

# Constitution Committee

## Agenda

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**Date:** Thursday, 15th September, 2016  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1, 2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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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 at the foot of each report.

### **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 Procedure Rules Nos.11 and 35 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 body in question. 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. **Minutes of Previous meeting** (Pages 1 - 6)

To approve the minutes of the meeting held on 15<sup>th</sup> July 2016.

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**Contact:** Paul Mountford, Governance and Democratic Services  
**Tel:** 01270 686472  
**E-Mail:** paul.mountford@cheshireeast.gov.uk

5. **Overview and Scrutiny Committees - Review of Structure** (Pages 7 - 18)

To consider proposals to reduce the number of Overview and Scrutiny Committees to better align committees to the Corporate and Cabinet structures.

6. **Substitute Committee Members at Planning Committee Meetings** (Pages 19 - 22)

To consider the establishment of a pool of trained Members to supplement existing arrangements for the provision of substitute committee members at planning committee meetings.

7. **Audio-Recording of Meetings** (Pages 23 - 28)

To consider a report seeking clarification and guidance on the audio-recording of decision-making meetings.

8. **Urgent Decision Procedures** (Pages 29 - 34)

To consider amendments to the procedures for taking urgent decisions as set out in the Constitution.

9. **Members' Use of the Council's Email System** (Pages 35 - 40)

To consider a report on guidance to Members on using the Council's internet and email services.

**THERE ARE NO PART 2 ITEMS**

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Constitution Committee**  
held on Friday, 15th July, 2016 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor A Martin (Chairman)  
Councillor D Marren (Vice-Chairman)

Councillors G Baxendale, E Brooks, B Burkhill, M Deakin (Sub for Cllr G Wait),  
B Dooley (Sub for Cllr S Pochin), S Edgar, S Hogben, L Jeuda (Sub for Cllr  
D Newton), D Mahon, N Mannion, R Menlove and J Wray (sub for Cllr  
M Beanland)

**Officers**

Bill Norman, Director of Legal Services  
Brian Reed, Head of Governance and Democratic Services  
Alex Thompson, Deputy S151 Officer  
Dominic Oakeshott, Corporate Manager Professional and Commercial  
Services  
Adrian Fisher, Head of Planning Strategy (for Item 6 only)  
Lindsey Parton, Registration Services and Business Manager  
Rachel Graves, Democratic Services

**1 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors M Beanland, D Newton,  
S Pochin and G Wait.

**2 DECLARATIONS OF INTEREST**

In the interest of openness in relation to Item 5 Councillors E Brooks,  
B Dooley, S Hogben, D Marren and R Menlove declared that they were  
director of ASDVs.

**3 PUBLIC SPEAKING TIME/OPEN SESSION**

There were no members of the public wishing to speak.

**4 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 18 February 2016 be approved as  
a correct record.

5 **SCHEME OF MEMBERS' ALLOWANCES: REPORT OF THE MEMBERS ALLOWANCES INDEPENDENT REMUNERATION PANEL (IRP)**

The Committee considered the report of the Independent Remuneration Panel on the Scheme of Members' Allowances.

The Independent Remuneration Panel had conducted a review of the current Scheme of Members' Allowances. To inform its review, the Panel had considered comparative data on allowances paid in the CIPFA family of authorities of which Cheshire East was part. The Panel had also met members from the different political groups and received briefings from officers of the Council. A copy of the Panel's Report was attached as Appendix A to the Committee report.

Professor Steve Leach, Chairman of the Independent Remuneration Panel, responded to Members' questions regarding the Panel's report and recommendations.

**RESOLVED:** That

1. Council be recommended to note the Independent Remuneration Panel's (IRP) report, and that the IRP members be thanked for their work on the Scheme of Members' Allowances (the Scheme).
2. Council be recommended to agree that:
  - a. All allowances under the Scheme be index-linked, for a four year period commencing on 28th July 2016, to any NJC officers' pay awards; the first of such indexation increases (if any) to apply to the NJC pay award for 2017/18.
  - b. The Council's new Allowances Scheme be implemented with effect from 28th July 2016.

*(the following recommendations show the paragraph numbering in the financial analysis at Appendix C to the report)*

- c. (1) The Panel's views about the level of any overall increase in the budget be noted.
- d. (2) The Panel's recommendations to discontinue Special Responsibility Allowances (SRAs), as set out in paragraph 2 of Appendix C, be agreed.
- e. (3) The Panel's recommendations, that the SRAs of the Leader, Deputy Leader, Cabinet members and Group Leaders should remain at their current level (subject to any future indexation as per paragraph 2[a] above), be agreed.

- f. (4) Consideration of the question of any changes to the SRA allocated to the Chairman of the Public Rights of Way Committee be deferred pending a report to the Constitution Committee upon potential options to amalgamate the work of that Committee with that of another decision-making body.
- g. (5) Whilst the principle of the recommended change to the SRA allocated to the Chairman of the Licensing Committee is accepted, the current SRA be retained, pending a report to the Constitution Committee upon potential options for the re-distribution of the SRA in line with the Panel's recommendations.
- h. (6a) The Basic Allowance be increased to £11,754 per Member, as recommended by the Panel as its first option.
- i. (6b) The second option recommended by the Panel, for a further increase to the Basic Allowance of an additional £187 per annum per Member be not accepted.
- j. (7) [as per Recommendation 2(a)].
- k. (8) The Panel's recommendation that Members should be allowed to claim more than one SRA be not accepted.
- l. (9) The Panel's recommendation, that fees paid to Members who act as directors of wholly owned companies/ASDVs etc should not be taken into account in relation to payment of SRAs be accepted, provided that SRAs will not be paid to such Members in circumstances in which the Director of Legal Services determines that the payment of an SRA, or part, relates to a comparable duty performed by such Members in both roles.
- m. (10) No changes be made to the existing mileage rates available to Members, nor to the existing recommendation that they claim the HMRC rate of 45p per mile.

## 6 PARISH COUNCILS - COMMUNITY GOVERNANCE REVIEWS

The Committee considered a report seeking to clarify the delegated authority of the Community Governance Review Sub Committee in relation to a review of the governance arrangements of certain parishes.

Informal enquires had been received to ascertain whether the parish review could be extended to consider revisions of Town and Council boundaries arising from recent and planned housing developments. It was considered that this was outside the scope of the current review and would be inappropriate and inequitable to respond to individual requests on a

piecemeal basis, given that many other requests could then come forward from other parish councils who felt themselves to be in similar positions.

**RESOLVED:**

That the remit of the Community Governance Review Sub-Committee, in relation to the parishes listed at paragraph 1.1 of the report, be confined to matters concerning the governance arrangements of the parish councils (e.g. number of Councillors and electoral arrangements) and not be extended to include boundary reviews in response to concerns over recent and planned housing development.

**7 VACANCIES IN THE OFFICE OF PARISH COUNCILLOR - TWEMLOW PARISH COUNCIL**

The Committee considered a report on vacancies in the Office of Parish Councillor at Tremlow Parish Council.

