

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Constitution Review
Meeting/Date: Council - 23rd March 2016
Executive Portfolio: Executive Leader
Report by: Corporate Director – Services / Managing Director
Ward(s) affected: All Ward(s)

Executive Summary:

Under the Local Government Act 2000, local authorities were required to adopt a written Constitution setting out its governance arrangements. Since then the Council has continued to review its Constitution regularly. The purpose of the review is to identify changes required to the Constitution to reflect new legislation and working practices, to overcome any inconsistencies which may have arisen and to make positive adjustments to improve or modify the way that the Constitution currently operates.

The Code of Financial Management and the Code of Procurement are also reviewed on an annual basis to ensure that they reflect current legislation and the changing needs of the Council. These policies underpin financial governance in the Council and are included in the Council's Constitution.

The Code of Financial Management is the Council's primary financial policy which sets out the financial responsibilities and is updated on an annual basis to ensure that the Code provides clear and updated guidance of responsibility and accountability for the 2016/17 financial year.

The Code of Procurement provides the Council with policy and rules for compliance with public procurement legislation. EU directives have changed the thresholds applicable to public procurement (effective from 1 January 2016) and clarified processes relating to concessions and some types of social services contracts. The Code has also introduced processes to manage potential conflicts of interest in the procurement process and simplified procedures for receipting tenders.

Recommendation(s):

It is recommended that Council:

1. Approve the following changes to the Council's constitution:-
 - a) All Committees / Panels with delegated decision making to be renamed as Committees in line with Local Government Act requirements.
 - b) The revised scheme of delegations as set out in part 3 – Responsibility for Functions
 - c) The introduction of Committee Procedure Rules

- d) The proposal to incorporate the Standards Committee into Corporate Governance Panel and for Standards Committee to be a sub- Committee of CGP.
- 2. Approve the Code of Financial Management, with immediate effect (as contained within the Council's Constitution at Appendix 1);
- 3. Approve the Code of Procurement, with immediate effect (as contained within the Council's Constitution at Appendix 1);
- 4. Approve and adopt the Constitution, subject to any amendments they wish to see made to the draft attached at Appendix 1, with effect from the Annual Council Meeting on 18th May 2016.
- 5. Authorise that delegated authority be given to the Head of Paid Services in consultation with the Leader / Deputy Leader to make minor editorial changes which by definition make no changes to the powers of delegations approved by virtue of recommendation 1.

1. PURPOSE OF THE REPORT

- 1.1 It is good practice to regularly review the Council's constitution to ensure that it reflects any changes in legislation and continues to meet the Council's needs in supporting effective governance. The Code of Financial Management and the Code of Procurement are reviewed on an annual basis to ensure that they reflect current legislation and the changing needs of the Council. These policies underpin the financial governance of the Council and are incorporated in the Constitution.
- 1.2 The Corporate Governance Panel (CGP) has a role to consider proposals in relations to the review of the Constitution and to make appropriate recommendations for adoption by the Full Council. CGP received a report on the draft constitution at their meeting on 9th March and have recommended its adoption by full Council. This report provides Council with a summary of the changes made and the rationale for the approach taken to the review for consideration.
- 1.3 CGP also received a separate report relating to the revised Code of Financial Management and Code of Procurement, both of these codes are incorporated into the revised Constitution and the detail of the changes to the codes have been included in this report for consideration by Council.

