

OPEN

Corporate Policy Committee

30 November 2023

Proposed Changes to the Constitution

Report of: David Brown Director of Governance and Compliance (Monitoring Officer)

Report Reference No: CP/62/23-24

Ward(s) Affected: All

Purpose of Report

- 1 The purpose of the report is to recommend the proposed changes to the Constitution, as agreed and recommended by the Council's Constitution Working Group (CWG) on 11 September 2023.
- 2 The changes proposed relate to various matters, administrative, procedural and to delegations in relation to staffing matters.
- 3 A detailed set of reports was provided to the CWG and the details within the report set out its recommendations for approval by the Corporate Policy Committee.

Executive Summary

- 4 The Constitution sets out the governance framework for decision-making within the Council. This provides for the consideration and recommendation for approval, of any proposed changes to Full Council.
- 5 On 11 September 2023 the Council's CWG received a series of reports detailing proposed changes to the Council's Constitution and the reasoning for such changes. These related to various matters that are in line with the Council's corporate priorities.
- 6 After careful consideration of each proposal, the CWG agreed with the proposals and that they should be recommended to the Corporate Policy Committee for consideration and in turn recommended to Full Council. These proposals relate to the following matters;
 - (a) Amendments to officer delegations to Directors relating to changes to staffing

- (b) Amendments to Officer Delegations relating to approval of settlement agreements
- (c) Amendments to decision making with regards to early retirement and severance packages
- (d) Inclusion of provisions to allow for electronic signing and sealing of documents
- (e) Amendments to the provisions regarding approvals of grants schemes.

RECOMMENDATIONS

The Corporate Policy Committee is recommended to;

1. Consider the changes to the Council's Constitution in relation to Officer Delegations and Staffing as set out in paragraph 8 - a) of the report and recommend them for approval to Full Council.
2. Consider the changes to the Council's Constitution in relation to Officer Delegations to Executive Directors only and settlement agreements as set out in paragraph 8 - b) of the report and recommend them for approval to Full Council.
3. Consider the changes to the Council's Constitution in relation to decision making with regards to early retirement and severance packages as set out in paragraphs 8 - c) of the report and recommend them for approval to Full Council.
4. Consider the changes to the Council's Constitution to allow the inclusion of provisions to allow for electronic signing and sealing of documents as set out in paragraph 8 – d) of the report and recommend them for approval to Full Council.
5. Consider the changes to the Council's Constitution to the provisions regarding approvals of grants schemes as set out in paragraph 8 – e) of the report and recommend them for approval to Full Council.

Background

- 7 The Constitution sets out the governance framework for decision-making within the Council. This provides for the consideration and recommendation for approval, of any proposed changes to full Council, by Corporate Policy Committee.

8 On 11 September 2023 CWG received a suite of reports proposing changes to various parts of the Constitution. The CWG considered these and recommended the following proposed amendments identified as track changes;

- a) Amendments and additions to Officer Delegations relating to Staffing as set out in the Constitution at Chapter 2, Part 5, Paragraph 36, which provide for delegations to all Directors and any appointed deputy, as follows;

36. To implement changes to staffing structures subject to prior consultation with all appropriate parties affected by the decision, including any Trade Unions, except where the restructure:

36.1 Involves the overall loss of ~~more than one post~~ 10 posts or more not currently vacant; or

36.2 Involves re-grading of posts or the grading of new posts with a salary of £100,000 or more; or

36.3 results in the total cost of the change to the staffing structure being £500,000 or more; or

36.4 results in a major change to the service provision received by residents; or

36.5 involves changes to existing National or Local Agreements and policies; or

36.6 cannot be achieved within the delegated powers in respect of budgets

Reasoning - The proposed changes to paragraph 36, provide an appropriate framework for officer delegations for an organisation of the size of Cheshire East Council to allow delegated powers to its senior officers to implement changes to the staffing structure, especially given the safeguards in place. Through the MTFs process, elected members have approved a range of business proposals to advance the alignment of expenditure to the agreed budget. Any consequential need to change staffing structures to enable this to happen and the decisions about how this is achieved in a timely manner, will be supported by the implementation of such changes avoiding unnecessary delays in decision-making process and the period of uncertainty for staff.