It was reported at the meeting, that since the report had been published, a parish councillor had withdrawn their resignation and that Tremlow Parish Council was now quorate and could now make decisions. As a result Recommendations 1(a) and (b) were no longer required.

Given that the Council in future may be required to make temporary appointments to parish councils to enable them to be quorate and take decisions, it was recommended that Council delegates this function to the Constitution Committee and the Committee's terms of reference be amended accordingly.

**RESOLVED:**

That Council be recommended to delegate to the Constitution Committee the Council's powers under section 91 of the Local Government Act 1972 in relation to the appointment of persons to fill vacancies on parish councils where such councils are otherwise unable to act, and the terms of the reference of the Constitution Committee, and hence the Constitution, be amended accordingly.

**8 NON-MAJOR CHANGES TO THE CONSTITUTION - RECOMMENDATIONS OF THE AUDIT AND GOVERNANCE COMMITTEE**

The Committee considered a report on two proposed changes to the Constitution as recommended by the Audit and Governance Committee.

The Audit and Governance, at its meeting on 30 June 2016 considered an update on the effectiveness of the Council's Whistleblowing Policy. The Committee resolved to recommend to the Constitution Committee that the list contained in the Whistleblowing Policy of those people to whom a

referral can be made be amended to include members of the Audit and Governance Committee and the Constitution be amended accordingly.

It was proposed that the following wording be added to the Whistleblowing policy:

“8.3 In exceptional circumstances you may not feel able to contact any of the officers detailed above. Where this is the case you may approach the Chair, Vice Chair or any member of the Audit and Governance Committee with your concerns.”

The Audit and Governance Committee had also reviewed its terms of reference and it was agreed that explicit reference should be made in the terms of reference to the fact that the Committee could appoint working groups. It was also noted that the wording of paragraph 22 of the terms of reference was currently incomplete and required an appropriate amendment.

**RESOLVED:** That

1 the list contained in the Whistleblowing Policy of those people to whom a referral can be made be amended to include members of the Audit and Governance Committee and the following wording be added to the Whistleblowing Police:

“8.3 In exceptional circumstances you may not feel able to contact any of the officers detailed above. Where this is the case you may approach the Chair, Vice Chair or any member of the Audit and Governance Committee with your concerns.”

2 the following amendment be made to the Terms of Reference of the Audit and Governance Committee:

(a) the following be added:  
*‘The Committee may establish standing and time-bound working groups (which may but need not be politically balanced) to consider any matters within these terms of reference of the Committee.’*

(b) paragraph 22 (Internal Audit) be amended as follows:  
*‘To make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.’*

3 the Constitution be amended accordingly.

9 **COUNCIL CONSTITUTION - REVISIONS TO THE FINANCE PROCEDURE RULES**

The Committee considered a report which set out amendments to the Council's Finance Procedure Rules.

The Finance Procedure Rules had been reviewed by a working group of officers from Finance, Legal and Audit with the aim of ensuring that these Rules were up to date, achieving a balance between the Finance Procedure Rules and supporting guidance to give Officers sufficient clarity as to the Council's Rules and Procedures. The resulting revisions to the Finance Procedure Rules, as set out in Appendices 1 and 2 to the Report, had been considered by the Constitution Member Working Group.

**RESOLVED:** That

- 1 the revisions to the Finance Procedure Rules be approved for adoption from 1 August 2016 with the following additional revisions:
  - a) D8 amend to read "Changes must be reviewed annually in the light of all relevant information, to the service area including consideration of appropriate inflation factors."
  - b) D9 the final line be amended to read "... while ensuring fair treatment of those that owe money, including consideration of any financial difficulties."
- 2 the Constitution be amended accordingly; and
- 3 Council be informed of the changes in accordance with the Constitution.

The meeting commenced at 10.00 am and concluded at 12.10 pm

Councillor A Martin (Chairman)

## CHESHIRE EAST COUNCIL

### Constitution Committee

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**Date of Meeting:** 15<sup>th</sup> September 2016  
**Report of:** Head of Governance and Democratic Services  
**Subject/Title:** Overview and Scrutiny Committees – Review of Structure

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#### 1.0 Report Summary

1.1 The report makes recommendations to reduce the number of Overview and Scrutiny Committees to better align committees to the Corporate and Cabinet structures.

#### 2.0 Recommendations

That it be recommended to Council that:-

(1) Overview and Scrutiny Committee structure be reduced from six to four committees as follows:

- Corporate (12 Members) – (To include the Chairs and Vice -Chairs of the other three Overview and Scrutiny committees);
- Environment and Regeneration (12 Members)
- Children and families (12 Members)
- Health and Adult Social care (15 Members)

(2) The terms of reference for each committee as set out in appendix 1 be approved;

(3) Meetings will be held on an eight weekly cycle, subject to each Chair being given flexibility to convene additional meetings as and when required depending on workload;

(4) Regular mid point meetings be disbanded;

(5) That a date for implementation be agreed.

#### 3.0 Reasons for Recommendations

3.1 The current Overview and Scrutiny Structure of six committees does not align with the new Corporate Structure of three directorates of Corporate, People and Places, nor does it align well with the existing Cabinet structure of 9 Portfolios. The new proposed structure provides clear links to the new corporate structure and ensures

that each portfolio holder will report to only one Overview and Scrutiny Committee each.

### **4.0 Wards Affected**

4.1 All.

### **5.0 Local Ward Members**

5.1 Not applicable.

### **6.0 Policy Implications**

6.1 No policy implications have been identified.

### **7.0 Financial Implications**

7.1 There will be a reduction in the Members allowances scheme resulting from a reduction in the payment of two Special responsibility allowances.

### **8.0 Legal Implications**

8.1 The review ensures that the Council's Overview and Scrutiny arrangements are in compliance with the Local Government Act 2000.

### **9.0 Risk Management**

9.1 No risks have been identified.

### **10.0 Background and Options**

10.1 Since the inception of Cheshire East in 2009, the Council's ambition for Overview and Scrutiny has been to ensure that it provides constructive challenge to Cabinet and partner organisations by focusing on the delivery of the Council's vision, strategic aims and objectives. In order to achieve this, Overview and Scrutiny has to be an integral part of the Council's decision making process, provide real opportunities for non-executive members to influence decision makers in a non-partisan environment; and ensure that the work of Overview and Scrutiny Committees always adds value to the work of the Council. This is accomplished by forging stronger links between Cabinet, Officers and Overview and Scrutiny.

10.2 All of the above sits comfortably with the well-established 'principles of good scrutiny', as set out in the Centre for Public Scrutiny's 'Good Scrutiny Guide' (CfPR 2004):

- to provide 'critical friend' challenge to executives, as well as external authorities and agencies (holding to account)

- to reflect the voice and concerns of the public and its communities (engaging the public as active citizens)
- to take the lead and own the scrutiny process on behalf of the public (facilitation of community leadership and effective representation)
- to make an impact on the delivery of public services (performance/quality assurance)

10.3 Overview and Scrutiny can steer portfolio holders in their policy work. Overview and Scrutiny committees exist to assist and challenge Cabinet in the process to achieve the Council's corporate objectives.

