

Constitution Committee

Agenda

Date: Thursday, 22nd November, 2018
Time: 2.00 pm
Venue: Committee Suite 1, 2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Cheshire East Council decision-making meetings are audio recorded and the recordings are uploaded to the Council's website.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with paragraph 2.32 of the Committee Procedure Rules, a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the Committee. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Member Speaking**

To provide an opportunity for any member to speak in relation to any aspect of the constitution.

5. **Minutes of Previous meeting** (Pages 3 - 8)

To approve the minutes of the meeting held on 20th September 2018.

6. **Community Governance Review Terms of Reference** (Pages 9 - 26)

To consider a report on the proposed terms of reference for the Community Governance Review, and the recommendations of the Community Governance Review Sub-Committee.

7. **Calendar of Meetings for 2019-20** (Pages 27 - 32)

To consider the draft Calendar of Meetings for Cheshire East Council for 2019-20.

8. **Audit and Governance Committee Terms of Reference** (Pages 33 - 50)

To consider revised Terms of Reference for the Audit and Governance Committee.

9. **Proposed Changes to the Constitution - Chief Officer Delegations** (Pages 51 - 56)

To consider proposed amendments to the constitution in order to improve clarity and operational efficiency in respect of regulatory enforcement functions.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 20th September, 2018 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor P Groves (Vice-Chairman)

Councillors G Baxendale, J Bratherton, M Deakin, H Gaddum, R Menlove,
J Nicholas, J Rhodes, B Walmsley, G Williams and S Edgar (for Cllr Beanland)

Officers

Dan Dickinson, Acting Director of Legal Services
Brian Reed, Head of Democratic Services and Governance
Paul Mountford, Executive Democratic Services Officer

Other Members present

Councillors J P Findlow, A Moran and B Moran

Apologies

Councillors D Bailey, M Beanland and L Durham

10 DECLARATIONS OF INTEREST

The Head of Democratic Services and Governance declared a personal interest in Item 6 – Community Governance Review as a resident of the Malbank Waters Estate, Nantwich.

11 PUBLIC SPEAKING TIME/OPEN SESSION

Sue Helliwell referred to a report to be considered by the Strategic Planning Board on 26th September 2018 regarding a revised planning application referral procedure for members and sought clarification of certain aspects of the procedure. The Acting Director of Legal Services undertook to consider the matters raised and respond in writing, with a copy to all members of the Committee.

12 MEMBER SPEAKING

Councillor A Moran expressed the hope that there would be adequate opportunity for Nantwich Town Council to have an input into any community governance review affecting Nantwich and adjoining parishes. He also asked if the review would include a review of the internal governance arrangements of Cheshire East Council. The Head of Democratic Services and Governance clarified that the community governance review would relate solely to the boundaries, warding

arrangements and councillor numbers for town and parish councils in Cheshire East and would have no bearing on the internal governance arrangements of Cheshire East Council.

13 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 28th June 2018 be approved as a correct record.

14 COMMUNITY GOVERNANCE REVIEW

The Committee considered proposals to conduct a Borough-wide community governance review of town and parish councils following the local government elections in May 2019. The review would cover town and parish boundaries, numbers of town and parish councillors and warding arrangements. Any existing requests for reviews from parish councils would be included in the overall review.

RESOLVED

That

1. a Borough-wide review of the governance arrangements of all of the Borough's town and parish councils be undertaken, commencing as soon as reasonably practicable after the 2019 all-out elections, and concluding well in advance of the May 2023 elections;
2. a sub-committee of the Committee be appointed to conduct the review, working with an officer working group, and make appropriate recommendations to the Constitution Committee for decision; and
3. the sub-committee comprise representatives of all of the Council's political groups, on the basis of the following proportionality: 4:1:1:1 (Conservative: Labour: Independent: Liberal Democrat), drawn from the Constitution Committee, provided that the Liberal Democrat Group representative shall be nominated by its Group Leader.

15 PUBLIC RIGHTS OF WAY PUBLIC PATH ORDERS: CHANGE TO SCHEME OF DELEGATION

The Committee considered a proposed amendment to the scheme of delegation to provide that the determination of public path order applications that were not contested or contentious at the pre-order consultation stage could be undertaken by the Executive Director of Place in consultation with the Chairman and Vice-Chairman of the Public Rights of Way Committee. The proposed amendment had been recommended by the Public Rights of Way Committee at its meeting on 11th June 2018.

All Public Path Order cases were currently presented to the Public Rights of Way Committee for determination. This impacted on the speed with which cases were processed, legal orders made, advertised and confirmed, and costs recovered.

RESOLVED

That Council be recommended to approve that the scheme of delegation be amended to enable the Executive Director Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-order consultation stage.

16 SHARED SERVICES JOINT COMMITTEE TERMS OF REFERENCE

The Committee considered a report on revised terms of reference for the Shared Services Joint Committee. Cheshire East and Cheshire West and Chester Councils now shared eight shared services, whereas at the formation of the Joint Committee there were approximately sixty-five services. The work of the Joint Committee had altered from overseeing the sharing of services to contributing to the development and shaping of the change agenda where the two Councils could share services. The terms of reference had been amended to reflect the Joint Committee's changing role.

The revised terms of reference were set out in Appendix A to the report.

RESOLVED

That Council be recommended to approve the amendment of the Constitution to include the revised terms of reference for the Shared Services Joint Committee as set out in Appendix A to the report.

17 LIVING DOCUMENT CHANGES TO THE CONSTITUTION

The Committee considered a report on progress with a number of issues relating to the constitution which had been raised during the review of the constitution or which had since emerged as issues needing to be addressed.

At the invitation of the Chairman, Councillor B Moran as Chairman of the Staffing Committee advised that the proposed amendments to the Staffing Committee's terms of reference were essentially matters of clarification and would be dealt with by the Monitoring Officer under delegated powers.

RESOLVED

That the Committee

1. notes the position regarding the various matters referred to in the Appendix to the report;
2. approves the amendment of the constitution to remove an erroneous provision relating to the appointment of the chairmen and vice-chairmen of overview and scrutiny committees by those committees, thus reflecting the position that such appointments have been made by the full Council since the Council's inception; and
3. agrees that the rules relating to member access to Part 2 documents and meetings be not reviewed at this time but that a watching brief be kept, and the Monitoring Officer make any necessary changes to the constitution to ensure that it reflects the position prior to 1st January 2018.

18 PROPOSED CHANGES TO GRANT APPLICATION PROCESS

The Committee considered a report on proposed changes to the grant application process. The current process required officers to seek Member approval prior to submitting a bid for grant funding. By the very nature of grant funding opportunities, there was often insufficient time available to proceed through the member approval routes and meet the timescales associated with a grant funding offer. The proposed changes would remove those time constraints whilst ensuring that appropriate member oversight continued. Member approval would still be required to accept a successful bid.

RESOLVED

That

1. Council be recommended to approve amendments to the constitution to provide that:
 - (a) officers are, in consultation with the relevant portfolio holder, able to apply for external grant funding opportunities;
 - (b) the requirement for relevant member approval (in accordance with the financial thresholds currently set out in the constitution) be applied to a decision to accept grant funding offered, not to apply for it (as is currently the case); and
 - (c) the S151 Officer is empowered (in consultation with the relevant portfolio holder and the Portfolio Holder for Finance and Communication) to approve supplementary capital or revenue estimates, where those estimates are fully funded through the ring-fenced grant funding awarded, in order to enable the Council to accept awarded grant funding and apply it for the purposes for which it has been awarded; and

2. the drafting to be proposed to Council in order to achieve the amendments set out in resolution 1 above be prepared by the Director of Legal Services in consultation with the Chairman of the Constitution Committee.