2. BACKGROUND

- 2.1 Under the Local Government Act 2000, local authorities were required to adopt a written Constitution setting out its governance arrangements. Since then the Council has continued to review its Constitution regularly. The purpose of the review is to ensure the Constitution remains up to date and fit for purpose and to make positive adjustments to improve or modify the way that the Constitution currently operates.
- 2.2 The Code of Financial Management is the Council's primary financial policy and sets out the financial responsibilities, financial and service planning, control of financial plans, cash and credit management and accounting procedures.
- 2.3 The Code of Procurement provides the framework for compliance with current legislation as well as the basis for 'best practice'. Procurement documentation and training will be revised to comply with the changes detailed at section 5 below.
- 2.4 In 2015 it was agreed that a more fundamental review of the Constitution would be undertaken. A Constitution Review Advisory Group was established to support the Monitoring Officer in undertaking this review. Membership of the Group included Councillors Ablewhite, Cawley, Francis, Bull, Shellens, Tuplin, Duffy and Howe. Officers involved in the review are Joanne Lancaster, Julie Slatter, Lisa Jablonska and Shirley Tracey. External advice and guidance has also been sought from Bevan Brittan LLP. The group has met six times since September 2015 to undertake the review.
- 2.5 The Council's Constitution should enable it to carry out its business effectively. It sets down the necessary procedures about decision making which should be followed, and the Council must abide by it, unless it is in conflict with legislation, which will then prevail.
- 2.6 Following this review the aim is that the Constitution is both compliant with existing legislation and case law, and also provides an effective and efficient

framework within which decisions can be taken in an appropriate way, and ensuring that Members, officers and the public are clear about the procedures for decision making, and scrutiny process which the Council follows.

3. PRINCIPLES OF THE CONSTITUTION REVIEW

- 3.1 Recent case law has emphasised the importance of Councils observing their Constitution when making decisions. The Constitution is owned by the Council and it is important that members are involved in discussing the options for the way the Constitution is developed and in the recommendations to Council as to the most effective result.
- 3.2 The Constitution Review Advisory Group agreed a number of principles to be adopted for the review as follows:

The constitution should:

- Focus on how the Council carries out its business;
 - Be more streamlined and so less wordy;
 - Make it easier for the council to do its business in not only a legal, but in an efficient and timely manner
 - Contain a revised and much simpler scheme of delegation which would not need constant revisions as statutes change and so would minimise the risk of challenge. This involved the development of a scheme of delegation for executive functions, and a scheme of delegation for Council functions, but in terms of role rather than statute.
 - Provide clarity about the roles of officers and members, including the role of the portfolio holders and chairmen of Council Committees
 - Use the Local Choice functions in a way which facilitates quick and effective decision making; and
 - Be accessible to the public of the area
- 3.3 The aim being to produce a Constitution which is a readable document which facilitates the council's decision making. It was also agreed that the Constitution should only contain those materials that it must contain. The Council's previous Constitution contained much guidance material which could better be referenced on the Council's website and in training and handbook guidance materials for Councillors.

4. SUMMARY OF CHANGES TO THE CONSTITUTION

- 4.1 A number of changes have been made to the Constitution over the last year in response to new legislation these changes have been included on the new Constitution but are not reported again here as they have already been subject to discussion and approval by CGP and Full Council.
- 4.2 In the course of the review it became clear that the Council needed to reconsider the naming of its Committees and panels. The legal advice to the group was that the Local Government Act provides that delegations cannot be made to a panel but only to a committee or sub-committee of the Council or Cabinet. This review therefore has changed the names of those panels such as Corporate Governance, Development Management and Licensing and Protection Panel to reflect this and they will in future be referred to as Committees. Overview and Scrutiny panels do not have delegated decision making and therefore the names are unchanged.