### 11.0 **Alignment of the Structure**

11.1 The Leader of the Council re-structured Cabinet in May 2016 reducing the number of portfolios to nine.

11.2 The current Overview and Scrutiny structure comprising six committees does not align with the new Cabinet well. The result is that most portfolio holders are required to report to more than one committee, and one portfolio holder has functions that are spread across four committees. This is not really sustainable.

11.3 A better alignment of the Overview and Scrutiny structure linked to the new portfolios will provide greater clarity for the organisation as a whole, and will give each portfolio holder a single point of contact as far as Overview and Scrutiny is concerned. This inevitably leads to a question about the number of committees that will be required to fulfil the Council's Overview and Scrutiny responsibilities.

11.4 Adopting that principle that the structure should recognise new the Corporate Structure involving three Directorates of Corporate, People and Places a draft structure has been created involving four committees. (See the chart below).

11.5 Each Portfolio holder in the new structure will report to one committee each. Where, portfolios have dual responsibility for a function it is implied that the Lead Portfolio holder will dictate which committee fulfils the scrutiny function. However, some officers may have to report to more than one Overview and Scrutiny committee.

11.6 The assumption is that Corporate Overview and Scrutiny Committee will retain its overarching responsibilities for the whole of the scrutiny function. Although not covered in the diagram, there is also an assumption that the Scrutiny Chairmen's Group will be resurrected, but this will meet informally, and has no direct impact on the structure.

11.7 There is a dedicated Health and Adult Social Care Committee. This is in recognition of the fact that Health and Adult Social care is a particularly challenging area which requires a dedicated group of well-trained Members to carry out the Council's statutory health scrutiny duties.

11.8 Likewise, there is also a committee dedicated to Children and Families. The case for this committee is very similar to that for Health and Adult Social care. Although there is no specific statutory requirement to scrutinise this area of work, the work-load is already significant and getting bigger. This committee will continue to appoint co-opted faith representatives in accordance with the Local Government Act 2000.

11.9 The fourth committee brings together all of the ASDVs and technical areas such as Environment, Planning, Communities etc. This committee will fulfil the Council's statutory responsibilities in relation to flood risk management and community safety.

### **12.0 Future method of Working**

12.1 Overview and Scrutiny has made the biggest impact through task and finish work. This is the policy development role outlined above. Task and Finish groups are time consuming for members and support officers. Reviews normally take between 6-9 months to reach completion. For this reason, the number of reviews that each committee can undertake is limited. In order to retain this discrete policy development role, Work programmes need to be succinct and manageable.

12.2 Committees will still need to fulfil their responsibility to hold Cabinet to account. This can be achieved by taking more opportunities to undertake intensive spotlight reviews along the lines of the recent health review of North West Ambulance Service (NWAS). Again, this requires a disciplined approach to work planning. However, flexibility is the key and Committees should make full use of the range of modes of operation available to them such as 'select committee' style meetings, task-and finish groups: spotlight reviews; public hearings etc. Formal committee settings should be used only when appropriate to the task, and 'items for information' should only be included when there is a demonstrable case for doing so.

### **13.0 Frequency of Meetings**

13.1 The number of meetings in the current calendar requires a lot of support from service departments. Better work planning will remove the need for as many meetings and will free officers to provide dedicated intensive support to a small number of reviews. As Scrutiny should always add value, fewer, more intensive reviews, should ensure that is always the case. Each Committee will still meet on a formal basis six times per year - the same as they do now.

13.2 The use of mid-point meetings should be discontinued in favour of all Member briefings where this is considered appropriate. This will enable information on important matters to be disseminated to a wider group of Members. It is suggested above that each committee should meet formally six times per year on an eight weekly cycle. If additional meetings are needed for specific briefings, these can be arranged on an ad hoc basis.

**14.0 The Way Forward**

- 14.1 As outlined above, many believe that Overview and Scrutiny is most effective when undertaking task and finish reviews. Since the inception of the Council in 2009, there have been twenty two task and finish reviews, covering such diverse topics as Home to School Transport, Fostering Services, Car Park Management, Assistive technology, Domestic Violence and Apprenticeships.
- 14.2 This body of work has been well received and illustrates that Overview and Scrutiny Members have the necessary skills to deal with complex policy issues. The policy development role will become even more important as the Council strives to make efficiency savings over the coming years. Overview and Scrutiny can play an integral role in transforming service provision.

**15.0 Allocation of Places and Political Representation**

- 15.1 Currently, there are 55 places available across 6 committees. The new structure below produces 51 places across 4 committees. Three committees have 12 members each. The exception is Health and Adult Social Care which is proposed to have 15 Members. This is in recognition of the heavy workload of the committee and should provide greater opportunities for that committee to undertake more detailed work by drawing from a bigger pool of members.
- 15.2 As Members are aware, Overview and Scrutiny Committees are subject to proportionality rules. Therefore any change to the number of places available on Overview and Scrutiny Committees will inevitably lead to some adjustments having to be made Council's committee structure. The details of these changes will be covered by a separate report to Council.

15.3

Proposed Overview and Scrutiny Structure

<p><b>CORPORATE (RESOURCES) 12 Members</b></p> <p><i>Portfolios:</i> <i>Leader</i> <i>Corporate Policy and Legal Services</i> <i>Finance and Assets</i></p>
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<p><b>ENVIRONMENT AND REGENERATION (PLACES) 12 Members</b></p> <p><i>Portfolios:</i> <i>Housing and Planning</i> <i>Regeneration</i> <i>Highways and</i> <i>Infrastructure</i></p>	<p><b>CHILDREN AND FAMILIES (PEOPLE) 12 members</b></p> <p><i>Portfolio:</i> <i>Children and Families</i></p>	<p><b>HEALTH AND ADULT SOCIAL CARE (PEOPLE) 15 Members</b></p> <p><i>Portfolios:</i> <i>Communities and</i> <i>Health</i> <i>Adult Care and</i> <i>Integration</i></p>
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**16.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Mark Nedderman  
 Designation: Scrutiny Manager Business Manager  
 Tel No: 01270 686459 Email: [mark.nedderman@cheshireeast.gov.uk](mailto:mark.nedderman@cheshireeast.gov.uk)

**APPENDIX 1**

**OVERVIEW AND SCRUTINY COMMITTEE REMITS**

Each Overview and Scrutiny Committee is responsible for the monitoring and review of each of the Cabinet responsibilities allocated to it in the lists below as well as the ASDVs assigned to it. Overview and Scrutiny Committees will liaise with those Portfolio Holders and Lead Officers assigned to them as indicated. Where there is uncertainty or a dispute over which Committee will consider a particular item, the Corporate Overview and Scrutiny Committee will determine which Committee should be responsible.

