

Constitution Committee

Agenda

Date: Thursday, 22nd March, 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 30th November 2017.

6. **A Member-led Council: Developing Effective Member and Officer Relations**
(Pages 9 - 20)

To consider a report on the document: 'A Member-led Council: Developing Effective Member and Officer Relations'.

7. **The Constitution: Living Document Changes** (Pages 21 - 34)

To consider a report on a number of issues raised during the process leading up to adoption of the Council's Constitution.

8. **Changes to the Contract Procedure Rules** (Pages 35 - 44)

To consider a report on changes to the Contract Procedure Rules.

9. **Appointment of Lay Members to Independent Admissions and Exclusions Appeals Panel** (Pages 45 - 48)

To consider the appointment of individuals as members of the Independent School Admission Appeals Panel and as members of the Independent Review Panel for Exclusion Reviews.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 30th November, 2017 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)

Councillors G Baxendale, M Deakin, L Durham, S Edgar, H Gaddum,
S Hogben, L Jeuda, D Mahon, N Mannion, R Menlove, G Williams, P Groves
(for Cllr Beanland) and J Nicholas (for Cllr Burkhill)

Officers

Brian Reed, Head of Governance and Democratic Services

Jan Willis, Director of Finance and Procurement

Sean Hannaby, Director of Planning and Sustainable Development

Deborah Nickson, Legal Team Manager (Projects) and Deputy Monitoring
Officer

Martin Middleton, Business Improvement and Change Manager

Julie Gregory, Solicitor

Paul Mountford, Executive Democratic Services Officer

External Adviser (Bevan Brittan)

Bethan Evans

Other Members present

Councillors J Bratherton, J Clowes, J P Findlow, R Fletcher, B Moran,
S Pochin, A Stott and B Walmsley

Apologies

Councillors M Beanland and B Burkhill

9 DECLARATIONS OF INTEREST

There were no declarations of interest.

10 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

11 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 5th October 2017 be approved as
a correct record subject to an amendment to reflect the attendance of
Councillor B Burkhill at the meeting.

12 MINUTES OF THE CONSTITUTION SUB-COMMITTEE

RESOLVED

That the minutes of the following meetings of the Constitution Sub-Committee be received and the recommendations contained therein be approved:

23rd August 2017

15th September 2017

29th September 2017

3rd November 2017

17th November 2017

13 MEMBERS SPEAKING

Councillor J Bratherton queried the provision in the draft constitution relating to attendance by members at the meeting of a body of which they were not appointed members, and in particular the need for prior agreement by the Monitoring Officer and the Chairman where the meeting was considering private and confidential business. Bevan Brittan advised that this type of provision was included in many councils' constitutions and had been agreed by the Constitution Sub-Committee. Councillor Hogben suggested that the wording of the provision could be amended to make it clear that members could attend any meeting during the consideration of Part 1 business. It was agreed that the officers in consultation with the Chairman would amend the wording as appropriate.

Councillor Bratherton also questioned the provision relating to Notices of Motion at Council meetings and felt that the proposer of the motion should have an opportunity to introduce it. The officers advised that it was appropriate for the proposer and seconder of the motion to speak on the motion at the meeting of the decision-making body to which the motion had been referred. This would enable a report on the matter to be prepared for that meeting and for an informed debate to take place.

Councillor R Fletcher sought an assurance that the new constitution would be appropriate for Cheshire East and would not simply reflect the practices adopted by other councils. The officers responded that Bevan Brittan had a considerable amount of experience of reviewing the constitutions of councils across the country and were bringing that depth of knowledge and experience to this process.

Councillor Fletcher also felt that the constitution should provide that reserved matters for large planning applications should be referred to the relevant planning committee and not be decided by officers. The officers replied that the provisions in question had been in place for the last 2-3 years and appeared to be working well.

Councillor S Pochin suggested that the standards procedure should be amended to provide that where a complaint was made against a member, there should be a right of appeal against the decision of the Monitoring Officer to allow the complaint to progress, or to decide to the contrary. It was suggested by Councillor Pochin that, in such circumstances, the Monitoring Officer would have a conflict of interest. Bevan Brittan responded that such a decision of the Monitoring Officer related to a preliminary stage of the process and that if a complaint were to proceed to a later stage there would be a facility for a member to have a full hearing. The Monitoring Officer had a statutory duty to determine the matter in consultation with the Independent Person and was independent of the Council's leadership.

Councillor B Walmsley referred to that part of the Local Ward Member Protocol relating to the need to keep ward members informed. She suggested that it would be helpful if this included a hyperlink to the definition of the term 'exempt information' would give reassurance to Members. It was agreed that such a hyperlink could be included.

Councillor Pochin questioned the recommendation to reduce the Forward Plan from a four month period to one month given that this was a strategic document which should cover a longer period. The officers responded that Bevan Brittan had suggested the change to reflect the changed legal position which now required that key decisions had to be published for a 28 day period. Councillor H Gaddum felt that the reduced period would be unduly restrictive. It was agreed that the wording would be changed to provide that the Forward Plan would cover a 'minimum' period of one month. This would enable items to be added to the Forward Plan over a longer period as happened now.

14 REVIEW OF THE CONSTITUTION

The Committee considered two reports recommending the approval and adoption of a revised constitution for Cheshire East Council.

The Council had undertaken a comprehensive review of the current constitution to ensure that it complied with all relevant statutory requirements, and had considered how its current processes and procedures should be altered to improve organisational efficiency and achieve good governance. The review had been guided by the seven key principles approved by the Committee at its meeting on 4th August 2017.

The Council had commissioned Bevan Brittan Solicitors to carry out a desktop review of the constitution and to assist in the drafting of a new constitution.

Details of the review and the way in which it had been conducted, including the extensive member consultation and engagement that had taken place, were set out in the report.

The report appended four documents:

Appendix A – A composite Explanatory Note of substantive issues which had been considered by the Constitution Sub-Committee, together with the Sub-Committee's recommendation against each issue, which were reflected in the draft constitution.

Appendix B – The draft Constitution

Appendix C – Those documents which formed part of the current constitution, but which the Constitution Sub-Committee had recommended should no longer be in the constitution, together with a summary front-sheet setting out information on the "ownership" of each document.

Appendix D – A document on arrangements for dealing with standards complaints against members which, whilst not part of the current constitution or part of the proposed new draft Constitution, was required by law and would be referenced and hyperlinked from the revised Member Code of Conduct.

On consideration of the table of financial limits set out in Appendix A.1, the officers advised that a number of the references would need to be corrected.

The Committee also considered a number of matters which if agreed would require the inclusion of additional documents in the constitution or amendments to it as follows:

Appendix E – The Overview and Scrutiny Procedure Rules. These had been the subject of discussion at the relevant working group but had been excluded from the papers presented to the Constitution Sub-Committee on 17 November 2017.

A colour-coded chart mapping out decision-making responsibilities. This would be completed on final approval of the revised constitution and incorporated into the document.

A hyperlink to guidance on the use of the Officer Decision Record (ODR) process. This would be completed in the final drafting of the document.

Certain issues relating to the current draft provisions relating to the Staffing Committee terms of reference, the Investigation and Disciplinary Committee and the Employee Procedure Rules. These issues were not contained in the Explanatory Note of substantive issues when considered by the Constitution Sub-Committee and were not included in the Explanatory Note before the Committee (Appendix A). The Committee considered a separate explanatory note on these issues which included a response from Bevan Brittan and a recommended position in each case. It was suggested in particular that the composition of the Staffing Appeals Sub-Committee should be changed from 3/5 members to 3 members, and

that the terms of reference of the Investigation and Disciplinary Committee should be amended to provide that the procedure for filtering out and dealing with allegations which were clearly unfounded, trivial or could best be dealt with under some other procedure be delegated to the Monitoring Officer in consultation with the Chairman of the Investigation and Disciplinary Committee and the Chairman of the Staffing Committee. The Committee agreed with both proposed amendments.