The meeting commenced at 2.00 pm and concluded at 3.10 pm

Councillor A Martin (Chairman)

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CONSTITUTION COMMITTEE – 22ND NOVEMBER 2018**COMMUNITY GOVERNANCE REVIEW TERMS OF REFERENCE****RECOMMENDATION****That the Committee**

- 1. note and endorse the contents of the report; and**
- 2. agree that the report in itself constitutes the terms of reference of the Community Governance Review, and endorse its publication as being the commencement of the Community Governance Review.**

Extract from the Minutes of the Community Governance Review Sub-Committee meeting on 8th November 2018

11 COMMUNITY GOVERNANCE REVIEW TERMS OF REFERENCE

The Sub-Committee considered a report setting out the terms of reference for the Community Governance Review.

The Constitution Committee at its meeting on 20th September 2018 had resolved that:

1. a Borough-wide review of the governance arrangements of all of the Borough's town and parish councils be undertaken, commencing as soon as reasonably practicable after the 2019 all-out elections, and concluding well in advance of the May 2023 elections;
2. a sub-committee of the Committee be appointed to conduct the review, working with an officer working group, and make appropriate recommendations to the Constitution Committee for decision; and
3. the sub-committee comprise representatives of all of the Council's political groups, on the basis of the following proportionality: 4:1:1:1 (Conservative: Labour: Independent: Liberal Democrat), drawn from the Constitution Committee, provided that the Liberal Democrat Group representative shall be nominated by its Group Leader.

Prior to considering the report, members received a presentation by Dr Melvin Humphreys, a trainer and specialist in community governance reviews at the Association of Electoral Administrators. Dr Humphreys outlined the legislative framework for the review, the key stages involved and the four principal duties of the Council which were as follows:

1. to adopt and publish terms of reference;
2. to consult parish councils and other relevant bodies and invite representations by such bodies and from electors;
3. to ensure an open and transparent decision-making process, with clear reasons given for each decision; and
4. to publish the outcome of the review in the form of a Reorganisation of Community Governance Order.

At the conclusion of the presentation, Dr Humphreys answered members' questions.

The Committee then considered the report which set out the terms of reference for the review.

The review would relate to the whole of the Borough, and would consider town and parish council governance arrangements. This would include changes to parish areas and parish electoral arrangements such as alterations to parish boundaries; the merging, creation and abolition of parishes; the naming of parishes; the numbers of parish councillors; whether to divide a parish into wards; and the grouping of parishes under common councils. The review could include a review of any Borough ward boundaries where the parish and Borough ward boundaries were no longer coterminous following a parish boundary change. The review would also deal with consequential matters such as the transfer of parish council staff, property and assets, or the setting of precepts for any new parish councils that may be formed.

A key part of the review would be public consultation which would take place over several months and include local electors, parish councils, and other bodies with an interest in the review such as local businesses and public and voluntary organisations.

In carrying out the review, the Council would be bound by the requirements of the relevant legislation and the terms of reference for the review as adopted by the Council. The Review would be completed when the Council had adopted a Reorganisation of Community Governance Order.

The first stage of the review was the adoption of the terms of reference. This would be followed by a period in which officers would gather the necessary information to help shape the review, taking into account any issues raised by parish councils and others prior to the formal consultation process. A set of proposals and a consultation plan would then be prepared for members' consideration.

RESOLVED

That the Sub-Committee

1. notes and endorses the contents of the report for consideration by the Constitution Committee; and

2. agrees that the report in itself constitutes the terms of reference of the Community Governance Review, and endorses its publication as being the commencement of the Community Governance Review.

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Working for a brighter future together

Community Governance Review Sub Committee

Date of Meeting: 08 November 2018

Report Title: Community Governance Review Terms of Reference

Portfolio Holder: Councillor J Paul Findlow, Corporate Policy and Legal Services

Senior Officer: Brian Reed, Head of Democratic Services and Governance

1. Report Summary

- 1.1. The Constitution Committee at its meeting on 20th September 2018 resolved that:
 1. a Borough-wide review of the governance arrangements of all of the Borough's town and parish councils be undertaken, commencing as soon as reasonably practicable after the 2019 all-out elections, and concluding well in advance of the May 2023 elections;
 2. a sub-committee of the Committee be appointed to conduct the review, working with an officer working group, and make appropriate recommendations to the Constitution Committee for decision; and
 3. the sub-committee comprise representatives of all of the Council's political groups, on the basis of the following proportionality: 4:1:1:1 (Conservative: Labour: Independent: Liberal Democrat), drawn from the Constitution Committee, provided that the Liberal Democrat Group representative shall be nominated by its Group Leader.
- 1.2. This report constitutes the proposed terms of reference for the review for the Sub-Committee's consideration and recommendation to the Constitution Committee.

2. Recommendations

- 2.1. That
 - 2.1.1. The Sub-Committee note and endorse the contents of this report for consideration by the Constitution Committee; and

- 2.1.2. The Sub-Committee agree that the report in itself constitutes the terms of reference of the Community Governance Review, and endorse its publication as being the commencement of the Community Governance Review.

3. Terms of Reference of the Community Governance Review

- 3.1. The terms of reference of the Community Governance Review are set out in this section of the report as follows:

Introduction

1. Cheshire East Borough Council has decided to undertake a Community Governance Review (Review) of the governance arrangements of all of the parishes in its area.
2. This Review will relate to the whole of the Borough, in order to consider making changes to parish areas and parish electoral arrangements; and potentially the alteration, merging, creation and abolishing of parishes, the naming of parishes and the adoption of an alternative style for new parishes. It might also involve changes to the electoral arrangements for parishes (the ordinary year of election; the council size; the number of councillors to be elected to the council, and whether to divide the parishes into wards for the purposes of elections).
3. In some cases it might be appropriate to group parishes under a common parish council or to de-group existing groupings of parishes.
4. Whilst the primary focus of the Review will be town and parish council matters, the outcome will be presented to the Local Government Boundary Commission for England, which has responsibility for Borough Council ward matters. In a limited number of instances, the Council may wish to request the Commission to alter a Borough ward boundary so that it is coterminous with a parish boundary. There may also be a need to make changes that arise in consequence of the Review (termed “consequential matters”), and these might include provisions for the transfer of parish council staff, property and assets, or the setting of precepts for any new parish councils that may be formed.
5. The Boundary Commission for England has power to alter Borough ward boundaries.
6. At present, there are 142 parishes in the Borough. Of these, 27 are divided into parish wards for the purposes of parish elections. There are 1,018 parish councillors, with each parish councillor representing an average of 296 electors. However, the electoral quota (the ratio of electors to parish councillors) varies widely, and ranges from one councillor to eight electors to one to 3,703 electors across the Borough. There are 44 parishes that are grouped under common councils and

there are 16 such parish councils. At the last ordinary parish elections in 2015, 46 (27% per cent) of the 186 parish ward elections were contested and led to a poll. However, 125 of the 1,018 parish council seats remained unfilled at the close of the last ordinary elections. Many of these vacant seats have since been filled under the parish councils' powers of co-option. Parish precepts (the amount that each parish requests to be raised from council tax) vary widely as do the council tax band D equivalents (the average council tax charged to the households of the parish) between the different parishes, with the band D equivalents ranging from £7.49 to £108.64 across the parishes of the Borough.

7. The Council will produce maps and data sets to provide further statistical information on these matters.
8. The Council considers that the present structure of parish governance serves its residents well, and it is not considered that extensive changes will follow from the Review. However, the present arrangements pre-date the creation of the Council in 2009, and were put in place by the demised authorities. The Council is mindful that there has been considerable change to the population and geography, as well as to the settlements of the Borough following housing developments since that date. The Local Plan also has a bearing on the Review, given that housing allocations have been made which have not yet been implemented.
9. The Review offers the opportunity to ensure that the tier of parish governance is fit for purpose for the future.
10. The data sets that the Council will produce will show the areas in which new development is programmed, especially over the next five-year period between 2019 and 2024, and will provide electorate forecasts for this period. These will be provided because the Council is required to consider any change in the number or distribution of the electors that is likely to occur over the period of five years when it considers parish electoral arrangements.
11. In undertaking the Review, the Council will adhere to Part 4 of the Local Government and Public Involvement in Health Act 2007 (as amended) ("the 2007 Act") and the relevant parts of the Local Government Act 1972 in its work. The following regulations apply, in particular, to consequential matters arising from the Review: Local Government (Parishes and Parish Councils) (England) Regulations 2008 (SI2008/625), and Local Government Finance (New Parishes) Regulations 2008 (SI2008/626). The Department of Communities and Local Government and the Local Government Boundary Commission for England has issued Guidance on Community Governance Reviews in accordance with section 100(4) of the 2007 Act in March 2010, and the Council will have regard to "the Guidance".