**Corporate Overview and Scrutiny Committee** (12 members)

Cabinet Portfolios: Leader, Finance and Assets, Corporate Policy and Legal Services

ASDVs: Lead for Governance of all ASDVs

Portfolio responsibilities:

- HS2, TfN and Northern Rail
- AGMA/Northern Gateway
- CCN/LGA
- Rural Affairs
- Internal Audit
- Corporate Risk Management /Performance
- Civil Protection and Emergency Planning
- Strategic Partnerships
- Sub-regional activity
- Government liaison
- Human Resources, Workforce and Organisational Development
- Corporate Health and Safety and Occupational Health
- Shared Services
- Business Improvement Programme
- Customer Complaints and Resources
- All matters relating to procurement, corporate contracts, contract monitoring
- EMB
- Governance of Alternative Service Delivery Vehicles
- Legal Services
- Monitoring compliance with the Council's decision-making processes
- Information governance and assurance (eg Senior Information Risk Owner and Caldicott Guardian)
- Equality and diversity

- The Financing of the Council and its Budget, and Corporate Business Planning
- Capital Programme and Strategy
- Reserves, Income and Funding Strategy
- Treasury and Business Management
- Insurance
- External Audit
- Pensions
- Revenues and Exchequer Functions, Including Benefits
- Democratic Services:
  - Electoral Functions
  - Civic Functions
  - Member Training and Development
- Births, Marriages and Deaths
- ICT
- Digital/Customer Access Service
- Comms & Media Relations

### **Health, Adult Social Care and Communities Overview and Scrutiny Committee** (15 member)

Cabinet Portfolios: Communities and Health, Adult Care and Integration

ASDV: ESAR

Portfolio Responsibilities:

- Community and Health Strategy
- Voluntary, Community and Faith Sector, including Citizens' Advice Bureaux
- All aspects of safer communities: Wardens, ASB and CCTV.
- Regulatory Services: Trading Standards, Licensing, Environment Health including Air Quality matters, contaminated land and pest and vermin control.
- Gypsies and Travellers
- Libraries
- Car Parking
- Markets
- Public Conveniences
- Health (i) Health and Wellbeing Board (ii) Health & Social Care Integration (Better Care Fund/Sustainability & Transformation, Caring together/Connecting Care
- Joint Strategic Needs Assessment.
- NHS England/Acute Trusts
- Domestic Violence Services

- Equality and Diversity (Service Users)
- Everybody Sports and Recreation (ESAR)
- Playing Pitch Strategy
- Care Act 2014
- Adult Safeguarding: Board/CQC/CEC Quality Assurance Team
- Care and Carer Assessment (i) personalisation.
- Carer Services including: (ii) Respite Care and Short Breaks.
- Care Service Commissioning, including: (iii) Residential & Domicillary Care (iv) Disability & Sensory Impairment services (v) Mental Health & Substance (vi) Re-ablement Services (vii) Occupational Therapy and Community Equipment (viii) Assistive Technology.
- Equality in Service Access & Delivery
- Extra Care Housing
- Adult (19 plus) Mental Health Services and Health Promotion
- Health and Wellbeing Board

### **Environment and Regeneration Overview and Scrutiny Committee** (12 members)

Cabinet Portfolios: Housing and Planning, Regeneration, Highways and Infrastructure.

ASDVs: Engine of the North, Ansa, Orbitas, Civicance, Tatton Park Enterprises, TSS

Portfolio Responsibilities:

- Economic Development
- Regeneration
- Employment and Skills
- Engine of the North
- Economic Twinning
- Assets: maintenance, purchase and sale
- Farms
- Energy Issues
- Carbon Reduction
- Waste and Recycling (ANSA)
- Environmental and Cleansing Services (ANSA)
- Street Scene (ANSA)
- Crematoriums and Burial Services (Orbitas)
- Planning Policy
- S106 & Community Infrastructure Levy
- Street naming & numbering

- Land charges
- Housing, Housing Associations, and Homelessness
- Development Management and Building Control
- Neighbourhood Planning
- Heritage
- Macclesfield Town Centre Scheme
- Planning Support Company (Civicanace)
- Highways and Transport strategy and operations, including public rights of way
- Local Transport Plan
- Transport Service Solutions (TSS)
- Improvement and Efficiency Social Enterprise (IEASE)
- Operational delivery of all cultural services, including: tourism and visitor economy, Tatton Park, Parks and Park Rangers and Arts and Culture.
- Leisure Strategy
- Leisure Services
- Tour of Britain

### **Children, Families Overview and Scrutiny Committee** (12 members)

Cabinet Portfolio: Children and Families

Portfolio Responsibilities:

- Children's Act 2004
- All aspects of Education and Schools
- Youth Support and Offending
- Lifelong learning/Skills
- Prevention and Early Intervention Strategies
- Corporate Parenting Lead
- All aspects of Children's work, including:
  - Cared for children and care leavers
  - Fostering, Adoption and Residential Services
  - Children's Trust and Children's Board
  - Children's Safeguarding (including Children's Safeguarding Board)
  - Children and Young People up to 25 years old
- 0-19 Health and Health Promotion
- 0-19 Mental Health

## **Scrutiny of ASDVs**

Each Overview and Scrutiny Committee will be responsible for monitoring the ASDVs which relate to their area of work. The Service Commissioning Portfolio Holder and the Commissioning Manager will report to each Overview and Scrutiny Committee on the following aspects of ASDVs:

- Budget and service delivery of ASDVs
- To report to Cabinet on all ASDV matters
- To review functions and departments of the Council which are seen as potential areas for ASDV operation;
- ASDV Communication and Marketing;
- ASDV Performance.

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# Cheshire East Council

## Constitution Committee

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**Date of Meeting:** 15<sup>th</sup> September 2016

**Report of:** Head of Governance and Democratic Services

**Subject:** Substitute Committee Members at Planning Committee meetings

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### 1. Report Summary

- 1.1. This report asks the Committee to consider making a recommendation to Council that a pool of trained Members be created to supplement existing arrangements for the provision of substitute committee members at planning committee meetings.

### 2. Recommendation

Council be recommended to agree that:

- 2.1. a pool of 8 planning substitutes be established, on the basis of political proportionality: 5:2:1 (Conservative: Labour: Independent);
- 2.2. the pool will supplement the existing Constitutional provisions which enable planning substitutes to be drawn from any of the Council's planning Committees; Northern Planning, Southern Planning and Strategic Planning Board;
- 2.3. only those Members who, in the opinion of the Director of Legal Services, have received appropriate planning training will be permitted to be members of the pool of planning substitutes;
- 2.4. subject to the requirement that each member of the pool must have received appropriate planning training, the political groups may nominate their members to take places as part of the pool as and when necessary;
- 2.5. That the Director of Legal Services, in consultation with the Chairman of the Constitution Committee, be given authority to make such changes to the Constitution as he considers are necessary to give effect to the wishes of Council.