[Note: the following Committee resolutions take into account those amendments agreed following Members' Speaking.]

RESOLVED

That subject to the resolutions below, Council be recommended to adopt the revised constitution of Cheshire East Council, as appended to the report at Appendix B, with an operative date of 1st January 2018:

1. the Overview and Scrutiny Committee Procedures as set out in Appendix E be approved for inclusion in the revised Constitution subject to the correction of any formatting and cross-referencing issues;
2. the provision within the draft constitution relating to attendance by members at the meeting of a body of which they are not appointed members be amended to make it clear that members can attend any meeting during the consideration of Part 1 business;
3. the Local Ward Member Protocol be amended to include a hyperlink to the definition of the term 'exempt information';
4. the provision relating to a one month Forward Plan be amended to provide that the Forward Plan shall cover a *minimum* period of one month (which would allow items to be included over a longer period);
5. the insertion into the Employment Rules of a section relating to the executive objection process for the appointment and dismissal of those chief officers and deputy chief officers not covered by paragraphs 4 and 5 be approved (page 252 of Appendix B);
6. the financial limits relating to virements (both revenue and capital) be clarified and the Acting Director of Legal Services in consultation with the Section 151 Officer be authorised to make any necessary amendments;
7. with regard to variations in capital programme scheme provision, consideration be given at a future date to the introduction of percentages alongside cash sums.
8. the reference, within the Planning and Development Control terms of reference, to the Portfolio Holders responsible for Development Control

and the Local Development Framework being members of the Strategic Planning Board be deleted (Appendix B page 43 para 20);

9. the reference to approval routes within Section E of the Finance Procedure Rules be suitably clarified (Appendix B page 213 paras 20-22), which shall be delegated to the Acting Director of Legal Services;
 10. paragraph 53 of the terms of reference of the Investigation and Disciplinary Committee be amended to provide that the procedure for filtering out and dealing with allegations which are clearly unfounded, trivial or can best be dealt with under some other procedure be delegated to the Monitoring Officer in consultation with the Chairman of the Investigation and Disciplinary Committee and the Chairman of the Staffing Committee;
 11. paragraph 49 of the terms of reference of the Staffing Committee be amended to provide that a Staffing Appeals Sub-Committee of 3 members be established on an ad hoc basis;
 12. all references to Cabinet Portfolios be brought up to date;
 13. the commitment to provide further supporting information with regard to the colour-coded chart mapping out decision-making responsibilities and the provision of a hyperlink to guidance on the use of the Officer Decision Record (ODR) process be noted and endorsed; and
 14. the arrangements for dealing with standards complaints against members (Appendix D) be referenced and hyperlinked from the revised Member Code of Conduct.
- 15 CALENDAR OF MEETINGS FOR 2018-19**

The Committee considered the draft calendar of meetings for 2018-19 and the outcome of the consultation thereon.

The proposed scheduling of meetings for 2018-19 followed the pattern adopted in previous years.

RESOLVED

That the draft Calendar of Public Meetings for Cheshire East Council 2018 - 2019 be recommended to Council for approval.

The meeting commenced at 10.00 am and concluded at 12.35 pm

Councillor A Martin (Chairman)



Constitution Committee

Date of Meeting: 22 March 2018

Report Title: A Member-led Council: Developing Effective Member and Officer Relations

Senior Officer: Acting Director of Legal Services

1. Report Summary

- 1.1. In order for the Council to be effective and successful, it is crucial for the relationship between Members and officers to be well-founded and properly understood.
- 1.2. This report sets out the history of the development of the appended document-A Member-led Council: Developing Effective Member and Officer Relations, and asks the Committee to agree to support the approach it advocates. The Committee is also asked to endorse the recommended status of the document as a supplement to the Council's Member/Officer Relations Protocol.

2. Recommendation

- 2.1. That the Committee support the approach set out in the appended document: Cheshire East - A Member-led Council: Developing effective Member and officer relations; and endorse its importance as a supplement to the Council's Member/ Officer Relations Protocol.

3. Reasons for Recommendations

- 3.1. To bring clarity and certainty to the crucially important relationship between Members of the Council and officers.

4. Other Options Considered

- 4.1. Not applicable.

5. Background

- 5.1. In early 2017, the Council's Corporate Leadership Team and Cabinet worked jointly with the Local Government Association to explore how the Council might refine its approach to Member and officer relations.
- 5.2. For some years, the Council had been clear in stating that it was "Member-led", but it was felt important to bring clarity to this statement; to establish

an agreed approach to the way in which elected Members and officers relate to each other, and to the expectations each have of the other. This relationship is crucial for the Council to be effective and successful.

- 5.3. This work led to the preparation of the appended document: Cheshire East- A Member led Council: Developing effective Member and officer relations. In summary, the document;

5.3.1. Makes clear the democratic mandate which elected Members have; and their responsibility for setting the policy framework, upon which the officers provide professional advice and expertise in order to deliver it.

5.3.2. Clarifies the role of officers as employees who put policies into effect and who deliver the Council's services, utilising powers and performing responsibilities delegated to them by Members.

5.3.3. Underlines the importance of officers acting with political impartiality, serving the whole Council rather than particular groups or Members; providing unbiased professional advice to Members.

- 5.4. The document was shared with the Council's political group leaders, and endorsed by them, and was subsequently published.

- 5.5. This document does not replace our agreed Member/Officer Protocol, but provides helpful additional guidance which supplements it.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. No direct legal implications arise from the recommendations of this report, although the content of the report could have beneficial legal implications for the Council.

6.2. Finance Implications

6.2.1. No direct finance implications arise from the recommendations of this report.

6.3. Equality Implications

6.3.1. No direct equality implications arise from the report, or from its recommendations but clarity around Member and officer relations will certainly have benefits in terms of equalities.

6.4. Human Resources Implications

6.4.1. The Council's refined approach to Member and officer relations brings much needed clarity to the way in which Members and officers work together, and the expectations of all colleagues. This clarity will bring benefits to Members, and to officers alike, minimising the risk of human resources issues arising.

6.5. Risk Management Implications

6.5.1. The Council's refined approach to Member and officer relations brings much needed clarity to the way in which Members and officers work together, and the expectations of all colleagues. This clarity will minimise risk.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

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

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. All Cheshire East Borough Wards are affected.

