terminations of employment by mutual agreement, and following consultation with the appropriate Portfolio Holder(s), on the grounds of business efficiency under the DCR for employees where any proposed compensation payment is in excess of £30,000;

New Executive Delegations

Description	Legislation	Executive or Non-Executive	Officer(s) to whom function delegated
<p><u>The Advanced Payment Code (APC)</u></p> <p>To implement the legal process (APC) in which developers who are to construct buildings fronting private streets are required to deposit monies or give security to cover the cost of proposed road works.</p> <p>To approve a procedure for the operation of the APC.</p> <p>To grant exemptions from the APC where justified in accordance with the legislative provisions.</p>	<p>Highway Act 1980 - Section 219 – 225</p>	<p>Executive</p>	<p>Corporate Director for Development and Growth</p> <p>Director for Planning and Transport</p> <p>Head of Service, Traffic and Safety</p>

Description	Legislation	Executive or Non-Executive	Officer(s) to whom function delegated
<p><u>Flood and Water Management Act</u></p> <p>Discharge the Council's functions, duties and powers under Part 1 and Schedule 1 of the Flood and Water Management Act 2010</p>	<p>Flood & Water Management Act – Part 1 and Schedule 1</p>	<p>Executive</p>	<p>Corporate Director for Development and Growth</p> <p>Director for Planning and Transport</p> <p>Head of Service, Traffic and Safety</p>
<p><u>Consent Works on Ordinary Watercourses</u></p> <p>The power to give consent for:-</p> <ul style="list-style-type: none"> • The erection or alteration of any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or the raising or other alteration of such obstruction • The erection or 	<p>Land Drainage Act 1991, Section 23</p>	<p>Executive</p>	<p>Corporate Director for Development and Growth</p> <p>Director for Planning and Transport</p> <p>Head of Service, Traffic and Safety</p>

Description	Legislation	Executive or Non-Executive	Officer(s) to whom function delegated
<p>alteration of any culvert that would be likely to affect the flow of any watercourse</p> <p>The operation of any drainage works, under the control of any Internal Drainage Board or local authority, so as to manage the level of water in a watercourse for the purposes of facilitating spray irrigation</p>	<p>Land Drainage Act 1991, Section 61F</p>		

NOTTINGHAM CITY COUNCIL

CODE OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council but is not one of its elected members.

1. Application

This Code of Conduct applies to you whenever you are acting in your capacity as a member of Nottingham City Council, including –

- 1.1 at formal meetings of the Council, its Committees and Sub-Committees, the Executive Board and its Committees and Sub-Committees;
- 1.2 when acting as a representative of the Council;
- 1.3 in making any decision as a Portfolio Holder or a Ward Councillor;
- 1.4 in discharging your functions as a Ward Councillor;
- 1.5 at briefing meetings with colleagues;
- 1.6 at site visits; and
- 1.7 when corresponding with the Council other than in a private capacity.

2. Principles

The principles underpinning this Code of Conduct are that you will act with:

Selflessness
Integrity
Objectivity
Accountability
Openness
Honesty
Leadership
Respect for others
A commitment to uphold the law

3. General Conduct

You must –

- 3.1 provide leadership to the Council and the communities within its area, by personal example;
- 3.2 respect others and not bully any person;
- 3.3 recognise that colleagues (other than political assistants) are employed by and serve the whole Council;

- 3.4 respect the confidentiality of information which you receive as a member –
 - (a) not disclosing confidential information to third parties unless required to do so by law or where there is a clear and over-riding public interest in doing so; and
 - (b) not obstructing third parties' legal rights of access to information;
- 3.5 not misconduct yourself in a manner which is likely to bring the Council into disrepute;
- 3.6 use your position as a member in the public interest and not for personal advantage;
- 3.7 accord with the Council's reasonable rules on the use of public resources for private and political purposes;
- 3.8 exercise your own independent judgement, taking decisions for good and substantial reasons –
 - (a) attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views of political groups;
 - (b) paying due regard to the advice of colleagues, and in particular to the advice of the statutory officers; and
 - (c) stating the reasons for your decisions where those reasons are not otherwise apparent;
- 3.9 account for your actions, particularly by supporting the Council's scrutiny function; and
- 3.10 ensure that, as far as within your powers, the Council acts within the law.

4. Disclosable Pecuniary Interests

You must -

- 4.1 comply with the statutory requirements to register, disclose and withdraw from participating in any matter in which you have a Disclosable Pecuniary Interest;
- 4.2 ensure that your register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your Disclosable Pecuniary Interests;
- 4.3 verbally declare the existence and nature of any Disclosable Pecuniary Interest at any meeting you attend where an item of business which affects or relates to the subject matter of that interest is to be considered, at or before that item of business is considered or as soon as you are aware of the interest;
- 4.4 'Meeting' means any meeting organised by or on behalf of the Council, including –
 - (a) any meeting of the Council, or a Committee or Sub-Committee of Council;
 - (b) any meeting of the Executive Board and any of its Committees or Sub-Committees
 - (c) in taking a decision as a Ward Councillor or as a Leader or a Portfolio Holder
 - (d) at any briefing by colleagues; and

