

# Cheshire East Council

## Constitution Committee

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**Date of Meeting:** 18<sup>th</sup> February 2016

**Report of:** Constitution Member Working Group

**Subject:** Proposals to Further the Council's Efforts to be More Open

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### 1. Report Summary

- 1.1. This report of the Constitution Member Working Group makes recommendations to the Constitution Committee upon a range of proposed measures which will further the Council's efforts to be more open.

### 2. Recommendation

- 2.1. Audio-recording of committee meetings: it is recommended that, with effect from the beginning of the new municipal year, subject to the availability of appropriate equipment, the proceedings of all decision-making meetings should be audio-recorded; further that such recordings should be retained for use by officers only in order to resolve any disagreement as to the accuracy of the draft minutes of the meeting, and that after formal agreement of the draft minutes, the audio recording should be deleted. It is further recommended that the Director of Legal Services and Monitoring Officer makes such appropriate addition to the Access to Information Procedure Rules as he considers is necessary to give effect to the wishes of the Committee.
- 2.2. Publication of Member attendances: the Committee is asked to consider whether the question of publicly recording Member attendance at non-formal decision-making meetings of Cheshire East Council, joint bodies and outside organisations, should be pursued.
- 2.3. Contract Procedure Rules: the Committee is recommended to agree that all notices of waiver, which are used when consent is sought to depart from the requirements of the Council's Contract Procedure Rules, and notices which are used to record any non-adherence to the Rules, should be retrospectively published for information on the next appropriate Audit and Governance Committee agenda.
- 2.4. Member Job Descriptions: the Committee is recommended to recommend to Council the approval and adoption of the job description for committee chairmen attached as Appendix 1 to this report, and to consider the

development of a job description for councillors, taking into consideration the model set out at Appendix 2.

- 2.5. Chairmanship of Overview and Scrutiny Committee meetings: that the Committee consider whether it wishes to recommend to Council that one or more Overview and Scrutiny Committee chairmanships should be required to be allocated to the Council's opposition groups.
- 2.6. Ombudsman findings: that subject to the requirements referred to in paragraph 5.2.4 of this report, it is recommended that the terms of reference of the Audit and Governance Committee be expanded to include responsibility for considering all findings of the Local Government Ombudsman, and for making recommendations as to actions that may be necessary in connection with the Ombudsman's findings; this also to include reports resulting in a finding of maladministration against the Council.

### **3. Background**

- 3.1. The Constitution Member Working Group is an informal cross-party group of Members, chaired by Councillor David Marren, which meets periodically to develop proposals for constitutional and related changes, for decision or recommendation by the Constitution Committee.
- 3.2. The Working Group met on 21<sup>st</sup> December to consider a range of issues, and made appropriate recommendations to the Constitution Committee, which are now included within this report.

#### Audio recording of committee meetings

- 3.3. The Working Group considered the question of whether the proceedings of Committees and other decision-making meetings should be audio-recorded. It was felt that, on occasion, the ability to refer to an audio-recording would assist officers in correctly minuting the proceedings of meetings.
- 3.4. Examples were given by Members of occasions upon which there had been disagreement over the minuting of a previous meeting.
- 3.5. In law, the draft minutes of a meeting are required to be agreed by the next meeting of the body in question, after which they are regarded as the definitive and accurate record of the proceedings of the meeting. The Working Group was of the view that keeping an audio recording of the meeting until the draft minutes of that meeting had been formally approved would be a helpful measure which would assist officers in circumstances where the accuracy of the draft minutes was questioned.
- 3.6. It is therefore proposed that, with effect from the beginning of the new municipal year, subject to the availability of appropriate equipment, the proceedings of all decision-making meetings should be audio-recorded; further that such recordings should be retained for use by officers only in

order to resolve any disagreement as to the accuracy of the draft minutes of the meeting, and that after formal agreement of the draft minutes, the audio recording should be deleted.