8. Consultation & Engagement

8.1. Not applicable

9. Access to Information

9.1. There are no applicable background documents.

10. Contact Information

10.1. 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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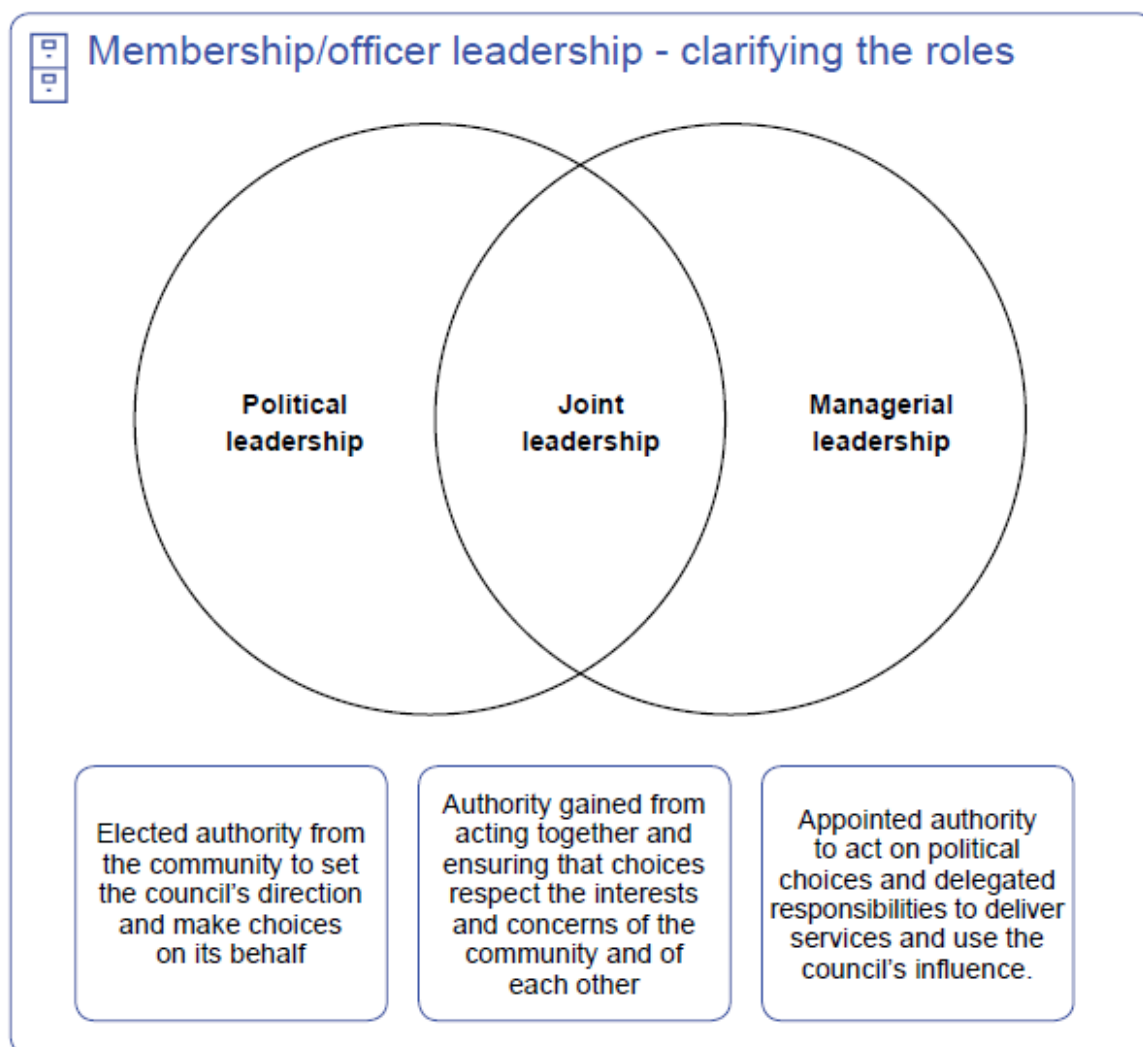
Appendix**Cheshire East - A member led Council –****Developing effective member and officer relations**

As part of our approach to refining member and officer relations it is useful to identify some of the issues and differences that need to be considered and, where necessary, addressed. The following points are based on the LGA guidance on member and officer relationships.

1. Members provide democratic mandate to the council and set the policy framework for the Council; whereas officers provide the professional advice and expertise needed to deliver the policy framework that has been agreed by members.
2. Officers are employees of the Council and are the people who put policies into effect and organise the provision of services. Officers also have powers and responsibilities delegated by members to make decisions on behalf of the Council.
3. Officers must act with political impartiality, serving the whole council rather than particular groups or members. They have a duty to provide unbiased professional advice and, as such, may have to advise members that certain courses of action should not be taken.
4. The Council has an agreed Member/Officer Protocol in place. This document is not intended to replace this, but it is of key importance in understanding the wider issues related to the way in which members of the Council and its officers should work together.
5. The following diagram outlines some of the differences in role:

A Quick Guide to some of the distinct roles	
Members ←	→ Officers
Are accountable to the electorate.	Accountable to the Council.
Are a Community Leader for a Ward.	Serve the whole Council.
Add a political dimension.	Politically Impartial.
Set high level policy/strategy.	Ensure operational delivery is effective.
Are involved in Chief Officer/CLT appointments.	Day to day staff and resources management.
Provide political perspective.	
Collectively set the policy and strategy framework for the Council.	

6. The roles of Members and officers are not however divided into distinct areas. The effective running of the Council requires an effective partnership and collaboration between Members and officers. The diagram below provides some further examples. Further to the descriptor above the following model outlines the differences and the overlaps:



7. A useful table to consider, in relation to expectations, is as follows:

What all Members can expect from Officers	What Officers can expect from Members
A commitment to the authority as a whole, not to an individual political group	Political leadership and direction
A working partnership	A working partnership
A timely response to enquiries and complaints	Compliance with ethical standards and probity requirements

Professional advice not influenced by political views or preference	Non-involvement in the day to day management
Integrity, mutual support and appropriate confidentiality	Respect, dignity and integrity, but no special consideration

8. Based on the above information and guidance we agree to sign up to, and work within the following principles:

Principles –

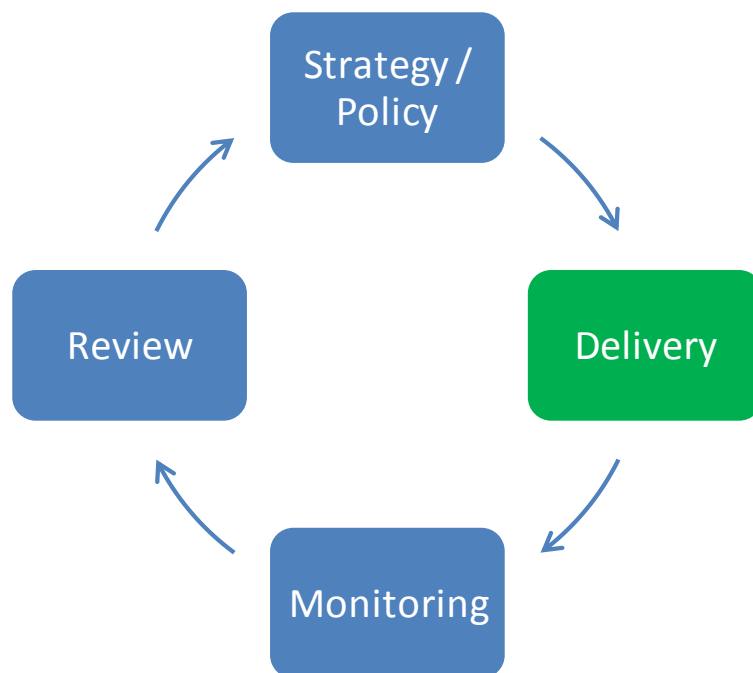
- i. Officers will work on the basis of “no surprises” when it comes to providing information to Members. The principles of timeliness, effective forward-planning and the planning of appropriate communications will be key.
- ii. Respecting each other, in terms of :
 - Political Leadership
 - The role of the local ward member
 - Officer political neutrality / professional role of officers
- iii. Officer responsiveness and even-handedness to members of all political groups, whilst acknowledging that officers must serve the ruling administration, irrespective of political colour.
- iv. Effective communication
- v. The role of officers is to support members’ leadership and activity in the development of strategy and policy, and by monitoring and reviewing the implementation of such policy. This is done through the provision of accurate information /data/advice. Officers will also provide material information and briefing on operational and service delivery matters as appropriate.
- vi. Officers will prepare information for all Members by way of periodic member-briefing to aid communication and share information appropriately.
- vii. Provision of consistent and timely officer advice:
 - This will be achieved by the establishment of a coordinated Member Enquiries Liaison service (currently under development)
 - a. Consistent and timely officer advice will represent the collective view of all departments of the Council