12. Links to the 2007 Act and the Guidance are provided here:

<http://www.legislation.gov.uk/ukpga/2007/28/contents>

<http://www.lgbce.org.uk/how-reviews-work/other-types-of-review/about-community-governance-reviews>

13. Section 93 of the 2007 Act requires the Council to consult the local government electors for the area under Review and any other person or body who appears to have an interest in the Review, and to take the representations that are received into account by judging them against the criteria in the 2007 Act and in these Terms of Reference. The Council will publish its plan for consultation during the Review, and this will include the receiving of submissions to assist the Council in preparing its draft proposals together with an appropriate period of consultation on those proposals. The Council is also required to publish all decisions taken as part of the Review and the reasons for taking those decisions.

14. The contents of this report comprise the Terms of Reference of the Review, and the Council publishes these Terms of Reference in accordance with Section 81 of the 2007 Act.

Parish Areas

15. In this part of the Terms of Reference, further consideration is given to parish areas, an element of the review that may lead to the creation of new parishes, altering the boundaries between existing parishes and, possibly, abolishing some existing parishes.

16. In particular, the Council is mindful that it is many years since the last Review of parishes was conducted within what is now the Borough of Cheshire East, and during that interval there has been considerable new development accompanied by a new distribution of population in the Borough. Many of these developments have traversed parish boundaries and have created new communities of identity. Housing allocations in the Local Plan will have the same effect.

17. Section 93(5) of the 2007 Act requires that the Council must have regard to the need to secure that the tier of parish governance:

- reflects the identities and interests of the different communities in the area. The Council considers that this is a 'community of identity' test, which is especially applicable to the new developments that presently traverse parish boundaries.
- is effective and convenient. The Council considers that this is a 'viability' test, and the Council is anxious to ensure that parishes are viable and possess a precept that enables them to actively and effectively promote the well-being of their residents and to

contribute to the real provision of services in their areas in an economic and efficient manner.

- takes into account any other arrangements for the purposes of community representation or community engagement in the area that reinforce the 'community of identity' test.

18. The Guidance (paragraphs 46-48) emphasises that electors should be able to identify clearly with the parish in which they are resident, because it is considered that this sense of identity and community lends strength and legitimacy to the parish structure, creates a common interest in parish affairs, encourages participation in elections to the parish council, leads to representative and accountable government, engenders visionary leadership and generates a strong, inclusive community with a sense of civic values, responsibility and pride.
19. The Borough of Cheshire East is entirely parished and there are no areas of the Borough that do not lie within a parish. The Council notes that the Guidance states that "the abolition of parishes should not be undertaken unless clearly justified" (paragraphs 117-124). The Council intends that the whole of Cheshire East shall continue to be divided into parish areas and there is a strong presumption that, with the possible exception of a few very small parishes, all the Borough's parishes shall have parish electoral arrangements.
20. The Council considers that the boundaries between parishes will normally reflect natural and man-made defining points between communities. These defining points will be either natural or man-made: they might include rivers or man-made features such as railways or motorways – those defining points that create a community of identity. The views of local residents and the parish councils will have an important bearing in this matter.
21. Where changes to boundaries are considered appropriate, the Council will endeavour to select boundaries that are and are likely to remain easily identifiable.
22. The Council considers that 'natural' settlements or settlements as they are defined in the documents that make up its Local Plan, including the Local Plan Strategy (adopted 2017) should not in normal circumstances be partitioned by parish boundaries.
23. The Council recognises that, in its rural area, a strong sense of community can prevail over an extensive but otherwise sparsely populated area. Parishes in these areas may have limited capacity to facilitate service provision and effective local government; even so, arrangements in these areas, when they accord with the wishes of the inhabitants of the parish, will at least represent convenient local government.

The Grouping of Parishes

24. A grouping arrangement for parishes may best be considered as a working alliance of parishes that have come together under a common parish council, with the electors of each of the grouped parishes electing a designated number of councillors to the council. It has been found to be an effective way of ensuring parish governance for small parishes that might otherwise be unviable as separate units, while retaining their separate parish identity. Under section 94 of the 2007 Act, new parishes of less than 150 electors will be unable to establish their own parish council.
25. At present, there are 16 grouping arrangements, involving 44 parishes, in operation in Cheshire East Borough. There are six parishes, outside the grouping arrangements, that have fewer than 150 electors. In a further seven of the Borough's 142 parishes there is no parish council, and the representative body in those parishes is their parish meeting which must meet at least twice each year.
26. The Council will consider whether a grouping arrangement may be an appropriate way forward for small parishes while noting the Guidance (paragraph 114) that "it would be inappropriate for it to be used to build artificially large units under single parish councils."

Names and Styles

27. The Council does not envisage that there will be many changes of parish names in this Review. Where it might be necessary to consider forming a new parish, the Council will endeavour to reflect existing local or historic place-names, and will give a strong presumption in favour of names proposed by local interested parties. However, the Council considers that composite names of parishes are rarely in the interests of effective and convenient local government. The Council would wish to avoid composite names other than in exceptional circumstances where the demands of history, local connections or the preservation of local ties make a pressing case for the retention of distinctive traditional names.
28. The 2007 Act introduced 'alternative styles' for parishes by inserting section 17A into the Local Government Act 1972. This allows existing parish councils (or the Borough Council during a community governance review) to adopt an 'alternative style' to replace the style "parish". However, only one of three prescribed styles can be adopted: "community", "neighbourhood" or "village".
29. Where a new parish is being created, the Council will make recommendations as to the name of the new parish and whether or not it shall have one of the alternative styles. Where an existing parish is under Review, the Council will make recommendations as to whether

the name of the parish should be changed, but it will be for the parish council or parish meeting to resolve whether the parish should have one of the alternative styles.

Electoral Arrangements

30. An important part of the Review will cover the electoral arrangements of the parishes, including any new parishes that are formed. The term 'electoral arrangements' covers the way in which a council is constituted for the parish, including:

- the ordinary year in which elections are held;
- the number of councillors to be elected to the council;
- the division (or not) of the parish into wards for the purpose of electing councillors;
- the number and boundaries of any such wards;
- the number of councillors to be elected for any such ward;
- the name of any such ward.

These matters are considered in turn.

Ordinary year of election

31. The next elections for parish councils in Cheshire East are programmed for 2019. As agreed by the Council's Constitution Committee, the Review will have no implications for those elections.

32. It is intended that the Review should be completed well before the elections scheduled for 2023. In particular, it will be necessary to ensure that the Review is completed to allow the various commencement requirements (setting the parish precepts, altering electoral registers, altering council tax bases, etc.) to be in place in good time for those elections.

A council for a parish

33. Section 94 of the 2007 Act sets out the duties that the Council has with regard to the creation of a council for a parish:

- where the number of electors is 1,000 or more – a parish council must be created;
- where the number of electors is 151-999 – a parish council may be created, with a parish meeting being the alternative form of parish governance;
- where the number of electors is 150 or fewer – a parish council is not created.

34. The Council holds a strong presumption in favour of the formation of parish councils for all parishes of more than 150 electors.