#### Publication of Member attendances

- 3.7. The Working Group discussed the existing automated arrangements which make a public record of Member attendances at meetings. Some Members were concerned that the current record of attendances at meetings did not reflect the full range of activities carried out by Members.
- 3.8. The automated record, which operates through the Council's *Modern.gov* system, keeps a record only of attendance at the Council's formal decision-making meetings, whereas Members attend a range of other bodies too eg working groups (such as the Constitution Committee Working Group), outside bodies (of which there are approaching 100), informal briefing meetings, Parish Council meetings, meetings of other bodies such as the Fire Authority, meetings of ASDVs etc.
- 3.9. It would not be possible to centrally record details of attendances at meetings of these other bodies without creating a burdensome administrative process.
- 3.10. Ultimately, any arrangements which might be adopted to publicly recognise the range of other meetings which Members attend would be dependent upon those Members submitting some form of regular return to officers. Not all members of the Working Group were in favour of creating additional burdens for themselves, for other Members, or for officers and the report author has doubts as to whether all Members would be likely to provide regular returns. The Committee's views are therefore sought upon whether this issue should be pursued.

#### Contract Procedure Rules

- 3.11. The meeting of the Audit and Governance Committee on 15<sup>th</sup> December considered the question of publication of notices of waiver, which are used when consent is sought to depart from the requirements of the Council's Contract Procedure Rules. The Committee decided that all such notices, and also notices which are used to record any non-adherence to the Rules, should be retrospectively published for information on the Audit and Governance Committee agenda.
- 3.12. The Working Group discussed the matter and concluded that the Council's Contract Procedure Rules should be amended appropriately to make this a formal constitutional requirement.

#### Member Job Descriptions

- 3.13. The Constitution Member Working Group at its meeting on 25<sup>th</sup> August 2015 considered a draft job description for committee chairmen which is

attached as Appendix 1 to this report. The Working Group agreed to recommend the job description to the Constitution Committee.

- 3.14. At its subsequent meeting on 21<sup>st</sup> December 2015, the Working Group considered whether a job description should also be developed for Members in general. It was felt that this would encourage and assist new Members by clarifying their roles and responsibilities, as well as assisting with Member allowances and Member development. It would also provide a helpful guide to individuals thinking of becoming local councillors. The Working Group agreed that a report should be submitted to the next meeting of the Constitution Committee with proposals for a Member job description.
- 3.15. Officers have previously undertaken some research into member job descriptions at other authorities, as a result of which the job description attached at Appendix 2 has been developed.
- 3.16. The Committee is recommended to recommend to Council the approval and adoption of the job description for committee chairmen attached as Appendix 1 to this report, and to consider the development of a job description for councillors, taking into consideration the model set out at Appendix 2.

#### Chairmanship of Overview and Scrutiny Committee meetings

- 3.17. At its meeting on 21<sup>st</sup> December, the Working Group discussed the allocation of Overview and Scrutiny Chairmen positions to the Council's political groups. Historically, the Council's opposition groups have asked that opposition Members be allocated one or more of the Overview and Scrutiny Committee Chairmanships.
- 3.18. In the normal course of events, the allocation of Chairmanships to committees would be an issue for discussion within and between the Groups. Unless there is a desire to see a formal requirement that one or more Overview and Scrutiny Committee chairmanships should be allocated to the opposition Groups, there is no need to make any constitutional change. However, if a formal requirement is sought, then the Committee should make an appropriate recommendation to Council.

#### Ombudsman findings

- 3.19. At the meeting of Council on 17<sup>th</sup> December 2015, consideration was given to a finding of the Local Government Ombudsman, against the Council, of maladministration. This finding had to be reported to Council as a matter of law.
- 3.20. Following on from the report to Council, the Working Group considered whether Full Council needs to see any further maladministration findings, or whether this obligation might be delegated to a Council committee, and whether any other decisions of the Local Government Ombudsman should also be considered by that committee.