- Members must not "shop-around" for advice, seeking to obtain advice which they may prefer from certain officers, or by seeking a secondary opinion once formal advice has been provided.
- viii. Observance of the Nolan Principles:
- We will seek to ensure that both officers and members act within the following principles:
1. Selflessness
 2. Integrity
 3. Objectivity
 4. Accountability
 5. Openness
 6. Honesty
 7. Leadership
- ix. Members and officers will be committed to setting and enforcing positive behaviours:
- In the main, individual members and political groups will deal with the behaviour of politicians, with only the most serious matters being referred to the Monitoring Officer under the standards process.
 - Officer conduct will be dealt with via line management arrangements with more serious matters being addressed via IDC, HR and performance processes.
- x. Members and officers will share responsibility for identifying when a strategy or policy needs to be developed, monitored or reviewed and for instigating that work in partnership.
- xi. Co-production – Members make political decisions but officers will work with them and advise in order to provide professional advice to inform the process.
- Members ultimately make the decisions
 - Officers then implement the decisions
- xii. Staffing matters have joint responsibility amongst members and officers:
- HR Policy review and statutory officer appointments are the responsibility of the staffing committee, subject to the required processes.
 - Management of staff and implementation of HR procedures are the responsibility of officers.
 - Management of disciplinary and whistleblowing matters are the responsibility of officers.

9. **The Model**

The following establishes the model which underpins our approach as a member-led authority. In the development of policy/strategy within Cheshire East Council there is a process or cycle that is undertaken:

- a) The development of the policy/strategy
- b) Delivery of the policy/strategy
- c) Monitoring of the policy/strategy
- d) Review of the policy/strategy linking to the revision of it (and back to the beginning of the cycle)



Within this model, 3 of the 4 activities are led by **elected members**: -

- Development;
- Monitoring
- Review

One of the four domains is identified as activity led by **officers**

- Delivery

It is of course accepted that officers will support members in the provision of information, data and advice in relation to the 3 processes of **development; monitoring and review**, and that officers would keep members briefed on any key issues in relation to the **delivery** of strategy and policy.

Whilst it is the case under an executive and leader model of local governance that the Cabinet will lead on many areas of strategy/policy development, monitoring and review, other members across all parties have a significant role to play.

Committee members and chairs and, in particular overview and scrutiny committee members and chairs, can play a key role in policy development and review. Equally, there is a clear role for ward members in liaison with communities to raise awareness of strategy and policy, and to feed back from a grass-roots level on proposals for development or review.

10. Officers responsibilities to elected members

Whilst it is understood that officers of the Council have a responsibility to deliver the policies, and action the formal decisions of the Cabinet, it is of key importance that they understand their responsibilities to the Council as a whole and to members of all political groups.

Whilst officers will treat all members in an even-handed, appropriate manner, members must appreciate that officer resource must be provided to assist the Administration to administer, not to assist the opposition to oppose.

All members have responsibilities to their residents, who often raise queries and enquiries with them. Members also have general responsibilities in respect of their local areas.

In order to assist members in dealing with local enquiries and queries, a Member Enquiries Service is being explored which will bring greater equity and clarity to arrangements and will establish a clear process for the handling of member enquiries. This should lead to greater and more effective responsiveness to matters raised by local members.

The Council's Constitution contains a Ward Member Protocol, which captures the role of the ward member and which sets out the responsibilities of officers in respect of local issues. Local issues are of key importance to all members who are accountable to the electors in their wards. The new Protocol simplifies and strengthens the requirements of what support ward members need to perform their role.

There is also a more detailed officer/member protocol providing further guidance on common issues and roles.

Members also have responsibilities to their political groups, and officers must provide impartial advice on procedures and the proposed handling of important issues, such as the budget and the administration of Council meetings.

Officers also have responsibilities towards those elected to senior Council office e.g. Chairmanship and Vice Chairmanship of Council or committees. Irrespective of political allegiance. Such members can expect to receive support and assistance in order to ensure that they can effectively perform their roles.

Officers must also support those members of Council who do not have “special responsibilities”. They are nevertheless equal members of Council and have a right to be appropriately supported.

11. Communicating with public, business, and stakeholder audiences

Officers, (including the corporate communications team) will:

- Deliver information about Council’s services and how to access them, prioritising those services where evidence shows that these are the most important to residents, and which are council priorities.
- Communicate, publicise and promote decisions, service changes, priorities etc that are the result of decisions taken through the democratic processes of the authority, for example:
 - Decisions taken at full council
 - Decisions taken at cabinet
 - Portfolio holder decisions
 - Decisions otherwise delegated through any of the above meetings or otherwise described through the constitution
- Defend the reputation of the organisation (but not that of individual Members personally), rebutting and correcting factual inaccuracies where they enter the public conversation about the organisation

The Corporate Communications Team will, at all times, observe the requirements of:

- Cheshire East Council’s media-relations protocol and other Cheshire East Council policies and protocols
- Code of recommended practice for local government publicity
- And relevant legislation

The Corporate Communications Team will work on matters that relate to the activity, decisions and priorities of the Council as an organisation, and will not operate in any way that is party-political in nature.

In public relations, as in all council business, it is the role of Members to be party-political and the role of officers to create content that is neutral, or occasionally to speak neutrally, on behalf of the whole Council (albeit including the delivery of a majority party’s programme). Any clearly party-political communications must be through Members’ own channels (e.g. their own party newsletters and their own social media channels) rather than those owned and supported by officers (and funded by taxpayer resources).

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Constitution Committee

Date of Meeting: 22 March 2018

Report Title: The Constitution: Living Document Changes

Senior Officer: Acting Director of Legal Services

1. Report Summary

This report provides an opportunity for the Committee to receive updates on issues which were raised during the process leading-up to adoption of the Council's Constitution; to note the use of delegated powers to make changes to the Constitution, where the Acting Director of Legal Services has power to do so; or to give more detailed consideration to specific issues.

2. Recommendations

That the Committee:

- 2.1. note the arrangements set out in paragraphs 1 and 2 of Appendix 1 to this report;
- 2.2. note the use, or the proposed use, of delegated powers as set out in the recommendations in paragraphs 3-11 of Appendix 1 to this report; and
- 2.3. make a specific decision or recommendation in response to the recommendations set out in paragraphs 12-17 of Appendix 1 to this report.

3. Reasons for Recommendations

- 3.1. In order for the Committee to be appropriately updated on specific issues and to enable the Committee to give detailed consideration to individual matters.

4. Other Options Considered

- 4.1. Not applicable.

5. Background

- 5.1. As part of the process followed in advance of the adoption of the Constitution at the Council meeting on 14th December, it was made clear that consideration would need to be given to a number of proposed "living document" changes, which had either arisen from issues raised by Members during the process leading up to adoption, or which would arise following adoption.