### **3. Background**

3.1 The Council has rules, set out in the Constitution, which provide for substitutes to attend meetings on behalf of committee members who are unable to do so (eg in cases of illness or holiday).

3.2 These rules are rightly enhanced in the case of certain committees (eg planning) so as to ensure that substitute members have received appropriate training.

3.3 However, during the last year, an additional restriction was placed on planning substitutes; this requiring planning substitutes to be members of one of the other planning committees; Northern Planning, Southern Planning or Strategic Planning Board.

3.4 This additional restriction has caused difficulties for the whips from time to time, with absences being unable to be filled.

3.5 Whilst it is essential to retain the requirement that planning substitutes have up to date and appropriate training, a way needs to be found to relax the rule that planning substitutes must be drawn from one of the other planning committees.

3.6 This report proposes that there should be a small pool of trained planning substitutes from which members can be called upon to substitute for absent members.

3.7 This provision would need to be added to the Constitution, following a report to the Constitution Committee, and an appropriate recommendation to Council.

3.8 The numbers in each Group's pool of substitutes should be limited. For example an approach could be adopted which recognises the proportionality of the Council with a pool of 8 Members (5:2:1:0).

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

4.1. All wards and local ward members are affected.

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

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

5.1.1. No direct policy implications arise from the recommendations of this report.

**5.2. Legal Implications**

5.2.1. It is of key importance to ensure that any Member involved in the determination of planning matters has received appropriate and up to date planning training. The recommendations of this report seek to achieve this.

5.2.2. The recommendations of this report will, if agreed by Council, result in the need for amendments to the Council's Constitution,

**5.3. Financial Implications**

5.3.1. The recommendations of this report do not result in any financial implications.

**5.4. Human Resources Implications**

5.4.1. The recommendations of this report do not have any human resources implications.

**5.5. Equality Implications**

5.5.1. The recommendations of this report could be seen to have positive equalities implications.

**5.6. Rural Community Implications**

5.6.1. The recommendations of this report do not have any direct implications for rural communities.

**5.7. Public Health Implications**

5.7.1. The recommendations of this report do not have any direct public health implications.

**6. Risk Management**

6.1. This report recommends an increase in the pool of Members who would be available to act as substitutes for absent Members at planning committee meetings. This will reduce the risk of reduced numbers of planning members taking part in the determination of planning matters.

**7. Background Papers**

7.1. No background papers were used in the preparation of this report.

**8. Contact Information**

Contact details for this report are as follows:-

**Name:** Brian Reed  
**Designation:** Head of Governance and Democratic Services  
**Tel. No.:** 01270 696670  
**Email:** [brian.reed@cheshireeast.gov.uk](mailto:brian.reed@cheshireeast.gov.uk)

## Cheshire East Council

### Constitution Committee

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<b>Date of Meeting:</b>	15 <sup>th</sup> September 2016
<b>Report of:</b>	Head of Governance and Democratic Services
<b>Title:</b>	Audio-Recording of Meetings
<b>Portfolio Holder:</b>	Councillor Peter Groves, Finance and Assets

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#### 1. Report Summary

- 1.1. This report seeks clarification and guidance upon the audio-recording of decision-making meetings.

#### 2. Recommendations

- 2.1. That the proposals contained in paragraph 5.2(d) of this report be considered and, if agreed, an appropriate recommendation be made to Council.
- 2.2. That the Director of Legal Services, in consultation with the Chairman of the Constitution Committee, be given authority to make such changes to the Constitution as he considers are necessary to give effect to the wishes of Council.

#### 3. Reason for Recommendations

- 3.1. In order for appropriate changes to be made to the Constitution.

#### 4. Other Options Considered

- 4.1. Other options considered include a decision not to proceed with audio-recording, given the cost of recording equipment, and the additional administrative work which would be involved.

#### 5. Background

- 5.1 The following is an extract of the minutes of the February meeting of the Constitution Committee, which considered the question of audio-recording decision-making meetings of the Council.

“With effect from the beginning of the new municipal year, subject to the availability of appropriate equipment, the proceedings of all decision-making meetings be audio-recorded; further that such recordings 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 be deleted”.

The question now arises as to how this minute should be actioned, given a number of practical considerations.

5.2 The Committee decision, which was approved by Council, stipulated that the sole purpose of keeping audio recordings of meetings will be to ensure the accuracy of minutes. Consideration should be given to the practicalities around this:

- a. For decades, local authority committees have relied upon the notes taken by committee clerks, who produce draft minutes. These are then considered, in the light of the recollection of the committee members, when they come to approve the minutes at the next meeting.
- b. The introduction of an audio-recording, which would be referred to if there was disagreement at a committee meeting over the accuracy of draft minutes, introduces practical considerations for the Committee. Given that the recording could not be listened to during the meeting, the approval of the disputed minute would need to be deferred. This, for example, would have consequences in respect of planning decisions where there is a set period of time within which an application should be determined.
- c. Rules would be needed in order to ensure that only certain categories of Members would have the right to formally call for the audio-recording to be used to clarify any concern about a draft minute eg a member of the committee in question, who had been present at the meeting in question.
- d. The following provisions could be built-into the Constitution, in order to provide certainty around the process:
  - i. Prior to it being moved and seconded that the minutes of a previous meeting of a decision-making meeting body be approved, such members as are referred to in paragraph 5.2 (d) (ii) (“Qualified Members”) below may propose that the audio recording of the meeting in question be scrutinised in order to establish the accuracy of the minute.
  - ii. Such proposal may only be made by a member appointed by Council to the decision-making body (not a substitute member), who was present throughout the whole of the item in question, at the meeting which made the decision, and must be supported by at least one other member of that body who was similarly present.

- iii. Where such a proposal is moved, seconded by Qualifying Members, and carried by a majority of such Members similarly present, the decision making body in question will consider the matter no further and the power to approve the minute, in a modified form, or in the same form as set out in the draft minutes, will be formally delegated to the Head of Governance and Democratic Services (or his nominated delegee), in consultation with the Chairman of the decision-making body in question, or his/her Vice Chairman.
- iv. In approving the minute in question, the Head of Governance and Democratic Services will have regard only to any available audio-recording of the meeting and to the views of the Chairman or Vice-Chairman.
- v. These provisions shall apply only to the following formal decision-making meetings of the Council, and not to the consideration of Part II (exempt) items of such meetings:
  - 1. Council
  - 2. Cabinet
  - 3. Planning Committees
  - 4. Licensing Committees/Sub-Committees
  - 5. Audit and Governance Committee
  - 6. Staffing Committee
- vi. Once the officer has exercised delegated powers, all members of the body in question will be notified of the outcome.
- vii. Upon the approval of the minutes, whether by the decision-making body, or by the officer, the audio-recording of the meeting in question will be expunged, provided that, if a relevant Freedom of Information request has been made before this has taken place, such request will remove the requirement to expunge until it has been satisfied.

