

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 26th March 2015

Report of: Head of Legal Services and Monitoring Officer

Subject/Title: The Council's Decision-Making and Governance Arrangements

1.0 Report Summary

1.1 This report addresses a range of decision-making and governance issues and seeks a recommendation from the Constitution Committee to Council about proposed constitutional changes.

1.2 The report seeks to amend the terms of reference of the Staffing Committee to properly reflect the split between executive and non-executive functions within the Council's constitution. It also seeks to add greater flexibility to the powers of the Chief Executive to make staffing and other decisions in a fast changing environment. In addition this report seeks to reflect the current management structure within the Council, make minor alterations to the constitution for consideration by the Council and sets out a work programme for a comprehensive overhaul of the constitution document.

2.0 Recommendations

2.1 That the terms of reference of the Staffing Committee be recommended to the Council for amendment in the constitution as set out in Appendix 1 of the report.

2.2 That the powers of the Head of Paid Service in relation to staffing and other matters be recommended to the Council for amendment in the constitution as set out in Appendix 1 of the report

2.3 That the Council be recommended to instruct the Head of Legal Services to make the changes in the constitution set out in Appendix 1 of this report

2.4 That the Council be recommended to instruct the Head of Legal Services to make any minor corrections, amendments or contextual changes resulting from the above.

2.5 That the work programme set out at Appendix 2 be adopted by the Committee for the year 2015-16.

3.0 Reasons for Recommendations

3.1 The recommendations of this report are made in order to ensure that the Council's decision-making and governance arrangements in relation to staffing are flexible enough to meet the needs of a modern, fast changing Council and properly reflect the split between executive and non-executive functions in the Constitution.

3.2 An opportunity has also been taken to tidy up certain aspects of the constitution of the Council. However, the constitution has now been in place for six years and is due a comprehensive overhaul to ensure that it reflects the needs of the Council today. Therefore, it is proposed that there should be a work programme overseen by the Committee to review the whole of the constitution within the next 12 months.

4.0 Wards Affected

4.1 Not directly applicable.

5.0 Local Ward Members

5.1 Not directly applicable.

6.0 Policy Implications

6.1 Much of the content of this report relates to proposed changes to the Council's decision-making and other governance arrangements. If such changes are recommended to and accepted by Council, the Council's Constitution will need to be amended accordingly.

7.0 Financial Implications

7.1 Not directly applicable.

8.0 Legal Implications

8.1 Any legal implications are contained in the main body of this report. The report recommends that changes should be made to the Council's Constitution. In order for such change to take place, there must be a recommendation from the Constitution Committee to the Council.

9.0 Risk Management

9.1 Not directly applicable.

10.0 Background

10.1 This report addresses a range of decision-making and governance issues and seeks recommendations from the Constitution Committee to Council about proposed constitutional changes.

10.2 The report seeks to amend the terms of reference of the Staffing Committee to properly reflect the split between executive and non-executive functions within the Council's constitution. It also seeks to add greater flexibility to the powers of the Chief Executive to make decisions, including staffing decisions in a fast changing environment. In addition this report seeks to reflect the current management structure within the Council and make minor alterations to the constitution for consideration by the Council.

10.3 The details of the changes are set out in a track changed copy of extracts from the constitution so that members can see how the wording in Appendix 1 has changed from the current version of the constitution.

10.4 The constitution has been in place for six years and during that time it has been amended from time to time. However, it is due a comprehensive overhaul to ensure that it reflects the needs of the Council today. Therefore, it is proposed that there should be a work programme overseen by the Committee to review the whole of the constitution within the next 12 months. A proposed work programme is set out at Appendix 2.

11.0 Staffing Committee

11.1 It is proposed to amend the terms of reference of the Staffing Committee to make it responsible for the recruitment and selection of permanent members of the Corporate Leadership Board with the power to make temporary appointments vesting in the Chief Executive.