- 5.2. Indeed, assurances were given to Members who raised issues during the process leading up to adoption, that there would be further opportunity for matters to be considered following adoption.
- 5.3. This report provides an opportunity for the Committee to consider these issues and either note changes which can be, or which have been, put in place under powers delegated to the Acting Director of Legal Services; or to give detailed consideration to more substantive issues.
- 5.4. Appendix 1 to this report lists matters for consideration at this meeting. It can be seen that items in Appendix 1 have been listed in the following order:
- 5.4.1. Items which the Committee is asked to note (where an update is provided for the Committee, but where no substantive decisions are required of the Committee).
- 5.4.2. Items relating to the use of delegated powers by the Acting Director of Legal Services (where the Acting Director of Legal Services has the power to make changes to the Constitution, and where he has already done so, or will do so).
- 5.4.3. Other matters (where the Committee needs to give detailed consideration to some specific issue).
- 5.5. The Committee is asked to note or consider, as appropriate, each of the items in Appendix 1.
- 5.6. A list of further issues to be considered at future meetings of the Committee is attached as Appendix 2.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. The legal implications of the recommendations to this report are contained within the main body of the report, as appropriate.
- 6.1.2. The Council must have a constitution as a requirement of the law, which must be published. Any agreed changes will be put in place in the Constitution but, where delegated powers to do this do not exist, these changes would need to be agreed by Council before publication.

6.2. Finance Implications

- 6.2.1. There are no direct finance implications.

6.3. Equality Implications

- 6.3.1. There are no direct equalities implications.

6.4. Human Resources Implications

6.4.1. There are no direct human resources implications.

6.5. Risk Management Implications

6.5.1. Local authority constitutions are “living documents” which must be kept under constant review in order to reflect best practice, changes in legislation, and the way in which they operate. By keeping constitutions under review, and updating them as appropriate, risk is minimised.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

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

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. All Cheshire East Borough Wards, and Ward members are affected, given that the Council’s Constitution has application across the whole of the Borough, and all Council operations.

8. Consultation & Engagement

8.1. As part of the process leading up to adoption of the Constitution at the meeting of Council on 14th December 2017, all Council Members were given opportunity to feed into the process, either by attending workshop, sub-committee, committee or Council meetings, or by attending “drop-in” sessions. It is estimated that more than 75% of the Council’s Members directly engaged in the process, and all were involved in the decision to adopt the Constitution.

9. Access to Information

9.1. During the process which preceded the adoption of the Constitution, a record was made of issues raised by individual Members so that these could be considered as part of the Constitution Committee’s work programme.

10. Contact Information

10.1. 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

Appendix 1

Items for noting

Item	Issue	Information	Recommendation
1	Portfolio Holder decision making: formal meetings are no longer required when Portfolio Holders make decisions.	<p>Commitments were given during the review process that arrangements would be put in place by officers to ensure that Members would receive advance notice of forthcoming decisions. These arrangements are in place and include:</p> <ul style="list-style-type: none"> • Full reports being prepared in respect of each Portfolio Holder decision to be made. • Legal, Financial and other professional advice being provided in respect of all reports and decisions to be made. • Advance electronic information being provided to all Members of forthcoming decisions, which indicates the date after which the proposed decision will be made (thereby enabling Members to seek further information, or discuss the matter with the Portfolio Holder). • Publication of Portfolio Holder decisions which have been taken with details of the call-in deadline. <p>These arrangements have been in place since January and do not appear to have created any difficulties.</p>	Committee to note the arrangements.
2	Local Officer Schemes of Delegation	<p>When the Council adopted its new Constitution, some changes were made to the Officer Schemes of Delegation, which required new sub-delegations to be made to other officers who had day-to-day responsibility for specific matters. Sub-delegations are now in place. The requirement to refresh Local Officer Schemes of Delegation has provided opportunity for Schemes to be brought up to date, leading to significant improvements and greater clarity for officers.</p>	Committee to note the arrangements.

Use of delegated powers, and for noting

3	Petitions Scheme	When the new Constitution was adopted, the old Petitions Scheme was dispensed-with and replaced by a new procedure rule. A typographical error, which suggests that the Scheme still applies, needs to be corrected under powers delegated to the Acting Monitoring Officer.	For the Committee to note the use of MO powers to make the change
4	EU Procurement Thresholds	The table of financial limits in the Constitution needs to be updated to reflect the current EU financial threshold.	That reference be made to the most up to date EU financial threshold, as agreed by the Monitoring Officer
5	Cabinet Procedure Rules (paragraph 3.33, pg 119)	Public speaking rules incorrectly reference the relevant provisions. (replace references to paragraphs 3.4 & 3.6 with a reference to paragraph 2.32 of the Committee Procedure Rules)	For the Committee to note the use of MO powers to make the change
6	Committee diagram (pg 11)	The diagram needs to be amended to reflect the current committee structure, which no longer includes the abolished Lay Members Appointments Committee, and to note that the Acting Monitoring Officer will use his powers to make changes to the diagram as and when other committees etc are appointed or abolished.	For the Committee to note the use of MO powers to make the change, and to make changes in the future to reflect the Council's agreed decision-making structure.
7	Limit for declarations of gifts and hospitality to officers was increased to £100 to equate with that of Members (paragraph 3.4, pg 293)	Council agreed that the threshold above which gifts and hospitality offered to Members and Officers should be equalised at the rate applicable to Members (£100). This change was not put in place in the Officer Code of Conduct, which now needs to be appropriately amended.	For the Committee to note the use of MO powers to make the change
8	Finance Procedure Rules (Page 184 para 2.25.1 and page 203 para 3.40.3)	Reference has been found to "the Head of Finance and Performance", which no longer exists. The Acting Monitoring Officer will identify the correct designation and make appropriate changes to the Rules.	For the Committee to note the use of MO powers to make the change (s)

9	Local Choice Functions (paragraphs 8-10, pp18-20)	Certain functions previously delegated to officers have been omitted, and need to be included in the new Constitution. The inclusion of these items will not increase the powers of officers which applied under the last version of the Council's Constitution. (see table at end of this document)	For the Committee to note the use of MO powers in making the change
10	Legal Authorisation and Enforcement	This issue will be explained at the meeting	For the Committee to note the use of MO powers to make the change
11	RIPA-authorising offices (paragraph 43, pg 88)	All Chief Officers are given the power to exercise the role of authorising officer and designate persons for RIPA purposes. As the Director of Legal Services has the formal "reviewer" role, he/she should be excluded from this provision.	For the Committee to note the use of MO powers to make the change