The number of parish councillors

35. The Council notes that the number of parish councillors for each parish council shall not be less than five (section 16, Local Government Act 1972). There is no maximum number in the legislation and there are no rules or guidance relating to the allocations of councillors. The Guidance (paragraph 156) states that “each area should be considered on its own merits, having regard to its population, geography and the pattern of communities,” and therefore the Council is prepared to pay particular attention to existing levels of representation, the broad pattern of existing council sizes which have stood the test of time and the take-up of seats at elections in its consideration of this matter.
36. The Guidance (paragraph 157) makes the point “that the conduct of parish council business does not usually require a large body of councillors”. The Council will look at those parishes where there has been a history of uncontested elections and/or the need to co-opt members in order to fill vacancies, questioning whether the present levels of representation are appropriate or whether there is a ‘democratic surplus’ in a parish.
37. Section 95(6-7) of the 2007 Act also requires the Council to have regard to the following factors when considering the number of councillors to be allocated to a parish:
- the number of local government electors for the parish;
 - any change in that number which is likely to occur in the period of five years beginning with the day when the Review starts.
38. The following factors will also be important considerations for the Council as it looks at parish council sizes:
- the different demands and consequently different levels of representation that are appropriate between urban and rural parishes;
 - the level of the precept and levels of service provision;
 - the challenges of population sparsity and securing an appropriate level of representation in such areas;
 - the traditional scale of representation in a particular parish;
 - the need to support a warding arrangement in a particular parish and achieving a good parity of representation between wards.

39. The data sets that the Council will publish will provide important information on all these matters.

Parish warding

40. The 2007 Act (section 95(3)) requires that, on considering whether a parish should be divided into wards for the purposes of elections of the parish council, the Council should consider the following:

- whether the number, or distribution, of the local government electors for the parish would make a single election of councillors impracticable or inconvenient;
- whether it is desirable that any area or areas of the parish should be separately represented on the council.

41. Whilst the Council will consider each case on its merits in line with these criteria, it also considers that warding arrangements should be clearly and readily understood by and should have relevance for the electorate in a parish; they should reflect clear physical and social differences within a parish, whether urban or rural: one parish but comprising different parts. Furthermore, ward elections should have merit; not only should they meet the two tests laid down in the Act, but they should also be in the interests of effective and convenient local government. The additional costs of multiple ward elections should not be wasteful of a parish's resources.

The boundaries and names of parish wards

42. The Council emphasises that parish ward boundaries should be clearly understood; and should take account of community identity and interests within a parish that comprises different parts. Where there is the need to do so, every attempt will be made to fix ward boundaries that are, and will remain, easily identifiable, as well as taking into account any local ties which might be broken by the fixing of any particular boundaries. These requirements are laid down in section 95(5) of the 2007 Act.

43. The Guidance (paragraph 163) has suggested a further relevant consideration. Whilst it is understood that the Local Government Boundary Commission for England has no current intention of doing so; when it undertakes a review of the Borough electoral wards, it is prohibited from splitting an unwarded parish or a parish ward by a Borough electoral ward boundary. This legal restriction does not apply to Reviews of parish electoral arrangements undertaken by the Borough Council, but the Commission has requested that the Council bear this in mind, which the Council will do. It is noted that the Review may result in a loss of coterminosity between Borough electoral ward boundaries and parish and parish ward boundaries, which will be undesirable for the

effective conduct of elections and that may not be resolved in the short term.

44. In the naming of parish wards, the Council will be mindful of existing local or historic place names, and there will be a presumption in favour of ward names proposed by local interested parties.

The number of councillors to be elected for parish wards

45. The Council has noted that the 2007 Act (paragraph 95(5)) requires it to have regard to the following when considering the number of councillors to be elected for each ward:

- the number of local government electors for the parish;
- any change in the number, or distribution, of the local government electors which is likely to occur in the period of five years beginning with the day when the Review starts.

46. The Guidance (paragraph 166) has advised, and this Council concurs, that “it is an important democratic principle that each person’s vote should be of equal weight so far as possible, having regard to other legitimate competing factors, when it comes to the elections of councillors” to a parish council. While there is no provision in legislation that each parish ward councillor should represent, as nearly as may be, the same number of electors, the Council concurs with the Guidance that it is not in the interests of effective and convenient local government, either for voters or councillors, to have significant differences in levels of representation between different parish wards.

47. The Council is likewise anxious to avoid the risk that, where one or more wards of a parish are over-represented by councillors, the residents of those wards (and their councillors) could be perceived as having more influence than others on the council. During the Review process and in its consultations, the Council is committed to consistently showing the ratios of electors to councillors that would result from its proposals.

48. The foregoing considerations, which are considered to be equitable, will also guide the Council when it considers the number of councillors to be elected to a common council by each parish within a grouping arrangement.

Consequential Matters

49. The Review will be completed when the Council adopts the Reorganisation of Community Governance Order. This Order may cover any consequential matters that appear to the Council to be necessary or proper to give effect to the Order. These may include:

- the transfer and management or custody of property;
- the setting of precepts for new parishes;
- provision with respect to the transfer of any functions, property, rights and liabilities;
- provision for the transfer of staff, compensation for loss of office, pensions and other staffing matters.

50. In these matters, the Council will be guided by the 2007 Act and the regulations referred to above.

51. The Council is mindful that it may recommend that the Local Government Boundary Commission for England make alterations to the boundaries of the Borough electoral divisions to reflect changes made at parish level. The Council notes that it will be for the Commission to decide if related alterations should be made and, if so, when they should be implemented, and that the Commission may find it appropriate to conduct an electoral Review of affected areas.

52. Earlier in this document it was noted that, in a limited number of instances, the Council may wish to request the Local Government Boundary Commission for England to alter a Borough ward boundary so that it is coterminous with a parish boundary.

What Happens Next in the Review

53. The Council is establishing a Review website where it will publish maps and data sets to support the Review. Paper copies of these documents will be available at the Council's main offices at Westfields, Macclesfield Town Hall and Municipal Buildings, Crewe.

54. The Council will also commence a process of consultation, including providing briefings for the parish councils, to enable it to prepare Draft Proposals in the Review.

4. Implications of the Recommendations

4.1. Legal Implications

4.1.1. The legal implications are contained in the main body of this report.

4.2. Finance Implications

4.2.1. It has been agreed that some degree of external advice will be required as part of the review process. The cost of this is not yet known but is not expected to be major. Consultation has taken place with the Head of Procurement to ensure that the correct process is followed.

4.3. Policy Implications

4.3.1. This report constitutes the terms of reference of the community governance review.

4.4. Equality Implications

4.4.1. There are no equality implications arising from this report.

4.5. Human Resources Implications

4.5.1. The review will be carried out using existing staffing resources, although it will be necessary to procure some external advice (see paragraph 4.2.1 above).

4.6. Risk Management Implications

4.6.1. Clear terms of reference will reduce the risk of lack of clarity for the review. The holistic approach envisaged will avoid the risk of adopting an inconsistent and piecemeal approach to the review in different parts of the Borough.

4.7. Rural Communities Implications

4.7.1. There are direct implications for all rural communities which will become evident as the review progresses.

4.8. Implications for Children & Young People

4.8.1. Any such implications will become evident as the review progresses.

4.9. Public Health Implications

4.9.1. Any such implications will become evident as the review progresses.

5. Ward Members Affected

5.1. All wards

6. Consultation & Engagement

6.1. This is dealt with in the main body of the report.

7. Access to Information

7.1. There are no additional supporting documents.

8. Contact Information

- 8.1. Any questions relating to this report should be directed to the following officer:

Name: Brian Reed

Job Title: Head of Democratic Services and Governance

Email: brian.reed@cheshireeast.gov.uk

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Constitution Committee

Date of Meeting: 22 November 2018

Report Title: Calendar of Meetings for 2019-20

Senior Officer: Dan Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. This report includes a draft Calendar of Meetings for Cheshire East Council for 2019-20.
- 1.2. The Committee is invited to recommend the draft calendar to Council for approval.

2. Recommendations

- 2.1. That the Committee comment on the responses to the consultation on the draft Calendar of Public Meetings, as set out in paragraph 5.15.
- 2.2. That the draft Calendar of Meetings for Cheshire East Council 2019-20 be recommended to Council for approval.