- (e) at any site visit to do with business of the Council;
- 4.5 unless you have the benefit of a current and relevant dispensation in relation to the matter being considered you must:
- (a) not participate, or participate further, in any discussions of the matter at the meeting;
 - (b) not participate in any vote, or further vote, taken on the matter at the meeting; and
 - (c) remove yourself from the meeting while any discussion or vote takes place on the matter;
- 4.6 where you are able to discharge a function of the Council acting alone and you are aware that you have a Disclosable Pecuniary Interest in a matter being dealt with, or to be dealt with, by you in the course of discharging that function, you must:
- (a) not take any steps, or further steps, in relation to the matter (except for the purpose of enabling someone other than you to deal with the matter); and
 - (b) notify the Monitoring Officer (in writing) of that disclosable pecuniary interest within 28 days of becoming aware of the interest if the interest is not already entered in the register and has not already been notified to the Monitoring Officer.

5. Other Interests

- 5.1 In addition to the requirements of Paragraph 4, if you attend a meeting where any item of business is to be considered and you are aware that you have an 'Other Interest' in that item, you must verbally declare the existence and nature of that interest at or before that item of business is considered or as soon as you are aware of the interest;
- 5.2 You have an "Other Interest" in an item of business of the authority if it not a Disclosable Pecuniary Interest and
- (a) you are, or ought reasonably to be, aware that a decision in relation to an item of business to be transacted might reasonably be regarded as affecting your wellbeing or financial position, or the wellbeing or financial position of a member of your family or a person with whom you have a close association, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of your ward or the Council's administrative area, or
 - (b) it relates to or is likely to affect any of the interests listed in the Table in the Appendix to this Code in respect of a member of your family (other than a 'relevant person'*) or a person with whom you have a close association, or
 - (c) a reasonable member of the public, with knowledge of all the circumstances, would consider that you have an interest which would prejudice your judgement if you were involved in making any decision on that item of business

* your spouse or civil partner, a person you are living with as husband or wife, or a person you are living with as if are civil partners.

- 5.3 You are not required to notify the Monitoring Officer of 'Other Interests' for inclusion in the register. However, you are required to declare that interest and act in accordance with paragraphs 4.5 or 4.6 above.

6. Sensitive Interests

- 6.1 You must notify the Monitoring Officer of the details of sensitive interests but these details will not be included in any published version of the register.
- 6.2 If you have a sensitive interest you are required to declare that you have an interest to meetings (as required by paragraph 4.3 and 5.3 of this Code) but the detail of the interest need not be declared.

7. Gifts and Hospitality

- 7.1 You must, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the Council within 28 days of receipt.
- 7.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.
- 7.3 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Council for this purpose.

8. Disclosure and Barring Service Checks

- 8.1 You shall co-operate fully with any Disclosure and Barring Service checks (at whatever level) required under Council policies and practices or as required or requested by an appropriate officer of the Council (being the Corporate Director for Children and Adults and the Monitoring Officer)

9. Safeguarding

- 9.1 Notwithstanding the generality of the previous provisions of this Code, you will comply with the following requirements specific to Council functions concerning children, young people and vulnerable and elderly adults.
- 9.2 You must, at all times, act in your office with particular regard to, and supporting, the duties of the Council with respect to children, young people and vulnerable and elderly adults.
- 9.3 You must not obstruct, nor seek to obstruct the effective performance of the Council's functions concerning children, young people and vulnerable and elderly adults nor, improperly, seek to influence the outcome of any decision taken, or to be taken, in relation to children, young people, or vulnerable or elderly adults, nor seek preferential treatment for any such person.

9.4 You must carry out, or attend any training events or courses designated by the Corporate Director for Children and Adults as mandatory for councillors and co-opted members.

Standards Committee Terms of Reference

- (a) To promote and maintain high standards of conduct by councillors and co-opted members;
- (b) to advise the Council on the adoption or revisions of its Code of Conduct, to monitor its operation and to assist councillors and co-opted members in observing it;
- (c) to agree the local arrangements for the investigation of allegations that the Code of Conduct has been breached, and arrangements under which decisions on allegations can be made;
- (d) to arrange training and advice for councillors and co-opted members on matters relating to the Council's Code of Conduct, and related probity issues;
- (e) to receive annual reports from the Monitoring Officer relating to complaints under the Code of Conduct, the Confidential Reporting Code and any other matters relating to conduct and propriety;
- (f) to consider reports and recommendations from the District Auditor relevant to the Code of Conduct and related probity issues;
- (g) to hear cases under the Council's procedure for dealing with complaints about councillors' and co-opted members' conduct;
- (h) to make recommendations regarding the settlement of cases of maladministration;
- (i) to keep under review and make recommendations on the content of the Code of Conduct for colleagues and protocols in connection with councillor/colleague relations;
- (j) granting dispensations to councillors and co-opted members in relation to the Code of Conduct, as permitted by legislation;
- (k) to review the operation of the Council's Confidential Reporting Code and make recommendations for any changes to it;
- (l) to respond to consultation exercises carried out by government and other agencies on issues related to the work of the Committee;
- (m) to consider any other matters referred to it by the Monitoring Officer;
- (n) granting and supervising exemptions from political restriction.

The Committee is accountable to Council and comprises 7 City Councillors (6:1).

The Committee meets as and when required.