Other matters

12	Consideration as to whether the proposer of a Notice of Motion at Council should be allowed to speak for up to 3 minutes in support of their item (paragraph 3, pg 130)	<p>This issue was raised in the period prior to adoption of the Constitution. Assurances were given that opportunity would be given for this to be considered by the Committee.</p> <p>Some years ago, proposers and seconders of notices of motion were permitted to speak, at the Full Council meeting, in support of their Notice of Motion. However there were concerns that, by allowing speeches in support of a Notice of Motion, an imbalanced and uninformed perspective would be given to those attending the meeting, or to those listening to the proceedings remotely.</p> <p>In addition, given that Council's role in most cases is simply to resolve that the matter be referred to the appropriate body for consideration, no report on the matter is available on the day of the Council meeting. Allowing speeches in support of Notices of Motion, which would not be subject to reasoned debate, and which would not be supported by a fully reasoned report, might tend to suggest to observers that the subject matter of Notices of Motion might have some legitimacy beyond what is actually the case. For this reason, Council previously decided that, whilst it was appropriate for the text of Notices of Motion to appear on the Council agenda,</p>	For the Committee to consider whether to recommend changes to Full Council
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		<p>there should be no speeches, comment, or debate upon them until an officer report had been submitted to the relevant decision-making body, which could then make a properly informed decision.</p> <p>There have been no changes to the existing Rule (paragraph 3, pg 130) which allows the Mayor to determine that Notices of Motion can be fully debated and determined at the Full Council meeting, where he/she “considers it conducive to the despatch of business”. This provision has been used occasionally in the past where, for example, an urgent decision is needed, and where sufficient information is available, so as to allow a properly informed decision to be made.</p>	
13	Licensing Committee quorum (paragraph 35, pg 50)	<p>The quorum for the Licensing Committee is currently x8 Members, out of the total membership of x15. Other regulatory committee quorums are 25% of their membership.</p> <p>There have been a number of occasions upon which there have been problems in securing the required quorum for the Licensing Committee right up until the commencement time of the meeting in question. Clearly, there has been a risk of the whole meeting becoming abortive on these occasions.</p> <p>Given that a 25% quorum figure applies to other regulatory committees, and has worked well since the beginning of the life of the Council, there should be no reason why the same figure should not apply to the Licensing Committee.</p>	That the Committee’s quorum be changed to reflect a consistent 25% (ie x4) of the membership
14	Civic Sub Committee and Outside Organisations Sub-Committee	<p>Bevan Brittan recommended that these very little-used sub committees be abolished with effect from the end of the Municipal Year, and that their terms of reference be taken on by the Constitution Committee.</p> <p>The Civic Sub Committee has not met for some years and, whilst the Outside Organisations Sub-Committee did intensive work at the beginning of the life of the Council, it has not been required to meet since March 2013.</p>	As per Bevan Brittan’s recommendation: Constitution Committee to recommend this to Council and for this change to be reflected in the list of Committees appointed at the Council’s Annual General Meeting

15	Officers taking Key Decisions	The old Constitution prevented officers from taking Key Decisions. Clarification is needed from the Committee as to whether this should continue to apply, even when officer schemes of delegation might suggest that such decisions can be taken by officers.	For the Committee to consider and resolve or recommend appropriately
16	Member Access to Part II documents (paragraphs 46-51, pages 161-162)	<p>Whilst Bevan Brittan solicitors recommended that a more restrictive approach should be taken, Council accepted that the original arrangements, which allow Members to have access to Part II documents, and to Part II proceedings in meetings, (except where staffing information, or information relating to vulnerable children/adults would be divulged), should continue, subject to a review being conducted after 6 months.</p> <p>There are some inconsistencies in the drafting of the new Constitution which might tend to suggest that the recommended (Bevan Brittan) restrictions should apply. The Committee is asked to confirm that the partially “unrestricted” position, as applied prior to January 2018, should continue to apply until such time as the Committee has received a full report on the matter, based upon the experience of at least 6 months of operation of these arrangements under the new Constitution.</p>	That the Committee confirm that the status quo should remain for the time being, subject to a review being undertaken after at least 6 months of the operation of the new Constitution have elapsed.
17	Contract Procedure Rules / Operational Expenditure and Key Decisions	Some changes to the Contract Procedure Rules are dealt with in a separate report on this agenda.	For the Committee to consider and resolve or recommend appropriately

Local Choice Functions	Decision Making Body	Delegation of functions to Committees (where applicable)
Functions under a local Act (other than one specified or referred to in Reg 2 or Schedule 1 of the Regulations 2000)	Cabinet	Chief Officers
To determine appeals ¹ against any decision of the authority	Full Council	Appeals Panel insofar as not delegated to any other Committee or officer
To make arrangements for appeals against exclusion of pupils from maintained schools	Full Council	Appeals Panel
To make arrangements for appeals regarding school admissions ²	Full Council	Appeals Panel
To make arrangements for appeals by governing bodies ³	Full Council	Appeals Panel
Any function relating to contaminated land ⁴	Cabinet	Chief Officers
The control of pollution or the management of air quality ⁵	Cabinet	Chief Officers
To serve an abatement notice in respect of a statutory nuisance ⁶	Cabinet	Chief Officers
To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act	Full Council	Not Delegated

¹ Including appeals in relation to access to information by Members under s100F Local Government Act 1972, Part 5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012, and the common law "need to know" rules

² s94(1), (1A) and (4) School Standards and Framework Act 1998

³ s95(2) School Standards and Framework Act 1998

⁴ Part IIA Environmental Protection Act 1990 and subordinate legislation

⁵ Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

⁶ s80(l) Environmental Protection Act 1990

1993 should apply in the authority's area ⁷		
To inspect the authority's area to detect any statutory nuisance ⁸	Full Council	Chief Officers
To investigate any complaint about the existence of a statutory nuisance ⁹	Full Council	Chief Officers
To obtain information about interests in land ¹⁰	Full Council	Chief Officers
To obtain particulars of persons interested in land ¹¹	Full Council	Chief Officers
To make arrangements for the execution of highways works ¹²	Cabinet	Chief Officers
<p>To appoint any individual</p> <p>(a) to any office other than an office in which s/he is employed by the authority</p> <p>(b) to any body other than</p> <p>(i) the authority;</p> <p>(ii) a joint Committee of two or more authorities; or</p> <p>(c) to any Committee or sub Committee of such a body</p> <p>and to revoke any such appointment</p>	Cabinet or individual Portfolio Holders in respect of organisations listed in the document accessed through the link in paragraph 11 below and the Full Council in respect of other organisations.	In respect of appointments by Full Council delegated to the Constitution Committee.
To make agreements with other local authorities for the placing of staff at the disposal of those other authorities	Cabinet	Chief Officers

⁷ s8 Noise and Statutory Nuisance Act 1993

⁸ s79 Environmental Protection Act 1990

⁹ s79 Environmental Protection Act 1990

¹⁰ s330 Town and Country Planning Act 1990

¹¹ s16 Local Government (Miscellaneous Provisions) Act 1976

¹² s278 Highways Act 1980

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**Constitution Committee
Future Work Programme**

Issue	Decision-maker	
	Constitution Committee / Council	Monitoring Officer (for report to Committee)
Potential change in the terms of reference of the Audit and Governance Committee, arising from (yet to be issued) CIPFA guidance.	28 June 2018	-
ASDV governance arrangements. Further information to be added to the Constitution by way of clarification, once the ASDV review has been concluded.	28 June 2018	-
Publication of register of interests / gifts and hospitality	28 June 2018	-
To review the contents of the Forward Plan.	28 June 2018	-
To review the allocation of chairmanships and vice-chairmanships on overview and scrutiny committees.	28 June 2018	-
Whether to reinstate the Appeals Sub-Committee as a full Committee in its own right with a fixed membership.	28 June 2018	-
The delegations to the Executive Director Place in the Constitution (Chapter 2 – Part 6 page 94) include HS2 Growth Strategy and Energy and Waste. These delegations need to be reviewed.	28 June 2018	-

Issue	Decision-maker	
	Constitution Committee / Council	Monitoring Officer
To consider whether there should be one set of criteria for considering call-ins, notices of motion and public and member questions.	28 June 2018	-
Responsibilities for Functions (page 10 – Joint Arrangements) – to consider whether the Extra Care Housing Management Board should be added, with its terms of reference being added in Chapter 2.	28 June 2018	-
Member / Officer Protocol – to consider the options for providing guidance to members on best practice for member conduct during a procurement exercise.	28 June 2018	-
Para 31.4 (page 158) of the Access to Information Procedure Rules relates to private meetings and does not necessarily relate to key decisions. It should therefore be dealt with in a separate paragraph.		MO
The section and hyperlink to dispensations (page 287) requires re-wording.		MO

Constitution Committee

Date of Meeting: 22 March 2018

Report Title: Changes to the Contract Procedure Rules

Portfolio Holder: Councillor Paul Bates, Finance and Communication

Senior Officer: Jan Willis – Interim Executive Director of Corporate Services

1. Report Summary

- 1.1. The Council has recently undertaken a comprehensive review of the Constitution, with the new Constitution coming into operation on the 1st January 2018. During the review, some amendments to the Contract Procedure Rules were overlooked due to the vast amount of amendments taking place. This report brings the changes which were overlooked during the review back to the Constitution Committee for approval.
- 1.2. The proposed changes are appended to this report. They are mainly operational which seek to further improve efficiency and governance.
- 1.3. There are two substantial changes proposed to the Rules. The first is the inclusion of an exemption to the Contract Procedure Rules within part 7 and the second is making operational expenditure, which is already within approved Council budgets, exempt from being a Key Decision.