3. Reasons for Recommendations

- 3.1. The Council is required to give public notice of its meetings in order to fulfil its legal obligations under the Access to Information Rules set out in the Constitution and to meet its obligations under the Local Government Act 1972. The Calendar will assist the Council in meeting these requirements.

4. Other Options Considered

- 4.1. Not applicable.

5. Background

- 5.1. As set out in its Constitution (Chapter 3 – Part 1 para 1.1) the Borough Council is required to decide when its meetings will take place and these will be contained in a calendar of meetings.

It is for full Council to approve the calendar.

- 5.2. Under Chapter 2 – Part 5 of the Constitution, the Constitution Committee is responsible for

“overseeing, monitoring, co-ordinating and implementing the Council’s administrative and political business, including.....administrative arrangements for the conduct of the Council and other meetings.”

- 5.3. The proposed scheduling of meetings for 2019/20 follows the pattern adopted in previous years. As far as possible only one Committee has been scheduled per day and meetings of each Committee have been scheduled on the same weekday were possible.
- 5.4. Scheduling of meetings had taken into account the business planning/performance reporting cycle.
- 5.5. Certain categories of meetings which do not form part of the formal decisions making process will be omitted from the public calendar but will be added to the Members’ diary for convenience. These include Member development sessions and meetings of the Cheshire Fire Authority and Cheshire Police and Crime Panel.
- 5.6. August has been retained for recess except for planning meetings.
- 5.7. No meetings have been scheduled on the dates of Cheshire Show (18 and 19 June 2019) and Nantwich Show (31 July 2019). Full Council in July has been scheduled for 18 July 2019, which is one of the days when the RHS Tatton Park Flower Show is taking place – the Show runs from 17 to 21 July 2019.
- 5.8. Meetings of full Council have been scheduled to be held on 18 July 2019, 17 October 2019, 12 December 2019, 20 February 2020 and 13 May 2020, with the start time of 11 am for Annual Council, December 2019 and February 2020 meetings and 2.00 pm in July and October meetings.
- 5.9. The date of July 2019 full Council has been moved a week forward from previous years so that it does not fall in the summer school holiday.
- 5.10. Meetings of Overview and Scrutiny Committees have been scheduled on bi-monthly basis, with the exception of the Health and Adult Social Care and Communities Overview and Scrutiny Committee which is scheduled almost monthly. If there is a specific need for additional meetings, these can be dealt with under existing arrangements.
- 5.11. Cabinet meetings have been scheduled on a Tuesday at 2.00 pm and have been arranged to take place in the Committee Suite at Westfields. No other meetings have been scheduled on the same day.
- 5.12. Strategic Planning Board, Northern Planning Committee and Southern Planning Committee are scheduled on a four weekly cycle of meetings on Wednesdays where possible; with any site visits taking place on the Friday before the meeting.
- 5.13. The Strategic Planning Board will commence at 10.30 am, with the Northern Planning Committee and Southern Planning Committee commencing at 10.00 am.

5.14. The Constitution Committee, Staffing Committee and Public Rights of Way Committee had been scheduled to take place quarterly, with the Audit and Governance Committee and Licensing Committee to meeting five times a year. Provisions exist for additional meetings to be called if needed.

5.15. The calendar of meetings had been circulated to the following:

- Corporate Leadership Team
- Cabinet members
- Committee Chairmen
- Group Leaders
- Group Whips

Responses have been received from consultees are summarised as follows:

- concern that Council was held on a Thursday in Sandbach when there are difficulties with parking due to it being market day, could consideration be given to changing the day of the week for full Council
- beneficial to start Strategic Planning Board at 10.00 am rather than 10.30 am to bring it into line with the other two Planning Committees

Any further responses received will be reported at the Constitution Committee meeting.

5.16. Subject to additional recommendations which Members may wish to make, the Committee is asked to refer the Calendar to Council for approval.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. There are no specific legal implications other than those identified in the main body of the report.

6.2. Finance Implications

6.2.1. There are no direct finance implications.

6.3. Policy Implications

6.3.1. There are no direct policy implications.

6.4. Equality Implications

6.4.1. There are no direct implications for equality.

6.5. Human Resources Implications

6.5.1. There are no direct implications for human resources.

6.6. Risk Management Implications

6.6.1. A published calendar of meetings enables effective business planning and decision making procedures.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. All Wards

8. Consultation & Engagement

8.1. The draft calendar of meetings has been circulated to the Corporate Leadership Team, Cabinet members, Committee Chairmen, Group Leaders and Group Whips.

9. Access to Information

9.1. Background papers relating to this report can be inspected by contacting the officer named below.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Rachel Graves

Job Title: Democratic Services Officer

Email: rachel.graves@cheshireeast.gov.uk

Calendar of Meetings 2019-20

COMMITTEE	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY
Council (Wed Annual Council/ Thursday)	22 (11 am)		18 (2 pm)			17 (2 pm)		12 (11 am)		20 (11 am)			13 (11 am)
Cabinet Bodies													
Cabinet (Tuesday 2 pm)		11	9		10	8	5	3	14	4	10	7	5
Shared Services Joint (Friday, Winsford)	31						29						
Corporate Bodies													
Constitution Committee (Thursday 2 pm)		27			19		21				19		
Audit and Governance Committee (Thursday 2 pm)	30		30 (Tue)			3		5			12		
Staffing Committee (Thu 2 pm)			25			24			23			23	
Appeals Sub Committee (Mon/Tue 2 pm)		4	2, 29		3	1, 29	19		7	11	3, 31		11
Regulatory Bodies													
Licensing Committee (Monday 2 pm)		3			2		4		6		2		
General Licensing Sub Committee		20	16	22	17	22	14	10	21	13	17	20	
Public Rights of Way Committee (Monday 2 pm)		10			9			2			9		
Strategic Planning Board (Wednesday 10.30 am)		26	24	28	25	23	20	18	29	26	25	22	
Southern Planning (Wednesday 10 am)	29		3	7	4	2, 30	27		8	5	4	1, 29	

COMMITTEE	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY
Northern Planning (Wednesday 10 am)		5	10	14	11	9	6	4	15	12	11	8	6

Overview and Scrutiny Bodies													
Corporate (Thu 2.00 pm)		6			5	31			9	3		2	
Health and Adult Social Care and Communities Overview and Scrutiny Committee (Thursday 10 am)		13		1	12	10	7	5	16	6	5	9	7
Environment and Regeneration (Mon 2 pm)		17			16		11		20		16		
Children and Families (Mon 1.30 pm)		24			23		25		27		23		

Others													
Health and Wellbeing Board (Tuesday 2 pm)	29		23		24		26		28		24		
Local Authority School Governor Appointments Panel (Monday 2 pm)			1			14				10			
ASDV Shareholder Committee (Wed 2 pm)		11			18				22		18		



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Constitution Committee

Date of Meeting: 22 November 2018

Report Title: Audit and Governance Committee Terms of Reference

Senior Officer: Daniel Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. The Council's Constitution includes the Terms of Reference for the Audit and Governance Committee. At its meeting on 27th September 2018, the Audit and Governance Committee approved revisions to its Terms of Reference. An amendment to the Constitution is required to include the revised Terms of Reference.

2. Recommendation

- 2.1. That Council be recommended to approve the amendment of the Constitution to include the revised Terms of Reference for the Audit and Governance Committee as set out in Appendix A.

3. Reason for Recommendation

- 3.1. To ensure that the Council's Constitution is kept up to date.

4. Other Options Considered

- 4.1. Not applicable

5. Background

- 5.1. The Audit and Governance Committee at its meeting on 27th September 2018, approved (with the exception of the matters referred to in paragraph 5.3 to 5.7 below) the revised Terms of Reference as set out in Appendix A to this report. These revised Terms of Reference reflect updated best practice guidance from CIPFA (Practical Guidance for Audit Committees).
- 5.2. The Constitution, Chapter 2, Part 5 – Functions of Committees includes the Terms of Reference for the Audit and Governance Committee, as set out in Appendix B to this report. In order to give effect to the changes approved by Audit and Governance Committee, the Constitution needs to be

amended to adopt the content of Appendix A to this report in place of the current terms or reference in the Constitution (set out in Appendix B hereto).