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

- 6.1. There are no direct implications for individual wards or local ward members.

## **7. Implications of Recommendation**

### **7.1. Policy Implications**

- 7.1.1. Once any new provisions are agreed, these will need to be approved by Council and incorporated into the Constitution.

## 7.2. Legal Implications

7.2.1 The proposals contained in this report would not amount to a minor change in the Constitution and so require the approval of full Council (Constitution page 51, Chapter 14 – Management of the Constitution Paragraph 2.1).

7.2.2 The approved minutes constitute the legal record of a meeting and any decisions taken. However, an audio-recording is itself a record/information kept by the Council for the purposes of the Freedom of Information Act 2000 (FOI) and so capable of being subject to requests for copies or transcripts. Consideration should be given to the making and retaining of audio-recordings and their inclusion in the Council's policies and practices in particular in relation to responding to FOI requests and document retention policies.

7.2.3 The Openness of Local Government Bodies Regulations 2014 (SI No 2095) amended existing legislation to require councils to allow any member of the public to record the proceedings and report on all public meetings using communication methods such as filming, audio-recording, taking photographs and using social media. The Council does not have a policy or protocol on the use of such modern media tools (which would be a means to assist in managing the day to day practical implications of the public's right to use such methods). However, in dealing with the public's use of such methods the Council does need to comply with the regulations/amended legislation. The audio-recording of public meetings by the Council itself, publication of the recording on the Council's website and retention in perpetuity would ensure that the Council has its own accurate record of the proceedings in its original form and enhances the openness of council business in accordance with the Council's transparency agenda.

## 7.3. Financial Implications

7.3.1. Following initial trials, basic recording mechanisms, such as dictaphones and iPad devices are not considered fit for purpose. Other devices of modest cost are being considered which, it is hoped, will prove to be adequate. It is understood that suitable devices can be purchased for around £140. Given the need for a number of devices to be purchased the total cost is not expected to exceed £600.

## 7.4. Human Resources Implications

7.4.1. There are no direct human resources implications.

## 7.5. Equality Implications

7.5.1. There are no direct equality implications.

## 7.6. Rural Community Implications

7.6.1. There are no direct rural community implications.

## 7.7. Public Health Implications

7.7.1. There are no direct public health implications.

## 8. Risk Management

8.1. No direct risks appear to arise from the proposals contained in this report. Indeed, the existence of a mechanism to give certainty to the minutes, where these are questioned, minimises risks to the organisation.

## 9. Background Papers

9.1. No background papers have been referred-to in the preparation of this report.

## 10. Contact Information

Contact details for this report are as follows:

**Name:** Brian Reed  
**Designation:** Head of Governance and Democratic Services  
**Tel. No.:** 01270 686670  
**Email:** [brian.reed@cheshireeast.gov.uk](mailto:brian.reed@cheshireeast.gov.uk)

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# CHESHIRE EAST COUNCIL

## Constitution Committee

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<b>Date of Meeting:</b>	15 <sup>th</sup> September 2016
<b>Report of:</b>	Director of Legal Services/Head of Governance and Democratic Services
<b>Subject/Title:</b>	Urgent Decision Procedures

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### 1.0 Report Summary

- 1.1 This report invites the Committee to consider amendments to the procedures for taking urgent decisions as set out in the Constitution. The current procedures were introduced in 2011 and are considered deficient in certain respects as explained in the report.

### 2.0 Recommendations

- 2.1 That Council be recommended that the procedures for taking urgent decisions as set out in Appendix 4 to the Procedure Rules within the Constitution be amended as set out in this report.

### 3.0 Reasons for Recommendations

- 3.1 The urgency procedures in their current form are considered unlawful in part and impracticable for the purpose of taking urgent decisions.

### 4.0 Background and Options

- 4.1 Where a decision is urgent and cannot await the next meeting, or a special meeting, of the relevant decision-making body, the Council's procedure rules set out how such decisions should be taken.
- 4.2 In the early days of Cheshire East Council, the procedure rules provided that urgent decisions would be taken by the Council's Chief Executive or his/her nominee in consultation with the relevant committee chairman or Cabinet member, the relevant scrutiny chairman and group leaders. Such decisions could involve significant amounts of expenditure and/or have a significant effect on a local community. In 2011, the then Head of Legal Services took the view that such decisions should properly be made by councillors and not officers. The urgency procedures were therefore amended by Council to provide that councillors and not officers would in future be responsible for urgent decisions. The urgency procedures approved by Council in 2011 are set out in Appendix 4 to the Procedure Rules within the Council's Constitution.
- 4.3 There are three different urgency procedures depending on whether the decision would normally have been taken by full Council, a committee or

sub-committee of the Council or the Cabinet. All three urgency procedures are set out in Appendix 4 to the Procedure Rules. The Appendix includes a definition of an urgent decision as follows:

*“A decision will be urgent if any delay likely to be caused by following the usual procedures would seriously prejudice the Council’s or the Public’s interests. If a decision is deemed an urgent decision caused by a failure to plan appropriately or work without due regard to timeliness, the circumstances giving rise to the need for an urgent decision should be reported to the Audit and Governance Committee on a quarterly basis.”*

- 4.4 The Director of Legal Services has reviewed the urgency procedures. He is of the view that the current provisions appear to have legal issues and may be less practical than is ideal for the purpose of taking urgent decisions. Each urgency procedure is discussed below. The deficiencies or weaknesses of each procedure are highlighted and an alternative approach is recommended in each case.

#### **Urgent Regulatory Decisions (Committee and Sub-Committee Procedure Rule 25)**

- 4.5 This procedure relates to decisions which would normally be taken by a regulatory committee such as a licensing committee or sub-committee. It provides as follows:

*“The Chairman and Vice-Chairman (or, in their absence, their nominees) of the relevant committee or sub-committee, in consultation with the appropriate Director or Head of Service, have delegated authority to take any non-executive decision subject to the following requirements being met:-*

- *The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or urgently convened meeting;*
- *The decision is reported for information to the next available meeting of the decision-making body;*
- *The provisions of legislation are complied with;*
- *Advice has been taken from the Council’s Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.”*

- 4.6 Section 101 of the Local Government Act 1972 provides that a decision may be delegated to a committee, a sub-committee or an officer. It does not allow decisions to be delegated to individual members or groups of members who are not constituted as a formal committee or sub-committee (or who are not members of the Council’s executive body). Therefore, this urgency procedure in its current form is unlawful and any decisions taken under it would be invalid.