- 4.3 **Part 1 - Summary and Explanation** – Minor changes only to paragraph 3 maximum number of Councillors amended from 8 to 9 to reflect legislation.
- 4.4 **Part 2 - Articles**
- Significant changes were made to the Articles in line with the principles above to ensure that only that information that is required is included to the Constitution.
- 4.5 Article 1 The Constitution – reference to the Corporate Plan deleted.
- Article 2 Members of the Council Paragraph 2– subject to amendment and review as part of the current Boundary Review and the decision to move to all out Elections.
Paragraph 3 (iii) to be amended to reflect the fact that Councillors have a responsibility to all residents of the Council’s area, and a special responsibility to residents in their ward.
Paragraph 3 b Rights and duties to be deleted as this information is duplicated.
- 4.6 Article 3 Citizens and the Council. Paragraph 1 (a) amended to reflect the change in law as set out in the Localism Act.
Paragraph 1 (b) The council is no longer required to have a petition scheme.
Paragraph 1 (c) delete this section. Agreed to allow time at meetings for public participation but this should be reflected elsewhere in the constitution.
- 4.7 Article 4 The Full Council. Paragraph 1 (a) the list of policies set out in the policy framework was reviewed and shortened. Revised list to include the Development Plan, Corporate Plan, Licensing Act, statement of licensing policy, Gambling Act and
Paragraph (b) – policy statements deleted
Paragraph (c) include Budget in the policy framework list
Paragraph (d) – Housing Land Transfer deleted
Paragraph 2 (a) amended to give the Monitoring Officer powers to make amendments to the constitution for matters of law fact and to reflect Council or Executive decisions.
Paragraph 2 (b) – approving or adopting the policy framework – deleted
Paragraph 2 (f) insert new para re appointment to committees
Paragraph re dismissal of statutory officers amended in line with legislative changes
Delete paragraph re casino licences.
- 4.8 Article 5 - Chairing the Council. It was agreed that this was a very lengthy section which could be shortened considerably, by including much of the content in job descriptions for example for the Chairman of the Council. A range of job descriptions for members e.g. Executive Leader, Executive Councillor are now being developed and will be published on the Council’s website.
- 4.9 Article 6 - Overview and Scrutiny. The detail of the remit of the Overview and Scrutiny Panels has been deleted from the articles. Revised wording to state that the Council will appoint Overview and scrutiny panels as it sees fit.
- 4.10 Article 7- The Cabinet. Requires some updating to ensure that it is in line with legislative changes, for example para 3 (c) to be deleted. New bullet point to be added as set out in the version of the constitution annotated by Bevan Brittan.

- 4.11 Article 8 – Regulatory and Other Committees and Panels. Amend to state that the Council will appoint such regulatory and other committees and panels as it sees fit.
- 4.12 The group debated whether the section re requirement for training should be retained in the constitution and we need to be clear what members can and cannot do. Although legally we have no ability to stop a member attending licensing or development management and could include the requirement in their job description Members of the Group felt strongly that retaining the training requirement was important.
- 4.13 Article 9 Standards Committee – all deleted except paragraph 1 all that is required in the articles is that the Council establish a Standards Committee.
- 4.14 Article 10 – Area Committees and Forums. Amended to simply read the Council shall appoint such area Committees or Forums as it sees fit.
- 4.15 Article 11 - Joint Arrangements. Arrangements to promote well being deleted – not relevant to this section. Access to information and delegation deleted as addressed elsewhere in the constitution.
- 4.16 Article 12- Officers. Amendments as advised by Bevan Brittan. Delete paragraphs relating to assessment of code of conduct complaints and conducting investigations. Delete appointment of deputy monitoring officer and appointment of deputy chief finance officer.
- 4.17 Article 13 – Decision Making. Agreed need to review, amend and shorten paragraph 3 b key decisions in light of recent changes agreed as part of the new disposals and acquisition policy. Deleted paragraphs 7 A and 8. Paragraph 7 amended in line with procedure rules and changes arising as a result of deleting 7A and 8.
- 4.18 Article 14 – Finance Contracts and Legal Matters. Amend paragraph 4 need to change the word panel to sub-committee in line with the Local Government Act requirements.
- 4.19 Article 15 – Review and Revision of the Constitution. Amended to reflect power for Monitoring Officer to make changes arising as a matter of fact, law or decisions made by Cabinet or Council. Delete paragraphs 2 and 3.
- 4.20 Article 16 – Suspension, Interpretation and Publication of the Constitution. Minor amendment re access to the constitution, specifically reference to paper copies deleted.
- 4.21 **Part 3 - Responsibility for Functions**

There have been significant changes made to the presentation of the information in this section however it is important to note that this has not resulted in any change to the scheme of delegations in itself. In practice delegations will operate as now. The review group agreed that the current scheme of delegations was overly lengthy and lacked clarity in terms of roles and responsibilities and how decisions should be recorded. The external advisors were clear that the Constitution was not fit for purpose and that listing delegations by statute was not only unwieldy and difficult to keep up to date but also risked challenge when it becomes out of date. The Constitution was one of the longest they had seen, due mainly to the very lengthy scheme of

delegations which in their view does not assist the Council to effectively carry out its functions.