- 3.21. The view of the Working Group was that all Local Government Ombudsman decisions should be reported for information to the Audit and Governance Committee. In considering this proposal, Members should have regard to the legal advice in paragraph 5.2.4.
- 3.22. It is recommended that subject to the requirements referred to in paragraph 5.2.4 of this report, the terms of reference of the Audit and Governance Committee should be expanded to include responsibility for considering all Local Government Ombudsman decisions, and for making such recommendations as to actions as may be necessary in connection with those decisions; this also to include reports resulting in a finding of maladministration against the Council.

#### General issues

- 3.23. At the meeting of Council on 22<sup>nd</sup> October 2015, Council agreed that the Constitution Committee would have delegated authority to make all changes to the Council's Constitution which are not major, subject to the Head of Legal Services and Monitoring Officer, and the Chief Operating Officer, agreeing that the proposed changes are not major, and to Council subsequently being informed of such changes.
- 3.24. With the exception of the proposals in respect of Overview and Scrutiny Committee Chairmen, those relating to Member Job Descriptions, and those relating to Ombudsman findings, which are considered to be major, the Director of Legal Services and Monitoring Officer and the Chief Operating Officer are content that the recommendations of this report, if agreed, will not result in major changes to the Constitution, and the Committee is therefore empowered to formally agree them without recommendation to Full Council. With regard to those changes which are considered to be major, the Committee is asked to make an appropriate recommendation to Council.
- 3.25. As required by the resolution of Council on 22<sup>nd</sup> October 2015, the proposed minor changes will be reported to Council for information in due course.

### **4. Wards Affected and Local Ward Members**

- 4.1. There are no direct impacts upon individual Wards.

### **5. Implications of Recommendation**

#### **5.1. Policy Implications**

- 5.1.1. Any changes to the Constitution, which arise from this report, will form the constitutional policy of the Council, and must be followed in the future work and operation of the Council.

## **5.2. Legal Implications**

5.2.1. In respect of the audio recording proposals, whilst the approved minute constitutes the legal record of the meeting and any decisions taken, the audio recordings themselves will constitute “information” kept by the Council (whilst they are kept by the Council) for the purposes of the Freedom of Information Act 2000, and so will be subject to requests for copies or transcripts of the same under that regime. The Council ought to be alert to that and factor those considerations into its FOI policies and practices in the round.

5.2.2. There are no legal issues arising in respect of the proposals for recording member attendances as set out above.

5.2.3. In respect of the proposals relating to notices of waiver, depending on the level of detail that is to be provided to the Audit and Governance Committee, there may from time to time be a need for that committee to meet in private if circumstances arise where it is called upon to consider notices that give rise to or contain confidential information that is exempt from publication.

5.2.4. In respect of the proposals relating to the Ombudsman's findings, there are statutory obligations which will, in some circumstances, require reports to be taken to Cabinet or full Council. Whilst the Audit and Governance Committee could have within its terms of reference responsibility to consider findings and make recommendations as a result, ultimately the Council's internal arrangements could not circumvent those statutory requirements. Similarly, the Ombudsman operates certain protocols in relation to the timing of the publication of its findings. The Council would have to give consideration to those protocols when determining how to manage the Audit and Governance Committee's agenda in that regard.

## **5.3. Financial Implications**

5.3.1. Whilst some of the proposals contained in this report will result in increased demands upon staff, these are not thought to be significant. The proposed audio-recording of meetings will result in the need for recording equipment, but it is felt that this can be obtained at a relatively modest cost.

## **5.4. Human Resources Implications**

5.4.1. There would appear to be no direct human resources implications.

## **5.5. Equality Implications**

5.5.1. There would appear to be no direct equality implications.

## **5.6. Rural Community Implications**

5.6.1. There would appear to be no direct implications for the Borough's rural communities.

## **5.7. Public Health Implications**

5.7.1. There would appear to be no direct public health implications.

## **6. Risk Management**

6.1. The proposals in this report would, if implemented, appear not to result in any risks for the Council; rather they would create opportunities which would benefit the public, Members, and the organisation.

## **7. Background Papers**

7.1. In writing this report, the report-author has had regard to the Council's Constitution.

## **8. Contact Information**

Contact details for this report are as follows:

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