- b) Amendments and additions to by way of an addition to Officer Delegations relating to approval of settlement agreements as set out in the Constitution at Chapter 2, Part 5, Paragraph 24 and 35, which

provide for delegations to all Directors and any appointed deputy, as follows;

24 The following delegations shall apply to all Directors (and any nominated deputies) *except for paragraph 35 .1 which shall only apply to those officers with roles identified as Executive Directors.*

35.1 To sign settlement agreements for employees/ex-employees, in consultation with the Chair of the Corporate Policy Committee for settlements of under £30,000 (excluding any contractual payment such as pay in lieu of notice, untaken accrued annual leave).

Reasoning - The recommended changes also give an additional delegation to Executive Directors to give them delegated authority to enter into a settlement agreement for employees/ex-employees, in consultation with the Chair of the Corporate Policy Committee relating to settlements under £30,000 (excluding any contractual payment such as pay in lieu of notice, untaken accrued annual leave). Lower value settlement agreements are often only based on contractual notice being paid in lieu of notice and outstanding contractual leave. The change would ensure that decisions to enter into settlement agreements are made in a timely manner without unnecessary delays. This would be beneficial as these can be sensitive situations with individuals feeling anxious to reach a resolution. A similarly worded amendment is proposed for the Chief Executive/Head of the Paid Service below to clarify the delegated authority relates to settlements of £30,000 and over (see 48.9 below).

- c) Amendments and additions to delegations to the Chief Executive/Head of the Paid Service in decision making with regards to early retirement and severance packages, as set out in the Constitution at Chapter 2, Part 5, Paragraph 48, as follows;

48.8 *To approve, in consultation with the Chair of the Corporate Policy Committee:*

- Voluntary and compulsory redundancies (with or without the early release of pension where the total cost is £95,000 or less)*
- Employee requested – Early retirement (where there is a pension strain cost)*
- Employer requested – Early retirement on grounds of ‘Efficiency of the Service’ retirement*
- Employee requested – Early retirement on compassionate grounds*
- Ill health retirement*
- Buy-out of hours*

- *Flexible retirement*

48.89 To sign settlement agreements for employees/ex-employees, in consultation with the Chair of the Corporate Policy Committee *for settlements of £30,000 and above (excluding any contractual payment such as pay in lieu of notice, untaken accrued annual leave).*

Reasoning - The recommended change to 48 will provide clarity for the approval route for a range of employment decisions including early retirement and severance. Within the Constitution the Corporate Policy Committee is responsible for making decisions in relation to proposed severance packages with a value of £95,000 or more as appropriate (excluding contractual and holiday pay), subject to the need to obtain an approval from full Council and central Government if required. However, it is silent on where approval lies for proposed severance packages with a value of lesser value. The recommendation is that the approval route is in line with the Financial Procedural Rules which set out the mechanism for how severance and early retirement proposals are brought forward from services. This will provide clarity and to ensure that the decision making for proposed severance packages, with or without early retirement, of less than £95,000 is made at an appropriate level within the constitution.