5.3. In preparing the content of Appendix A for the purposes of this Constitution Committee report, further consideration was given to references in the proposed new terms of reference, approved by the Audit and Governance Committee, as they relate to that Committee's responsibilities in relation to anti-fraud, corruption and whistleblowing.

5.4. At its September meeting, the Audit and Governance Committee was content to remove the existing term of reference No. 41 (see Appendix B hereto) which read:-

"To approve and monitor Council policies relating to whistleblowing and anti-fraud and corruption."

5.5. The Audit and Governance Committee was content to remove that term of reference on the basis that whistleblowing policies are an integral part of ethical conduct, transparency and fraud and corruption detection and prevention, which were dealt with elsewhere in the proposed new terms of reference. The commentary at point No. 46 of Appendix A to the Audit and Governance Committee report on 27 September 2018 relates.

5.6. Notwithstanding Audit and Governance Committee being content with that proposed deletion, the view taken after further consideration of the matter after the 27 September 2018 meeting was that it was desirable to retain a specific reference to approving and monitoring whistleblowing policies in the terms of reference. For that reason, Appendix A to this report has been amended slightly from the version approved by Audit and Governance Committee by the re-inclusion of original term No. 41 (see term No.145 Appendix A hereto).

5.7. The Chair and Vice Chair of Audit and Governance Committee have expressed themselves content with this re-inclusion. Relevant Portfolio Holders and the Group Leaders have also been consulted and have raised no concerns.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. Section 37 of the Local Government Act 2000 and the guidance issued under it requires the Council to keep its Constitution up to date and regularly review it.

6.1.2. Amendments to the Terms of Reference of Committee require the approval of Full Council (Constitution Chapter 2, Part 3 – Paragraph 1.11).

6.2. Finance Implications

6.2.1. There are no specific Finance implications.

6.3. Policy Implications

6.3.1. There are no known Policy implications.

6.4. Equality Implications

6.4.1. There are no Equality Implications

6.5. Human Resources Implications

6.5.1. There are no specific HR implications

6.6. Risk Management Implications

6.6.1. There are no direct risk management implications

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. None.

8. Access to Information

8.1. Reports which set out the background are available publically

[Item 12 Audit and Governance Committee 27th September 2018](#)

9. Contact Information

9.1. Any questions relating to this report should be directed to the following officer:

Name: Josie Griffiths

Job Title: Principal Auditor

Email: josie.griffiths@cheshireeast.gov.uk

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Audit and Governance Committee Terms of Reference

Drafted following review at 27th September 2018 meeting

Membership: 11 Members

- 103 The success of the Audit and Governance Committee depends upon its ability to remain apolitical. It must adopt a non-political approach to its meetings and discussions at all times. Remaining apolitical also places a duty on members not to make inappropriate use of information provided to the Committee for other purposes.
- 104 The Committee is composed of 11 Members, comprising 10 members of the Council and one independent voting member (a member who is not a Councillor) with the Chairman and Vice-Chairman being appointed at full Council. The co-option of an independent member is intended to bring additional knowledge and expertise to the Committee and reinforce its political neutrality and independence. To ensure that the Committee remains focussed on its assurance role, all members of the Committee, and any designated substitute, must be appropriately trained.

Statement of Purpose

- 105 The Audit Committee is a key component of the Council's corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial standards.
- 106 It provides an independent assurance to the Council of the adequacy of the risk management framework and the internal control environment.
- 107 It provides independent review of the Council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes.
- 108 It oversees internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.
- 109 It promotes high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity).

Governance, risk and control

- 110 To review the Council's corporate governance arrangements against the good governance framework and consider annual governance reports and assurances.
- 111 To review and approve the Annual Governance Statement and consider whether it properly reflects the risk environment and supporting assurances, taking into account internal audit's opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control.
- 112 To consider the Council's arrangements to secure value for money and to review and scrutinise assurances and assessments on the effectiveness of these arrangements.
- 113 To consider the Council's framework of assurance and ensure that it adequately addresses the risks and priorities of the council.
- 114 To monitor the effective development and operation of risk management in the council.
- 115 To monitor progress in addressing risk related issues reported to the committee.
- 116 To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions, including calling managers to explain lack of progress.
- 117 To review the assessment of fraud risks and potential harm to the Council from fraud and corruption.
- 118 To monitor the counter-fraud strategy, actions and resources.
- 119 To review the governance and assurance arrangements for significant partnerships or collaborations.
- 120 To review and monitor the Council's treasury management arrangements in accordance with the CIPFA Treasury Management Code of Practice.

Internal Audit

- 121 To approve the internal audit charter.

- 122 To review proposals made in relation to the appointment of external providers of internal audit services and to make recommendations
- 123 To approve the risk-based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon those other sources.
- 124 To approve significant interim changes to the risk-based internal audit plan and resource requirements
- 125 To make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.
- 126 To consider any impairments to independence or objectivity arising from additional roles or responsibilities outside of internal auditing of the head of internal audit. To approve and periodically review safeguards to limit such impairments.
- 127 To consider reports from the head of internal audit on internal audit's performance during the year, including the performance of external providers of internal audit services. These will include:
- a) Updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work.
 - b) Regular reports on the results of the Quality Assurance and Improvement Programme.
 - c) Reports on instances where the internal audit function does not conform to the Public Sector Internal Audit Standards and Local Government Application Note, considering whether the non-conformance is significant enough that it must be included in the Annual Governance Statement.
- 128 To consider the head of internal audit's annual report:
- a) The statement of the level of conformance with the Public Sector Internal Audit Standards and Local Government Application Note and the results of the Quality Assurance and Improvement Programme that supports the statement – these will indicate the reliability of the conclusions of internal audit.
 - b) The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control together with the

summary of the work supporting the opinion – these will assist the committee in reviewing the Annual Governance Statement.

- 129 To consider summaries of specific internal audit reports as requested.
- 130 To receive reports outlining the action taken where the head of internal audit has concluded that management has accepted a level of risk that may be unacceptable to the authority or there are concerns about progress with the implementation of agreed actions.
- 131 To contribute to the Quality Assurance and Improvement Programme and in particular, to the external quality assessment of internal audit that takes place at least once every five years.
- 132 To consider a report on the effectiveness of internal audit to support the Annual Governance Statement, where required to do so by the Accounts and Audit Regulations.
- 133 To provide free and unfettered access to the audit committee chair for the head of internal audit, including the opportunity for a private meeting with the committee.

External Audit

- 134 To support the independence of external audit through consideration of the external auditor's annual assessment of its independence and review of any issues raised by PSAA or the authority's auditor panel as appropriate.
- 135 To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.
- 136 To consider specific reports as agreed with the external auditor.
- 137 To comment on the scope and depth of external audit work and to ensure it gives value for money.
- 138 To commission work from internal and external audit.
- 139 To advise and recommend on the effectiveness of relationships between external and internal audit and other inspection agencies or relevant bodies.

Financial Reporting

- 140 To review and approve the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and

whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.

- 141 To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.

Accountability Arrangements

- 142 To report to those charged with governance on the committee's findings conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks; financial reporting arrangements, and internal and external audit functions.
- 143 To report to full Council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose.
- 144 To publish an annual report on the work of the committee.

Related Functions

- 145 To approve and monitor Council policies relating to whistleblowing and anti-fraud and corruption.
- 146 Subject to the requirements set out below, to consider all findings of the Local Government Ombudsman, including reports resulting in a finding of maladministration against the Council, and to make recommendations as to actions that may be necessary in connection with the Ombudsman's findings.
- (a) There are statutory obligations which will, in some circumstances, require reports to be taken to Cabinet or full Council.
- (b) The Ombudsman operates protocols in relation to the timing of the publication of findings. The Council would have to give consideration to those protocols when determining how to manage the Audit and Governance Committee's agenda.