11.2 It is also proposed that the Committee will have the responsibility for approving all human resources policies applicable to Council staff, including pay and grading structures (except those that must be approved in law by the Council), and employees' terms and conditions. It would also approve policies on how the Council exercises its functions under pension schemes; make recommendations to Council about the annual Pay Policy Statement and any amendments to it; make recommendations to the Council about decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more and in relation to proposed severance packages with a value of £100,000 or more.

11.3 These proposals are in accordance with the spirit of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

12.0 Powers of the Chief Executive

12.1 The proposal is that the constitution is amended to make it clear that the Chief Executive is responsible for running all the services of the Council unless specific powers, duties and functions are delegated to a member decision-making body or a Cabinet member. The proposed delegations make it clear that the Chief Executive can exercise the powers and responsibilities of any Chief Officer.

12.2 It is also intended to provide the Chief Executive with the powers to approve the pay, terms and conditions of service and training of any employee except where that

approval would be contrary to the provisions of the annual Senior Officer Pay Policy Statement (which is reserved by law to the full Council) or contrary to the employment policies of the Council. It is proposed that he will also have the power to determine the number, grade, title and nature of temporary staff employed by the Council including Chief Officers.

13.0 Scheme of Delegation to Officers

13.1 In order to avoid confusion with departmental schemes of delegation provided by Executive Directors and Chief Officers it is proposed that the scheme of delegation within the constitution is known as the Scheme of Delegation to Senior Officers.

13.2 In order to ensure that there is no gap between the Council getting new statutory functions and the Council making a formal decision about how they should be exercised it is proposed that paragraph 1.33 of the officer scheme of delegation is amended to provide that whenever new legislation relevant or related to the functions exercised by a Chief Officer is introduced that officer will have the delegated authority to exercise powers or otherwise take action under that legislation until such time as the Council, Cabinet, a committee or the Chief Executive decides whom to allocate responsibility for the new legislation to.

13.3 It is a requirement that certain statutory officers should report to the Chief Executive. Therefore it is proposed that paragraph 3.2 is amended to reflect this by making it clear that although the Executive Director of Strategic Commissioning is responsible for the day to day management of the Director of Children's Services, Director of Adult Social Care and Director of Public Health these posts will have direct access to the Chief Executive.

13.4 In addition, the functions of the Director of Economic Growth and Prosperity have been moved and given their own place in the senior officer scheme of delegation under the title "Executive Director of Economic Growth and Prosperity."

13.5 The regulatory functions set out at pages 157 to 160 and 170 to 174 of the constitution are currently shown in the Constitution as being with the Director of Public Health. In reality they currently sit with the Head of Communities. Therefore, they need to be transferred in the Constitution from the Director of Public Health to the Executive Director of Strategic Commissioning who will then delegate them further to the Head of Communities.

14.0 Council Procedure Rules

14.1 Currently the Council has no process set out in the constitution which prevents motions getting onto the Council agenda which are irrelevant to the business or functions of the Council even though such motions cannot be considered. In addition, there are no grounds and no method for excluding motions which are improper because, for example, they are vexatious, defamatory or offensive. It is proposed that such a provision is introduced with the Head of Legal Services carrying out a check and deciding if motions are inappropriate.

14.2 The current rule about motions being referred to other decision making bodies for a decision provides for a motion to be referred unless the Mayor considers it “conducive to the despatch of business” for it to be dealt with at the Council meeting. Therefore, the default position is that a motion stands referred unless it is appropriate to deal with it there and then. This mechanism prevents the agenda of the Council from being dominated by items which ought properly to be dealt with by another arm of the Council. Nevertheless, a convention has arisen whereby the proposer and seconder of the motion often make speeches even though there will be no debate on the issue. It is suggested that members may want to review this current convention and consider introducing an amendment to the rules of debate to limit this occurring. The suggested amendments to the Council’s procedure rules set out at Appendix 1 achieve this.

15.0 Access to Information

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

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