- 4.22 The revised scheme of delegation sets out a short form of delegations to both Committees and Officers from Council and detail of Executive functions and delegations to Officers. The schedule detailing appointments to outside organisations has been deleted from the Constitution as has the table detailing Member Champions. Member Champions can be appointed by the Executive Leader but there is no requirement to record them in the Constitution.

4.23 **Part 4 – Rules of Procedure**

Council Procedure Rules – minor amendments to delete reference to panels in line with Local Government Act as at paragraph 4.2 above. Also changes to reflect that there is no longer a requirement to have a petition scheme. Reference to application to Committees deleted replaced by new **Committee Procedure Rules**. All annexes which are guidance notes are deleted from the Constitution and to be held on the Council's website. Code of Practice guidance materials are to be made available for Members in handbook form and used as training materials as appropriate. Content and length of speeches amended to permit speeches of no more than 5 minutes without the consent of the Chairman. Exceptions being in respect of the Executive Councillor responsible for presenting the Budget and Statutory and Non Statutory plans.

- 4.24 **Access to Information Procedure Rules** – minor amendment only for example in relation to definition of exempt material.

- 4.25 **Cabinet Procedure Rules** – section on delegations simplified. Conflict of interest section deleted as addressed elsewhere in the code of conduct.

- 4.26 **Overview and Scrutiny Procedure Rules** – these have been reviewed and flow charts introduced to better define process.

- 4.27 **Code of Financial Management and Code of Procurement** – reviewed annually and updated in line with changes in legislation or accounting codes. Where possible information has been streamlined. All annexes have been deleted as this is not required information. The details of changes to the Code of Financial management and the Code of Procurement are reported annually to Corporate Governance Panel and at the meeting on 9th March 2016 were recommended for Council approval. See section 5 below for details of the changes made.

- 4.28 **Officer Employment Procedure Rules** – updated to reflect changes relating to dismissal of Statutory Officers.

- 4.29 **Part 5 Codes and Protocols**- the principles regarding including only those things that need to be in the Constitution have been applied here and as a result a number of codes and guidance for the Public have been taken out of the Constitution. These materials will be made available on the Council's website.

- 4.30 **Monitoring Officer Protocol** – retitled code of conduct complaints. Complaints process flowchart retained. Detail of complaints process to be published on the website.

- 4.31 **Members' planning code of good practice and Licensing Code of Good Practice** – reviewed and shortened. Fuller guide to be made available as

Member Handbook and guidance and also available on the website. There was some discussion about whether this and the licensing code of good practice should be included in the Constitution. The group felt it important to retain some guidance in the Constitution and both have therefore been revised and retained.

- 4.32 **Protocol for Community Leadership** – has been deleted from the Constitution but will be available in handbook/ guidance form as part of induction for new Members.
- 4.33 **Protocol of Member/ Officer Relations** – renamed Member/Officer Protocol.
- 4.34 **Part 6 Members Allowance Scheme** – updated to reflect recent review. Schedule 2 deleted. Members IT and telephone support guidelines have been deleted this information will be available to Members as part of an induction pack.
- 4.35 Management structure updated. The Constitution should contain the names and addresses of all Councillors – this will be achieved by including a link to the Member contact details on the Council website.

5. CODE OF FINANCIAL MANAGEMENT AND CODE OF PROCUREMENT

5.1 THE MAIN CHANGES TO THE CODE OF FINANCIAL MANAGEMENT ARE SET OUT IN THE TABLE BELOW:

Para.	Section	Summary of the Changes
1.1	General	Removal of reference to Responsible Financial Officer, widening the responsibility for informing financial implications to relevant officers accountable for budgets.
1.7, 1.8	Budget Managers and Managers & Executive Councillors	Assigning of accountability to budget managers/managers and relevant Executive Councillors. Being responsible for planning for the budgetary cycle, so far as it relates to their budgets.
1.19	Budget Managers	Revised vacant post authorisation. Inclusion of requirement to report fraud and corruption to the Internal Audit & Risk Manager. Increasing accountability for delivery of services etc and financial performance, including comparisons to service standards and organisational comparators.
3.2, 3.3	Controlling financial plans	On a monthly basis financial and overall performance will be reviewed by the budgets managers and relevant Executive Councillor. Removal of the specific compilation of the Financial Performance Monitoring Suite to facilitate improvements during the year.
3.8, 3.9, 3.10	Controlling financial plans	Increase in additional spending with net impact from £350,000 to £500,000