- d) Inclusion of provisions to allow for electronic signing and sealing of documents as set out in Chapter 2 Part 5 paragraph 64;

‘To attest the affixing of the Council’s seal to all documents approved for sealing. Such attestation and/or affixing may include by digital or electronic means in accordance with the provisions of the Electronic Communications Act 2000 or other legislative authority’

Reasoning - The Council’s Constitution delegates authority to witness and attach the Council’s seal to documents, to the Monitoring Officer. This has been delegated to individual lawyers within Legal Services and for many years the affixing of the Council’s seal has been done manually, with documents being printed off and paper seals being attached and embossed with the Council’s seal. The Electronic Communications Act 2000 introduced recognition of electronic seals and signatures as a method of authenticating documents required to be signed and/or sealed and since the Covid pandemic and the increase in hybrid working, the physical signing and sealing of documentation on behalf of the Council has become more onerous for those who have delegated authority. In response, many local authorities have moved to electronic signing and sealing and currently the Council uses electronic signatures within its Atamis system, for contracts, where no seal is required. The proposed changes will avoid any delays in sealing of documents, align with the Council’s Digital Strategy and it’s green agenda by reducing in printing.

- e) Amendments to the provisions regarding approvals of grants schemes as set out in Chapter 3, Part 4, Section 4 Paragraph 6.26 and 6.27;

6.26 The Corporate Policy Committee will on a periodic basis, agree a policy setting down the approach to be taken to the allocation of grants, donations and other contributions to outside bodies. A committee may approve a specific scheme that falls within its terms of reference and delegate to the relevant Executive Director a financial limit for the allocation of grants, donations and other contributions to outside bodies.

6.27 Grants, donations and contributions will be paid by the Council in accordance with the policies determined under paragraph 6.26 above, subject to there being adequate provision in service budgets and the appropriate approvals being sought. Where no other specific scheme has been approved by a committee the following limits will apply.

<i>Approval Level</i>	<i>Amount</i>
<i>Officers</i>	<i>Up to and including £50,000 (where grant is within approved grant policy and fully funded)</i>
<i>Relevant Corporate Leadership Team member in consultation with the Chair of the relevant Committee and Chair of Finance Sub-Committee</i>	<i>Between £50,000 and £100,000 (where grant is within approved grant policy and fully funded)</i>
<i>Committee</i>	<i>All Grants of £100,000 or more. All grants which do not fall within existing approved grant policy require Corporate Policy Committee approval.</i>

Reasoning - The reasons for this proposal is that there has been a lack of clarity as to when grants should be referred for committee approval. This amendment confirms that it is the size of scheme value that is relevant and committee may then delegate allocation etc to the director.

Consultation and Engagement

9 As stated the Constitution Working Group was consulted on these proposals on 11 September 2023 and their recommendations are as set out above.

Reasons for Recommendations

10 The reasons for each recommendation is set out above against each proposed change.

Other Options Considered

Option	Impact	Risk
1. Do nothing and leave the constitution unchanged.	This is not considered to be a suitable alternative option as there needs to be clarity within the constitution to enable the effective and efficient operation of the organisation with appropriate delegated powers for the size of organisation such as Cheshire East Council. The Constitution is a living document, which needs to be kept under review to ensure that it is fit for purpose and that it meets the needs of the Council.	Failure to achieve the outcomes identified and impacts stated.
2. Adopt only some of the proposed amendments	As for option 1.	As for option 1.

Implications and Comments

Monitoring Officer/Legal

11 The legal implications are set out within the report.

Section 151 Officer/Finance

12 There are no financial implications arising directly from the report.

Policy

13 The recommended changes to the Constitution will, if agreed, result in constitutional change. They will facilitate an open and enabling organisation

and ensure that there is transparency in all aspects of council decision making.

Equality, Diversity and Inclusion

- 14 There are no direct implications arising from this report. Equality, diversity and inclusion issues will be considered as part of any decision regarding the human resource implications set out within the report.

Human Resources

- 15 The human resources implications are set out within the body of the report.

Risk Management

- 16 There are no risks arising from this report.

Rural Communities

- 17 There are no implications arising from this report.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 18 There are no implications arising from this report.

Public Health

- 19 There are no public health implications arising from the report.

Climate Change

- 20 There are no climate change implications arising from this report.

Access to Information	
Contact Officer:	Janet Witkowski Head of Legal Services Janet.Witkowski@cheshireeast.gov.uk
Appendices:	N/a
Background Papers:	N/a