**Recommended:** That the procedure be amended to the following:

*“The Chief Executive or relevant Chief Officer (or in their absence their nominees) in consultation with the Chairman and/or Vice-Chairman of the relevant committee or sub-committee have delegated authority to take any non-executive decision subject to the following requirements being met: (requirements as before).”*

**Urgent Decisions: Council (Council Procedure Rule 18)**

4.7 This procedure relates to decisions which would normally be taken by full Council. It provides as follows:

*“If a decision would normally be required to be made by full Council the decision may be made by an urgency sub-committee which shall comprise 5 Members of the Council (ratio 3:1:1) and the Mayor (or in his absence the Deputy Mayor) as a non-voting member subject to the following requirements being met:-*

- *The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting ;*
- *The decision is reported for information to the next available meeting of the Council;*
- *The provisions of legislation are complied with;*
- *Advice has been taken from the Chief Executive, Council’s Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.”*

4.8 An urgency committee convened for the purpose of taking an urgent decision would be subject to the Access to Information provisions, normally requiring five clear working days’ notice before the meeting could take place. It would also be necessary to find five members at short notice to make up the committee, presumably in consultation with the group leaders or whips (plus the Mayor or Deputy Mayor). This would be a protracted process for taking an urgent decision requiring immediate action and would therefore seem impracticable.

**Recommended:** That the procedure be amended to the following:

*“If a decision would normally be required to be made by full Council the decision may be made by the Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with Group Leaders and the Mayor (or in his/her absence the Deputy Mayor) subject to the following requirements being met: (requirements as before).”*

4.9 In the case of both amendments above, it is proposed that the decision-making role revert to officers. This is to avoid both legal complications and

the impracticalities of trying to arrange an urgent member body at short notice. However, in both cases, the procedure will require that all relevant members are formally consulted and a record of such consultation will be made as part of the decision notice.

**Urgent Decisions: Cabinet / Executive Matters (Cabinet Procedure Rule 53)**

4.10 This procedure relates to decisions which would normally be taken by Cabinet. It provides as follows:

*“The Leader of the Council, the Deputy Leader of the Council and the relevant portfolio holder (or, in their absence, their nominees), have delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met:-*

- *The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Cabinet, or an urgently convened Cabinet meeting;*
- *The decision is reported for information to the next available meeting of the Cabinet;*
- *The provisions of legislation are complied with;*
- *The relevant overview and scrutiny committee Chairman has been notified of the matter and has been invited to make representations;*
- *The Leaders of all Opposition Groups have been notified of the matter and have been invited to make representations;*
- *Advice has been taken from the Council’s Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.*

*In addition the following provisions shall apply:-*

- *Rules 13, 14 and 15 of Access to Information Procedure Rules shall be adhered to, relating to the content of the Forward Plan, general exceptions to the requirement to list decisions on the Forward Plan, and circumstances of special urgency*
- *Rule 54 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions*
- *Overview and Scrutiny Procedure Rules in relation to Call-in (Rule12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).*
- *Rule 4 of the Budget and Policy Framework Procedure Rules shall be adhered to in relation to urgent executive decisions taken under this procedure.*
- *Overview and scrutiny committees can review the reasons for the urgency of a decision and the process adopted.”*

- 4.11 This procedure depends on the Leader, Deputy Leader and relevant Portfolio Holder all being available to take an urgent decision jointly. Sometimes, one or more of these individuals is absent when the need for an urgent decision arises. It is also doubtful that a decision taken by a group of executive members not formally constituted as a committee of the Cabinet would be lawful. Any formally constituted body would of course be subject to the Access to Information requirements as regards notice of the meeting, etc. and could compromise the Council's interests in the case of an urgent decision. Finally, only the Leader of the Council may nominate another member of the Cabinet to act in his/her absence or the absence of another member of the Cabinet. Neither the Deputy Leader nor any other member of the Cabinet may nominate a substitute.
- 4.12 The proposed amended procedure recommended below sets out a formal scheme of delegation to individual Cabinet members with regard to the taking of urgent executive decisions and will therefore require the approval of the Leader of the Council before it can be incorporated into the Constitution.

**Recommended:** That subject to the approval of the Leader of the Council, the procedure for taking urgent executive decisions be amended to the following:

*“The Leader of the Council, or in his/her absence the Deputy Leader of the Council, or in his/her absence the relevant portfolio holder has delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met: (requirements as before).”*

*Note: for the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply.”*

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

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

## **6. Implications of Recommendation**

### **6.1. Policy Implications**

- 6.1.1. 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.

**6.2. Legal Implications**

6.2.1. As discussed in this report, the current procedures for dealing with urgent decisions other than by a formally-constituted decision-making body are in places unlawful. The proposed amendments will place the procedures on a sound legal footing.

**6.3. Financial Implications**

6.3.1. There are no specific financial implications.

**6.4. Human Resources Implications**

6.4.1. There are no human resources implications.

**6.5. Equality Implications**

6.5.1. There are no direct equality implications.

**6.6. Rural Community Implications**

6.6.1. There are no direct implications for the Borough's rural communities.

**6.7. Public Health Implications**

6.7.1. There are no direct public health implications.

**7. Risk Management**

7.1. The proposals in this report would, if implemented, appear not to result in any risks for the Council; rather they would mitigate any existing risks.

**8. Background Papers**

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

**9.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report author:

Name: Paul Mountford  
Designation: Governance and Democratic Services  
Tel No: 01270 686472  
E-mail: [paul.mountford@cheshireeast.gov.uk](mailto:paul.mountford@cheshireeast.gov.uk)

# CHESHIRE EAST COUNCIL

## Constitution Committee

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<b>Date of Meeting:</b>	15 September 2016
<b>Report of:</b>	Director of Legal Services
<b>Subject/Title:</b>	Members' Use of the Council's Email System

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### 1.0 Report Summary

- 1.1 This report considers the existing guidance to Members on using the Council's internet and email services and, in this context, seeks to provide clarification of the phrase in the Members' Code of Conduct that 'Resources must not be used improperly for political purposes (including party political purposes)'.

### 2.0 Recommendation

- 2.1 That the Committee consider whether the clarification provided in this report should be distributed to all Members.

### 3.0 Reason for Recommendation

- 3.1 To enable the Committee to consider whether the clarification provided in this report is helpful and proportionate and should be distributed to all Members.

### 4.0 Background and Options

- 4.1 This report considers the existing guidance in the Members Code of Conduct on use of the Council's Resources and the guidance in the ICT Code of Practice for Members on using the Council's email service.
- 4.2 Paragraph 6(b) to Part A of the Council's Member Code of Conduct ('the Code of Conduct') places restrictions on use by Members of the Council's resources, as follows:

#### **A. General obligations**

*Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:*

#### **6. Honesty**

*(b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only. **Resources must not be used improperly for political purposes (including party political purposes)** and you must*

*have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986. [Emphasis added.]*

The full version of the Code of Conduct can be found on the authority's website at:

[http://www.cheshireeast.gov.uk/council\\_and\\_democracy/your\\_council/constitution.aspx](http://www.cheshireeast.gov.uk/council_and_democracy/your_council/constitution.aspx)

- 4.3 The Code of Conduct thus prohibits using Council resources improperly for political purposes. This is thus a qualified prohibition and begs the question 'When is use for political purposes acceptable?'
- 4.4 The Council's ICT Code of Practice for Members ('the Code of Practice') provides more detailed guidance on use of the Council's email service by Councillors. The Code of Practice is based on the Council's ICT Security Policies, the Government Code of Connection requirements and ISO27001 standards for information management and security. It is split into three areas: the first providing guidance on using Council systems, the second detailed guidance on using Council equipment and the third specific direction on using non-Council equipment to access systems.