3.14	Controlling financial plans	Clarifying the limitations and increasing the budget virement from £4,000 to £5,000.
3.15	Controlling financial plans	Increase in CMT budget virement approval limit from £150,000 to £250,000.
3.16	Controlling financial plans	Increase in Cabinet budget virement approval limit from £350,000 to £500,000.
3.17	Controlling financial plans	Inclusion of Cabinet approval for Earmarked Reserve allocation if within net budget.
3.20, 3.21	Controlling financial plans	Update on the approval of capital schemes process.
5.3	Accounting requirements	Clarified budget manager responsibility in respect of financial record keeping and removed reference to contract processing in the financial management system.
5.8	Accounting requirements	Clarification on the approval for write offs
5.11	Accounting requirements	Earmarked reserves will be operated in line with the Earmarked Reserves Strategy.
5.12	Accounting requirements	Section 6 Assets has been incorporated into section 5 as the detail is now included within the Disposals and acquisition policy with the approval limits noted within 5.14

5.2 CODE OF PROCUREMENT:

There are 3 significant changes to this Code:

- (a) The EU has issued revised thresholds (effective 1st January 2016) and clarified the how the thresholds apply to concessions and certain types of service contracts. Described as a “Light Touch Regime Services” these service contracts are principally health and social related services and now benefit from higher threshold values.
- (b) Although rare, the potential for conflicts of interest exists in procurement and the Code had been silent on the subject. The Public Procurement Regulations 2015 are not prescriptive but the expression “might be perceived to compromise their impartiality and independence” sets a high standard for the legal test. Should a potential conflict of interest be identified the new paragraph seeks to isolate the affected Officer from the process to protect both the Council and the individual.
- (c) The Code duplicated information contained in the Procedure for the Receipt of Tenders and Formal Quotations. Following a review and revisions of the Procedure for the Receipt of Tenders and Formal Quotations the duplicated sections have been removed from the Code.

5.3 There are some minor changes including to layout. The table below sets the proposed changes for 2016/2017:

Para.	Section	Summary of the Change
2.2.	Advertising	The EU thresholds change on 1 January 2016 2 specific process Concessions and the “Light Touch Regime Services” are now subject to differing thresholds. Both are now incorporated into the table.
2.3	Advertising	The wording of this paragraph has now been simplified and included in paragraph 2.2.
13.2	Contracts	The paragraph now mandates the use of the Council’s Standard Terms and Conditions (T&Cs) except where the value is greater than £75k, or there is appreciated risk to delivery or performance, or specific T&Cs are needed for the category. Exceptions remain subject to approval by the Legal Services Officer.
16	Contract Award Notices	The amendment clarifies the need to announce low value contract awards.
20	Conflict of Interest	The new paragraph seeks to manage any identified potential conflict of interest by ensuring independent oversight in specification writing and evaluation of lower value procurements (less than £75k) and maintaining an arm’s length approach to higher value procurements (greater than £75k).

6. COMMENTS OF THE CORPORATE GOVERNANCE PANEL

The Corporate Governance Panel at its meeting on 9 March 2016 has endorsed and recommended that the Council adopt the revised Constitution.

The Panel noted that as part of the review it was proposed to disband the Standards Committee and that these functions be incorporated into the Terms of Reference of the Corporate Governance Panel. Functions relating to the conduct of Members will be considered by a Standards Sub-Committee, which will be a Sub-Committee of Corporate Governance. Currently the Standards Committee considers customer complaints about the Council, which is a function that will be incorporated in the work of the Overview and Scrutiny Panel (Finance and Performance).