Working Groups

- 147 The Committee may establish standing and time-bound working groups (which may but need not be politically balanced) to consider any matters within the terms of reference of the Committee.

Standards Arrangements

- 148 The Committee is responsible for the Council's standards arrangements which seek to:
- (a) promote high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity);
 - (b) ensure that Members receive advice and as appropriate on the Members Code of Conduct; and
 - (c) grant dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted Member to participate in a meeting of the Authority.
- 149 Council on 22nd October 2015 approved a procedure to be followed when considering a complaint that an elected member of the Council or of a town or parish council within its area has failed to comply with the Council's Code of Conduct. The full procedure is available from the Monitoring Officer.

Hearing Sub Committee

- 150 The Hearing Sub-committee is a Sub-Committee of the Council's Audit and Governance Committee appointed to consider complaints under the procedure referred to in Chapter 4, Part 1, Paragraph 28 of the Constitution. It has 3 members drawn from a cross party panel of 15 members of the Council. An Independent Person is invited to attend all meetings of the Hearing Sub-committee and his/her views are sought and taken into consideration before the Hearing Sub-committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.
- 151 The Independent Person is a person who has applied for the post following advertisement. He/she is appointed by Council.

AUDIT AND GOVERNANCE COMMITTEE**Membership: 11 Members**

- 103 The success of the Audit and Governance Committee depends upon its ability to remain apolitical. It must adopt a non-political approach to its meetings and discussions at all times. Remaining apolitical also places a duty on members not to make inappropriate use of information provided to the Committee for other purposes.
- 104 The Committee is composed of 11 Members, comprising 10 members of the Council and one independent voting member (a member who is not a Councillor) with the Chairman and Vice-Chairman being appointed at full Council. The co-option of an independent member is intended to bring additional knowledge and expertise to the Committee and reinforce its political neutrality and independence. To ensure that the Committee remains focussed on its assurance role, all members of the Committee, and any designated substitute, must be appropriately trained.

Statement of Purpose

- 105 The Audit Committee is a key component of the Council's corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial standards.
- 106 It provides an independent assurance to the Council of the adequacy of the risk management framework and the internal control environment.
- 107 It provides independent review of the Council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes.
- 108 It oversees internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.
- 109 It promotes high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity).

Functions

- 110 The Committee has responsibility for the following areas of the Council's activities and operations.

- 111 Detailed explanations of the areas covered in each heading are available by clicking on the links¹:

Governance, Risk and Control

1. *To review the Council's corporate governance arrangements against the good governance framework and consider annual governance reports and assurances.*
2. *To review and approve the Annual Governance Statement and consider whether it properly reflects the risk environment and supporting assurances, taking into account internal audit's opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control.*
3. *To consider the Council's arrangements to secure value for money and to review and scrutinise assurances and assessments on the effectiveness of these arrangements.*
4. *To consider the Council's framework of assurance and ensure that it adequately addresses the risks and priorities of the council.*
5. *To monitor the effective development and operation of risk management in the council.*
6. *To monitor progress in addressing risk related issues reported to the committee.*
7. *To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions, including calling managers to explain lack of progress.*
8. *To review the assessment of fraud risks and potential harm to the Council from fraud and corruption.*
9. *To make recommendations to the Executive on the Council's arrangements for deterring, preventing, detecting and investigating fraud.*
10. *To monitor the counter fraud strategy, actions and resources.*
11. *To advise the Executive on responses to audit management letters, reports and investigations and reviewing whether agreed external audit or inspection recommendations have been implemented as timetabled.*

¹ In the current Constitution, details of the functions are provided in a hyperlinked Appendix. They are produced in full within this document for clarification and assistance in comparison.

12. *To review and monitor the Council's treasury management arrangements in accordance with the CIPFA Treasury Management Code of Practice.*

Internal audit

13. *To approve the internal audit charter.*
14. *To review proposals made in relation to the appointment of external providers of internal audit services and to make recommendations.*
15. *To approve the risk-based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon those other sources.*
16. *To approve significant interim changes to the risk-based internal audit plan and resource requirements.*
17. *To make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.*
18. *To consider reports from the head of internal audit on internal audit's performance during the year, including the performance of external providers of internal audit services. These will include:*
19. *a) Updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work.*
20. *b) Regular reports on the results of the Quality Assurance and Improvement Programme.*
21. *c) Reports on instances where the internal audit function does not conform to the Public Sector Internal Audit Standards and Local Government Application Note, considering whether the non-conformance is significant enough that it must be included in the Annual Governance Statement.*
22. *To consider the head of internal audit's annual report:*
23. *a) The statement of the level of conformance with the Public Sector Internal Audit Standards and Local Government Application Note and the results of the Quality Assurance and Improvement Programme that supports the statement – these will indicate the reliability of the conclusions of internal audit.*
24. *b) The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control together with the*

summary of the work supporting the opinion – these will assist the committee in reviewing the Annual Governance Statement.

- 25. To consider summaries of specific internal audit reports as requested.*
- 26. To receive reports outlining the action taken where the head of internal audit has concluded that management has accepted a level of risk that may be unacceptable to the authority or there are concerns about progress with the implementation of agreed actions.*
- 27. To contribute to the Quality Assurance and Improvement Programme and in particular, to the external quality assessment of internal audit that takes place at least once every five years.*
- 28. To consider a report on the effectiveness of internal audit to support the Annual Governance Statement, where required to do so by the Accounts and Audit Regulations.*
- 29. To support the development of effective communication with the head of internal audit.*
- 30. To review and make recommendations to the Executive regarding the effectiveness of internal audit to include ensuring the internal audit function is adequately resourced, to review its strategy, receive, challenge and approve its annual plan and monitor its delivery and to review significant audit findings and monitor progress by managers in implementing agreed recommendations.*

External Audit

- 31. To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.*
- 32. To consider specific reports as agreed with the external auditor.*
- 33. To comment on the scope and depth of external audit work and to ensure it gives value for money.*
- 34. To commission work from internal and external audit.*
- 35. To advise and recommend on the effectiveness of relationships between external and internal audit and other inspection agencies or relevant bodies.*

Financial Reporting

- 36. To review and approve the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and*

whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.

37. *To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.*
38. *To receive retrospectively for information all notices of waiver which are used when consent is sought to depart from the requirements of the Council's Contract Procedure Rules, and all notices which are used to record any non-adherence to those Rules.*

Accountability Arrangements

39. *To report to those charged with governance on the committee's findings conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks; financial reporting arrangements, and internal and external audit functions.*

Related functions

40. *To report to full Council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose.*
41. *To approve and monitor Council policies relating to "whistleblowing" and anti-fraud and corruption.*
42. *To seek assurance that customer complaint arrangements are robust.*
43. *Subject to the requirements set out below, to consider all findings of the Local Government Ombudsman, including reports resulting in a finding of maladministration against the Council, and to make recommendations as to actions that may be necessary in connection with the Ombudsman's findings.*

(a) There are statutory obligations which will, in some circumstances, require reports to be taken to Cabinet or full Council.

(b) The Ombudsman operates protocols in relation to the timing of the publication of findings. The Council would have to give consideration to those protocols when determining how to manage the Audit and Governance Committee's agenda.