The full version of the Code of Practice can be found on the authority's website at:

<http://centranet.ourcheshire.cccusers.com/tasks/IT/Site%20documents/ICT%20code%20of%20practice%20for%20Members.pdf>

- 4.5 In the section in the Code of Practice on using Council systems, the following guidance is provided in relation to email:

*2.2 Email*

*Each Councillor is responsible for the context of all text, audio and images that they send, and should not contain derogatory statements, potentially libellous, defamatory, comments likely to cause offence, gossip, hoaxes, or jokes to others inside or outside the Council.*

*Be aware that data contained within email could be subject to the provisions of the Data Protection Act.*

*Automatic forwarding arrangements for any messages from the work account to one outside the authority, e.g. at home must not be set up.*

*Automatically sending Cheshire East emails to external accounts increases the risk of disclosure or interception.*

*Confidential or sensitive information sent outside of the Council network via email must be encrypted using approved methods only – Contact the ICT Service Desk for additional information.*

*Do not forward or reply to suspicious emails or chain letters, similarly do not click on attachments or web links within suspect emails. If in doubt contact the ICT Service Desk for advice.*

*Be aware that a disclaimer is included automatically in all outgoing emails stating that it was sent in confidence for the addressee only, may be legally privileged and any views expressed are not necessarily those of Council.*

*Email correspondence may be monitored inline with the ICT Security Policies.*

- 4.6 In the section in the Code of Practice on using Council equipment, the following guidance is provided in relation to email:

### **3 Guidance when using Council equipment**

#### **3.1 Use and Protection**

*Members may use their Council provided computers for official business activities and those related to other public bodies or organisations on which they are the Council's representative or nominee, e.g. Housing Trust, Parish Council.*

**Members should not use the ICT facilities improperly for political purposes such as the promotion of a political party, a candidate or group of candidates in an election or in connection with a party political campaign.**

*Personal use is allowed providing the ICT security policies are adhered to. Members must 'log out' of systems fully or lock the computer when leaving a workstation unattended.*

*All information and files created, received, stored or sent while on Council business or using Council facilities form part of the Council's corporate records and remain property of the Council.*

*All corporate laptops must be encrypted. This should be arranged via the ICT Service Desk.*

*Only corporate encrypted memory sticks must be used.*

*Always ensure that equipment and media are powered off when left unattended and preferably locked away.*

*Good security measures should be used to protect a laptop i.e. not left unattended when in use or when in sleep or standby saving states. The laptop must be kept in a secure location (i.e. out of sight) when not in use and not be an easy target for thieves.*

*Ensure that only equipment belonging to the Council is connected to a Council PC or the network. [Emphasis Added.]*

#### **3.2 The Council's Internet**

*The Council's Internet and email service may not be used for transmitting, accessing, retrieving or storing any communications of a discriminatory or harassing nature or materials that are racist, offensive, obscene, pornographic, sexually explicit, or used for the purposes of gambling.*

[Extract only.]

- 4.7 In the Code of Practice the following specific direction on using non-Council equipment to access systems is provided:

### **4 Guidance when using own equipment**

*Non Council equipment or privately owned equipment should only access systems through ICT approved remote access solutions.*

*Members must 'log out' of systems fully or lock the computer when leaving a workstation unattended.*

*All information and files created, received, stored or sent while on Council business or using Council facilities form part of the Council's corporate records and remain property of the Council.*

*Members should clearly state in any email whether it is being sent on official Council business.*

*The content of every email sent on official Council business must not be such that it brings the Council into disrepute. Emails whether including text, audio and/or images must not contain derogatory statements, potentially libellous or defamatory comments or anything likely to cause offence, to others either inside or outside the Council. Note that gossip, hoaxes, or jokes fall within this category.*

*The Internet is an insecure medium, confidential or sensitive information should not be sent by personal email.*

*Members are reminded that the Council's indemnity and insurance arrangements are limited to official business.*

- 4.8 The Code of Practice thus mirrors the Code of Conduct in prohibiting using the Council's ICT facilities 'improperly for political purposes.' But it puts some flesh on the bones of this restriction by giving as examples of improper use 'the promotion of a political party, a candidate or group of candidates in an election or in connection with a party political campaign.'
- 4.9 Neither the Code of Conduct nor the Code of practice provide guidance as to when use of Council resources for political purposes might not be 'improper.' However, as sending an email on the Council network has no identifiable cost to the public purse, there may be circumstances where an email about party political matters is harmless and not improper. An example might be an email by a Group Leader or Whip to fellow Group Members to change the time of a group meeting; or similarly to an officer to change the period booked for use of a meeting room by that Group.
- 4.10 Factors which may make it more likely that a 'political' email is acceptable include the following:
- The sender and recipient/s are both/all Councillors belonging to the same political group;
  - The recipient is not a member of the public;
  - The content of the email is administrative in nature;
  - The email does not contain any politically controversial material;
  - The email does not criticise other people, and/or another political party.
- 4.11 Factors which may make it more likely that a 'political' email is unacceptable (i.e. 'improper') include the following:
- The recipient is not another Councillor belonging to the same political group;
  - The recipient is a member of the public;
  - The content of the email is not purely administrative in nature;

- The email contain politically controversial material;
- The email criticises other people and/or another political party.

4.12 It is not possible to provide definitive guidance covering every possible set of facts. However, if a Member is unsure whether sending an email on the Council's system might be 'improper' they should seek advice from the Monitoring Officer. In general, the somewhat trite phrase 'if in doubt, don't' might be wise advice.

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

5.1. None

## **6. Implications of Recommendation**

### **6.1. Policy Implications**

6.1.1. None

### **6.2. Legal Implications**

6.2.1. The Council is required under section 27 of the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority. As part of this duty the Council must 'adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.'

### **6.3. Financial Implications**

6.3.1. None

### **6.4. Human Resources Implications**

6.4.1. None

### **6.5. Equality Implications**

6.5.1. None

### **6.6. Rural Community Implications**

6.6.1. None

### **6.7. Public Health Implications**

6.7.1. None

## 7. Risk Management

- 7.1. Providing practical guidance on the interpretation of the Code of Conduct will make it less likely that Members will be the subject of complaints from the public.

## 8. Background Papers

- 8.1. The Members Code of Conduct and ICT Code of Practice for Members.

## 9.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

Name: **Bill Norman**  
Designation: **Director of Legal Services and Monitoring Officer**  
Tel No: **01270 685850**  
Email: [Bill.Norman@cheshireeast.gov](mailto:Bill.Norman@cheshireeast.gov)