Should a Standards Sub-Committee be required it will be served by a small number of Members from the Corporate Governance Committee.

Subject to approval by Council, the Constitution will include a method for version control where the dates of all future amendments will be included for ease of reference. A minimal number of paper copies will also be circulated to appropriate Officers, which will ensure any updates are circulated and the versions updated. The Panel has requested that the Chairman and Vice-Chairman of Council are also provided with a copy. It has been noted that

training on the new Constitution will be arranged after the elections in May 2016.

As a separate agenda item at the same meeting, the Corporate Governance Panel supported the proposed changes to the Code of Financial Management and to the Code of Procurement and recommended that the Council adopt the Codes.

7. KEY IMPACTS/RISKS

- 7.1 It is important that the Council has an up to date and clear Constitution to ensure that governance is effective and there is clarity about how and where decisions are made and how meetings shall be conducted. The Constitution must reflect relevant legislation and set out a clear framework for making and recording decisions to mitigate the risk of successful challenge to decisions made by the Council, Cabinet or any Committees or panels or by Officers in accordance with the scheme of delegations.

8. TIMETABLE FOR IMPLEMENTATION

- 8.1 Subject to full Council approval on 23rd March the Constitution will be implemented at the Annual Council Meeting. The Member handbooks and other guidance materials for new Members will be in place after the elections in May. Training on the new Constitution will also be arranged for after the May elections. Once the Constitution is approved the materials identified for publication on the website will be formatted and posted.

9. LINK TO THE CORPORATE PLAN

- 9.1 A clear and well drafted Constitution, code of Financial Management and Code of Procurement supports the Council in its Corporate objective to be an efficient and business like Council.

10. CONSULTATION

- 10.1 Members have been involved in the review through a Constitution Review Advisory Group. The Senior Management Team has also been consulted on the proposed changes.

11. LEGAL IMPLICATIONS

- 11.1 Under the Local Government Act 2000, local authorities were required to adopt a written Constitution setting out its governance arrangements. Regular review ensures that the Constitution reflects new legislation and supports effective working practices and clear decision making. Various amendments have been approved by Council during the year as a result of legislative change and these have now been incorporated in the Constitution.
- 11.2 The Code of Procurement and the Code of Financial Management have been updated to reflect current legislation and regulations, aiding the Councils' compliance.

12. RESOURCE IMPLICATIONS

- 12.1 The cost of the review of the Constitution has been met from the Monitoring Officer Budget, there are no other direct costs arising from the review. The Constitution incorporates the Council's Code of Financial Management and

procurement Code this is updated annually to ensure it reflects legislative requirements and guidance.

- 12.2 The Code of Financial Management is the Council's primary financial policy which sets out the financial responsibilities and is updated on an annual basis to ensure that the Code provides clear and updated guidance of responsibility and accountability for the 2016/17 financial year. The Code of Procurement provides the Council with policy and rules for compliance with public procurement legislation. EU directives have changed the thresholds applicable to public procurement (effective from 1 January 2016) and clarified processes relating to concessions and some types of social services contracts. The Code has also introduced processes to manage potential conflicts of interest in the procurement process and simplified procedures for receipting tenders.

13. REASONS FOR THE RECOMMENDED DECISIONS

- 13.1 The Constitution is a key document in the Council's Governance Framework. Council is therefore asked to consider and comment on the changes as outlined in this report and to approve and adopt the draft, subject to any changes that may be identified.

14. LIST OF APPENDICES INCLUDED

Appendix 1 - Draft Constitution

BACKGROUND PAPERS

Constitution – the Council's current Constitution is available for review and comparison on the Council's website.

<http://www.huntingdonshire.gov.uk/media/1367/constitution.pdf>

Agenda Item 7 - Code of Financial Management and Code of Procurement for 2016/17 - Corporate Governance Panel – 9th March 2016

<http://applications.huntingdonshire.gov.uk/moderngov/documents/s78521/CGP%20-%20COP%20and%20COFM%202016.17%20V5.pdf>

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