2. Recommendation

- 2.1. That the Committee approve the revised changes to the Contract Procedure Rules as appended to this report.

3. Reasons for Recommendation/s

- 3.1. The Council has recently undertaken a review of the Constitution which was approved for implementation from the 1st of January 2018. During the review some amendments to the Contract Procedure Rules were overlooked. This report brings the changes overlooked back for review and approval by the Constitution Committee.
- 3.2. The proposed changes are mainly operational which seek to further improve efficiency and governance.

4. Other Options Considered

- 4.1. That the Committee do not agree to the proposed changes meaning the Council will continue to work within the current Contract Procedure Rules within the Constitution.

5. Background

- 5.1. The Council has recently undertaken a review of the Constitution which was approved for implementation from the 1st of January 2018. During the review some amendments to the Contract Procedure Rules were overlooked.
- 5.2. The proposed changes seek to further improve organisational efficiency and good governance.
- 5.3. There are two substantial changes proposed to the Rules. The first is the inclusion of an exemption to the Contract Procedure Rules within part 7, Waivers and the second is making operational expenditure, which is already within approved Council budgets, exempt from being a Key Decision.
- 5.4. The Contract Procedure Rules state that any expenditure above £10,000 and below the EU Threshold services should seek three quotations to ensure value for money. However there are examples where only one approved supplier is available due to copyright material, unique technology or as a result of conditions where the Council is receiving grant funding. The proposal is to give an exemption to the Contract Procedure Rules where no reasonable alternative or substitute exists and the absence of competition is not as a result of an artificial narrowing down of the procurement. In this instance there would be no need to complete the WARN process.
- 5.5. Notwithstanding the above exemption, the agreement of the Procurement Manager must be sought prior to any action being taken, except where there is a need to take urgent action to safeguard the Council's interests or delay would expose the Council to significant risk, in which case the action must be reported at the earliest opportunity, retrospectively, to the S.151 Officer and Director of Legal Services and the relevant Executive Director.
- 5.6. Under the current Constitution all expenditure above £1m is a Key Decision. This means that all expenditure above this threshold requires a Cabinet decision (or delegation to an officer) to enter into a contract. This includes day to day operational expenditure such as office cleaning materials, library books, stationery and Microsoft licences. This adds time

and additional work to the commissioning and procurement process to gain approval to proceed for business as usual expenditure.

- 5.7. Some authorities have included an exemption within the definition of a Key Decision which excludes operational expenditure, irrespective of contract value. This exemption means business as usual activity does not need to go through Cabinet. This report recommends that Cheshire East Council adopts the same approach, allowing the procurement, renewal or extension of contracts that relate to operational expenditure for which there is budget approval to proceed without needing further Cabinet approval. Approval as to whether it is day to day operational expenditure would sit with the newly formed Commissioning and Procurement Board. The authority to enter into the contract would still require sign off by the relevant Executive Director.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. Section 37 of the Local Government Act 2000 and guidance issued thereunder requires the Council to keep its Constitution up to date and regularly review it. Under the Act the Secretary of State could direct what information a local authority should include within its constitution. Under section 37, the secretary of state directed that local authorities financial rules or regulations or such equivalent provisions as the local authority may have in place and rules, regulations and procedures in respect of contracts and procurement whether specified in the local authority's standing orders or not, should be included in the constitution.

6.2. Finance Implications

- 6.2.1. The Constitution incorporates the Finance Procedure Rules which set out the rules relating to the financial management of the Council, including financial planning; risk management and control of resources; and financial systems and procedures. Clearly there are important relationships between the Finance and Contract Procedure Rules, as exemplified in this report.
- 6.2.2. Whilst the recommendations in the report are in respect of changes in operational practice, there are no direct financial, budgetary implications relating to the amendments.

6.3. Equality Implications

- 6.3.1. If this section indicates that an Equality Impact Assessment has been completed it is to be included as an Appendix to the report.

6.4. Human Resources Implications

6.4.1. None

6.5. Risk Management Implications

6.5.1. Legal and financial implications are recorded above.

6.5.2. The approval of day to day operational expenditure above £1m will sit with the Commissioning and Procurement Board which is chaired by Jan Willis Interim Executive Director or Corporate Service.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

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

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. All ward members

8. Access to Information

8.1. As appended to this report. Additional information may be requested.

9. Contact Information

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

Name: Lianne Halliday

Job Title: Senior Manager - Procurement

Email: lianne.halliday@cheshireeast.gov.uk

Contract Procedure Rules

Reference	CPR Jan 2018	Amendments	Change / Add
2.7.4	Refer to the section 151 Officer	Refer to Finance Procedure Rules – 4.62	Change
2.19		Where the Councils wholly or partly owned companies acts as agent for the Council then these Rules shall apply.	Add
2.22	(Members exercise their powers through Officers)	No Member may instruct Officers to act in a way that is inconsistent with these Rules.	Change
2.25	Prior to any procurement activity, the Commissioning Officer shall ascertain whether any Corporate Contract exists in relation to their requirements. Where such a Corporate Contract exists, it shall be best practice to utilise the Corporate Contracts.	Prior to any procurement activity, the Commissioning Officer shall ascertain whether any Corporate Contract exists in relation to their requirements. Where such a Corporate Contract exists, it is a requirement to utilise Corporate Contracts unless better value for money can be clearly evidenced.	Change
2.28	All Council employees (and third parties engaged on the Council's behalf) must take appropriate measures to effectively prevent, identify and remedy conflicts of interests. Any conflict of interest must be declared with the Officer Code of Conduct.	All Council Officers, Members (and third parties engaged on the Council's behalf) must take appropriate measures to effectively prevent, identify and remedy conflicts of interests. Any conflict of interest must be declared in accordance with the Officer Code of Conduct and the Members Code of Conduct.	Change
2.38		Copies of the contracts will be provided to Legal Services for retention.	Add
2.39	Expenditure Approval Process	<p>All Officers requiring to commit expenditure in order to acquire goods, services or works on behalf of the Council must:</p> <ul style="list-style-type: none"> Obtain the prior approval of the relevant decision maker who has authority to give such approval under the constitution. This approval is subject to having sufficient budgetary provision and being included in the Councils capital programme or revenue budget Complete a business case and risk log for all 	Change