- 112 The powers of the Committee in delivering these functions shall include (but not be limited to) the following:

112.1 To review and monitor the Council's treasury management arrangements in accordance with the CIPFA Treasury Management Code of Practice

112.2 To consider the head of internal audit's annual report

112.3 To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.

112.4 To consider specific reports as agreed with the external auditor

112.5 To review and approve the annual statement of accounts

112.6 To approve and monitor Council policies relating to "whistleblowing" and anti- fraud and corruption

112.7 To consider all findings of the Local Government Ombudsman (subject to statutory requirements relating to reporting and timings) including reports resulting in a finding of maladministration against the Council, and to make recommendations as to actions that may be necessary in connection with the Ombudsman's findings

112.8 To promote high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council

112.9 To grant dispensations under the provisions of the Localism Act 2011 to enable a Member or co-opted Member to participate in a meeting of the Authority

Hearing Sub-Committee

Membership

113 3 Members drawn from a cross party panel of 15 Members of the Council. An Independent Person is invited to attend all meetings of the Hearings Sub-committee and his/her views are sought and taken into consideration before the Hearings Sub-committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct

114 An Independent Person is a person who is appointed under the Localism Act and has applied for the post following advertisement. He/she is appointed by Council.

Functions

- 115 To consider complaints about Member complaints under the Code of Conduct in accordance with the arrangements for dealing with such complaints.

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Working for a brighter future together

Constitution Committee

Date of Meeting: 22 November 2018

Report Title: Proposed Changes to the Constitution – Chief Officer Delegations

Portfolio Holder: Cllr Paul Findlow – Corporate Policy and Legal Services Portfolio Holder

Senior Officer: Daniel Dickinson – Acting Director of Legal Services

1. Report Summary

- 1.1. The purpose of this report is to alert members to a need, identified by Regulatory Services colleagues, to amend three paragraphs of the constitution relating to officer powers. The need arises in order to improve clarity and operational efficiency in respect of regulatory enforcement functions.

2. Recommendation/s

- 2.1. That the Constitution Committee note the intention of the Monitoring Officer to amend paragraphs 37, 41 and 42 of the delegations to Chief Officers section of the Constitution as set out in the appendix hereto.

3. Reasons for Recommendation/s

- 3.1. The changes proposed will ensure greater operational clarity and efficiency.

4. Other Options Considered

- 4.1. None

5. Background

- 5.1. The first paragraph in respect of which amendments are proposed is paragraph 37 on page 94, which is a general delegation to all chief officers. It currently reads:-

“37 To enter into reciprocal arrangements for the authorisation and appointment of officers to facilitate cross-border co-operation in the discharge of delegated functions with any other council.”

5.2. There may be scenarios where such reciprocal arrangements need to be made with enforcement authorities that are not councils. Consequently, after the words “any other council” the words “or enforcement authority” should be added. This reflects the position in the constitution prior to 1 January 2018.

5.3. The second and third paragraphs in respect of which amendments are proposed are paragraphs 41 and 42 on page 95. Those paragraphs deal with the “legal authorisation and enforcement” functions delegated to all chief officers. Those paragraphs are, for convenience, reproduced below.

“41 To authorise officers possessing such qualifications as may be required by law and where Chief Officers are satisfied that appropriate training has been undertaken, to:

41.1 take samples, carry out inspections or surveys, enter land and premises and generally perform the functions of and/or act as a duly authorised, officer of the Council (howsoever described)

41.2 issue certificates of authority or certify copies of documents

41.3 enforce the requirements of legislation

41.4 instruct the Monitoring Officer to consider whether or not legal proceedings to enforce the requirements of legislation are appropriate.

42 With the approval of the Monitoring Officer, to:

42.1 authorise the issue and service of requisitions for information, any notice, order or direction

42.2 approve or issue any licence which may be required or authorised by or under any legislation or byelaws (not otherwise mentioned in this scheme of delegation)

42.3 authorise the institution of legal and quasi-legal proceedings and/or other action (including debt recovery) as is considered necessary to protect the interests of the Council

42.4 sign certificates for contracts.”

- 5.4. The intention of paragraphs 41 and 42 is to authorise officers to undertake enforcement activity. The difference between the two paragraphs is that the functions set out in paragraph 41 do not require the prior approval of the Monitoring Officer, whereas those set out in paragraph 42 do.
- 5.5. Operationally the approval of the Monitoring Officer is only necessary for the institution of legal and quasi-legal proceedings and in respect of the general “catch all” power to authorise other action considered necessary to protect the interests of the Council (42.3).
- 5.6. All of the other matters referred to in the current paragraphs 41 and 42 can quite properly be exercised/delegated by Chief Officers without the prior approval of the Monitoring Officer. It is perfectly appropriate for the routine exercise of those powers to be undertaken in service, under the supervision and approval of appropriate service management hierarchies. Whilst legal advice can be and is sought as and when required, the requirement for prior approval from the Monitoring Officer in respect of those matters is considered to be an unnecessary administrative burden.
- 5.7. Consequently, these two paragraphs need to be restructured. There needs to be two new paragraphs. The first new paragraph should deal with all of those functions in respect of which the prior approval of the Monitoring Officer is not required. The second new paragraph should deal with those functions that require the approval of the Monitoring Officer. Proposed new paragraphs 41 and 42 are set out below accordingly.
- 5.8. In respect of the proposed new paragraph 41, there is scope to apply normal drafting conventions to improve clarity. The drafting convention would be to commence the paragraph by giving a general authorisation to undertake enforcement activity, and then provide a non-exhaustive list of examples of the sort of enforcement activity contemplated. That approach is adopted in the proposed new paragraph 41.
- 5.9. In respect of the proposed new paragraph 41, Members will notice that the provision in the current paragraph 41.4, specifically empowering officers to ask the Monitoring Officer whether or not legal proceedings would be appropriate to enforce legislation, has been omitted. In reality, any officer (or Member for that matter) is at liberty to take a view from the Monitoring Officer as to whether or not legal proceedings are appropriate. The current paragraph 41.4 serves no useful purpose and should be deleted.

5.10. Additionally, Members will notice that “applying for warrants” has been added to the proposed new paragraph 41 to clarify that this activity (ancillary to the exercise of powers to enter/seize) does not require the prior approval of the Monitoring Officer.

5.11. The Monitoring Officer is of the view that the changes proposed rank as changes which provide appropriate clarity and correct inconsistencies in drafting. They have no impact on the substantive effect of the paragraphs in question as originally drafted and can, therefore, be made in consultation with the Chairman and Vice Chairman of the Committee in accordance with paragraph 67 on page 106/7 of the constitution. Nevertheless, these matters are presented to full committee so that the opportunity exists for Members to seek any clarification they may require on these matters.

6. Implications of the Recommendations

6.1. There are no Legal, Financial, Policy, Equality, Human Resources, Risk Management, Rural Communities, Children & Young People or Public Health implications that flow from the proposed amendments.

7. Ward Members Affected

7.1. All wards are equally affected.

8. Consultation & Engagement

8.1. Colleagues in Regulatory Services have been extensively consulted.

9. Access to Information

9.1. The Constitution can be accessed through the Council’s website.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Daniel Dickinson

Job Title: Acting Director of Legal Services

Email: daniel.dickinson@cheshireeast.gov.uk

Appendix

Proposed New Paragraph 37

- 37 To enter into reciprocal arrangements for the authorisation and appointment of officers to facilitate cross-border co-operation in the discharge of delegated functions with any other council or enforcement authority.

Proposed New Paragraph 41

- 41 To act as “duly authorised officers” (for the purposes of all relevant legislation) and to enforce/administer the requirements of all relevant regulatory legislation which shall (for the avoidance of doubt) include (but not be limited to) taking the following action (and all actions reasonably necessary, expedient or ancillary in order to facilitate or enable the same):-

41.1 Applying for warrants, carrying out investigations, inspections or surveys, entering land and premises, taking samples and seizing property

41.2 issuing (or declining to issue) licences, certificates or certified copies of documents, approvals, permissions, consents, notices, orders, directions or requisitions for information

Proposed New Paragraph 42

- 42 With the approval of the Monitoring Officer, to authorise the institution, defence or participation in civil and criminal proceedings and quasi-proceedings (which for the avoidance of doubt shall include but not be limited to all court hearings, tribunal, inquiry and appeal processes), administer cautions and/or take any other action considered necessary to protect the interests of the Council.

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