		<p>expenditure over £250k which is approved by the Commissioning and Procurement Board</p> <ul style="list-style-type: none"> • Ensure that supplies of a similar type are procured together where it is practicable and cost effective to do so. • Consider the Social Value implications • Make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate local scheme of delegation; • Make sure that there is enough money in the budget to cover the total whole life financial commitment being made (including any consultants or other external charges or fees); • Make sure that the Forward Plan and publicity requirements have been followed where the purchase is a Key Decision. • Give regard to Best Value and the Public Sector Equality Duty and ensure consultations with the public have been carried out as required. 	
2.40		The Council endeavours to consider how it can help achieve sustainable development through its work by ensuring that there are good working conditions for our suppliers' employees, the products and services procured are sustainable and that social-economic issues, such as equality and poverty, are addressed.	Change
2.41		Remove "endeavour to"	Remove
3.5	When issuing Requests for Quotations for below EU Threshold Contracts, Officers should consider	When issuing Requests for Quotations for below EU Threshold Contracts, Officers should consider whether the Contract may be of	Change

	whether the Contract may be of interest to organisations / individuals in other EU Member States and explain any concerns to the Procurement Manager	interest to organisations / individuals in other EU Member States and takes advice from the CPU	
4.1	Should be	Must be	Change
5.12		<p>The Director of Legal Services and the Section 151 Officer should be involved in any procurement exceeding £1m in value.</p> <p>Members should not be involved in any Evaluation Panel.</p>	Add
7	Whole waiver process	<p>It is strongly expected that these Rules will be followed in all cases with very limited exceptions, however, in the event a Commissioning Officer believes a waiver to these Rules is essential to the efficient running of the Service they must seek a waiver by producing a report that must be approved by;</p> <p>£10,000 - £25,000 - the Procurement Manager Above £25,000 - the S.151 Officer and the Director of Legal Services</p> <p>The report must be in accordance with the prescribed format available from the CPU. The format of the report shall be determined by the Procurement Manager, and must be used in line with any associated guidance published:</p> <p>(a) Advice and guidance must be sought from the Procurement Manager prior to submission of the waiver form to the S.151 Officer and Director of Legal Services. If approval is granted, it is still required that an appropriate contract be entered into prior to any requirements being provided by the provider.</p> <p>(b) The waiver of these</p>	Change

		<p>Rules and the reason(s) for waiver shall be clearly recorded and reported to the Commissioning and Procurement Board.</p> <p>Exemptions from the above requirements may be agreed for instances of</p> <ul style="list-style-type: none"> • <u>extreme urgency</u>, where there is an <u>immediate</u> risk to <u>life, property</u> or an <u>individual's safety and wellbeing</u>, and any inaction by the Council (related to risks to safety and wellbeing) would be a breach of our statutory duty and obligations. • Significant reputational risk or where such an exemption is required to ensure continuity or to safeguard the Councils interests. • Where there is genuinely only one approved supplier, such as for works of art, copy right material, or unique technology, where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the procurement. • The selection of a supplier whose usage is a condition of a Grant funding approval. • The selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party. <p>The agreement of the Procurement Manager must be sought prior to any action being taken except where the nature of the urgency and risk renders this impractical. Such instances must be reported at the earliest opportunity, retrospectively, to the S.151 Officer and Director of</p>	
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		Legal Services and the relevant Executive Director following the incident.	
7.4	No Officer or Member, may seek to actively avoid the application of these Rules.	without following the necessary waiver process outlined within these Rules - Remove	Remove
7.7	immediately to the Section 151 Officer	and the Director of Legal Services.	Add – after S151 Officer
7.9	Remove – appropriate	Replace - next	Change

Key Decisions

All procurements with a contract value above £1m are a Key Decision and require Cabinet approval before a formal contract can be entered into. This is for all expenditure including operational expenditure.

Cheshire West and Chester have an exemption within their constitution for a Key Decision;

Definition of Key Decision

4.1 A Key Decision is any Cabinet Decision (regardless of who takes it) which is likely to: -

(a) result in expenditure (except internal operational expenditure on things like advertising, locum staff, office cleaning services, library books, vehicles, consumables, utilities etc...) or savings of £1million or more; or,

(b) have a significant effect on communities living or working in an area comprising two or more wards.

This means that any operational expenditure that is already within approved budgets does not require a Cabinet decision.

An example of this is the Microsoft Desktop Licencing Agreement. This is £3.7m for 3 years. Under CEC constitution this requires Cabinet approval, however under CWaC this is classed as operational expenditure that has already been approved at Council and is within agreed budgets.

Other examples which fall into this are stationary, translation and interpretation and Energy.

It is proposed that Cheshire East have a similar exemption which allows the council to procure and enter contracts for operational expenditure which is already within council budgets. The authorisation as to whether the expenditure is operational or not should sit with the Commissioning and Procurement Board.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22 March 2018
Report of: Director of Legal Services
Subject/Title: Appointment of Lay Members to Independent Admissions and Exclusions Appeals Panel

1.0 Report Summary

- 1.1 The report invites the Committee to consider the appointment of individuals as members of the Independent School Admission Appeals Panel and as members of the Independent Review Panel for Exclusion Reviews.

2.0 Recommendation

- 2.1 That the Committee approve the appointment of two individuals to become Independent School Admission Appeal Panel members and Independent Exclusion Review Panel members.

3.0 Reasons for Recommendations

- 3.1 Under s94 of the School Standards and Framework Act 1998, responsibility for making arrangements for appeals against the refusal of a school place rests with the admission authority of the school. The Council is the admission authority of a number of schools in Cheshire East. Where it is the admission authority, it must ensure that there are sufficient people appointed to sit on the appeals panel as and when required. By appointing additional admission appeal panel members the Council will meet its statutory duty.
- 3.2 Under s.51A Education Act 2002 and the School Discipline (Pupil Exclusions and Reviews) Regulations 2012 the Council, where it is the arranging authority, is responsible for ensuring that an exclusion review hearing is conducted by a review panel constituted in accordance with the regulations. By appointing additional exclusion review panel members the Council will meet its statutory duty.

4.0 Wards Affected

- 4.1 Not applicable

5.0 Local Ward Members

- 5.1 Not applicable

6.0 Policy Implications including

6.1 None arising from this report

7.0 Financial Implications

7.1 None arising from this report

8.0 Legal Implications

8.1 The Council has a legal responsibility to ensure that there is a sufficient pool of trained panel members, both lay members and educational members, to sit on both school admission appeals panels and independent exclusion review panels to ensure that panels operate lawfully and follow due process.

9.0 Risk Management

9.1 Any decisions made by the Independent Appeal Panel are potentially subject to an investigation by the Local Government Ombudsmen or judicial review.

10.0 Background and Options

10.1 The Council currently has a pool of people registered as members who are eligible to sit on the School Admission Appeals Panel and a pool of people who are eligible to sit on the Independent Review Panel for Exclusions.

10.2 The Council is constantly reviewing the number of people eligible to sit on these Panels and periodically seeks to appoint new members where numbers have declined due to retirement or resignation.

10.3 Following a recent advertisement for new members, the Council received a number of applications. All of these were interviewed and evaluated by the Acting Director of Legal Services and following this process and the withdrawal of some prospective candidates, two candidates remain to be recommended for appointment. The details of the two candidates are not included in this report. If members require the personal details of the applicants to be disclosed and discussed at the meeting, the Committee will have to resolve to move into Part II as the information is exempt by virtue of paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972 (information relating to any individual).

10.4 All independent admission appeal and exclusion review panel members will receive training before sitting on Appeals Panels or Exclusion Reviews.

11.0 Access to Information

- 11.1 Those background papers relating to this report which are not exempt can be inspected by contacting the report writer:

Name: Maureen Hills

Designation: Solicitor, Adults & Education Team Manager

Tel No: 01270 685596

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