

SLOUGH BOROUGH COUNCIL

REPORT TO: Council **DATE:** 18th May 2017

CONTACT OFFICER: Member Panel on the Constitution
Catherine Meek, Head of Democratic Services
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WARD(S): All

PART I FOR DECISION

REVIEW OF CONSTITUTION AND RELATED MATTERS

1. **Purpose of Report**

To report the recommendations of the Member Panel on the Constitution (MPOC) on the Review of the Constitution.

2. **Recommendations**

The Council is requested to Resolve:

Contract Procedure Rules – Part 4.6

- (a) That the proposed revisions to sections 16.46 – 16.47 and 16.48 – 16.67 of the Contract Procedure Rules as set out in Appendix 1 (A) be approved.

Arrangements for the Dismissal of Head of Paid Services, Monitoring Officer and Chief Finance Officer

- (b) That the following new committees and delegations be approved:
- 1) That the existing Statutory Officers' Disciplinary Panel be abolished.
 - 2) That an Investigating and Disciplinary Committee be established to deal with disciplinary matters relating to the relevant officers. This Committee to be a politically balanced committee of five Members only one of whom is to be a member of the Executive (not the Leader or Commissioner with responsibility for Human Resources or Finance).
 - 3) That an Appeals Committee be established to deal with disciplinary matters short of dismissal relating to the relevant officers. This committee is to be a politically balanced committee of five Members only one of whom is to be a member of the Executive. (not the Leader or Commissioner with responsibility for Human Resources or Finance).
 - 4) That an Independent Panel comprising three people appointed under section 28 Localism Act 2011 be established to advise Council in the event of a recommendation from the Independent Disciplinary Committee to dismiss a relevant Officer.

- 5) That Investigating and Disciplinary Committee have delegated responsibility for the suspension of “the relevant officers.” In the event of the need for urgency, this function to be delegated to the Monitoring Officer following consultation with the Leader in the case of the suspension of the Chief Executive and delegated to the Chief Executive following consultation with the Leader in the case of the suspension of the Monitoring Officer or the Chief Finance Officer.
- 6) That In the case of a complaint against a relevant officer, the decision whether to refer the matter to the Investigating and Disciplinary Committee will be delegated to the Monitoring Officer following consultation with the Leader in the case of a complaint against the Chief Executive and delegated to the Chief Executive following consultation with the Leader in the case of a complaint against the Monitoring Officer or the Chief Finance Officer.
- 7) That the relevant officers will be given the same right to be accompanied at any disciplinary hearing as all Slough employees. This does not automatically include the right to be accompanied by a legal representative.
- 8) That the Monitoring Officer be tasked with producing a revised disciplinary procedure for the relevant officers based on the model procedure produced by the Joint Negotiating Committee for Local Authority Chief Executives for approval by the Employment and Appeals Committee.
- 9) That, thereafter the Employment and Appeals Committee will not have responsibility for the discipline of the relevant officers.
- 10) That the revised Officer Employment Procedure Rules set out at Appendix 2 (C) be approved.

Local Code of Conduct for Employees

- (c) That the revised Local Code of Conduct for Employees as set out at Appendix 3(B) be approved.

Article 12 – Officer Roles and Statutory Functions

- (d) That the revised Article 12 as set out at Appendix 4 be approved.

Review of Whistleblowing Policy

- (e) That the proposed revised Whistleblowing code as set out at Appendix 5 be approved and that it be renamed ‘Confidential Whistleblowing Code’.

Motions to Council

- (f) That Procedure Rule 14.1 be amended to read

‘14.1 Notice

- a. Except for motions which can be moved without notice under Rule 15, written notice of every motion, signed by at least two Members, must be delivered to the Head of Democratic Services not later than noon on the ninth working day before the date of the meeting. At any one Ordinary meeting:
 - Only one motion may be proposed by any Political Group,

- Or, in the case of no group, an individual member,
- And one cross-party motion proposed by any member (on a first come first served basis).

The wording of a motion can be submitted by email, and in this case, one member may submit the wording and another e mail in support of the motion must be received by the noon deadline. E mails must be from a source that validates the identity of the sender.’

- (g) That the Monitoring Officer and Head of Democratic Services be authorised to amend the current published Constitution to reflect Council Structures, legislative requirements and other administrative amendments as necessary.

3. **Slough Joint Wellbeing Strategy Priorities**

None as this report is administrative in nature.

4. **Other Implications**

The Constitution meets the Council’s requirements and incorporates all necessary legal requirements.

5. **Supporting Information**

Background – Review of Constitution

- 5.1 The Council establishes the Member Panel on the Constitution each year to keep the Constitution under review. The Panel has met on a number of occasions and identified with the Interim Monitoring Officer a number of key areas of the Constitution that needed to be reviewed. Members were also asked to raise any Constitutional matters that they wished to be looked into.

Recommendations of the Panel

The Panel has made/endorsed a number of recommendations to the Council as follows:

Contract Procedure Rules - Part 4.6

- 5.2 The Council’s Contract Procedure Rules which are contained within the Financial Procedure rules require amendment to ensure compliance with the Public Contracts Regulations (2015) (PCRs).
- 5.3 Proposed amendments:
- Update references to the Public Contracts Regulations (2006) in the current Contract Procedure Rules to the new Public Contracts Regulations (2015)
 - Include a section on Dynamic Purchasing Systems (DPS), the use of which is codified within the new Regulations but was not currently included in the Council’s rules
 - Incorporate the new Light Touch Procurement Regime, which covered Social Care and Health procurement, and other services set out in Schedule 3 of the PCRs
 - Clarify where approval from the Council’s Procurement Review Board (PRB) was required

- Make other minor amendments, such as to job titles and to remove repetition.

The Panel recommended that the revised Contract Procedure Rules as set out at Appendix 1(A) be approved. Recommendation (a)

Arrangements for the Dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer

- 5.4 The Panel considered the Interim Monitoring Officer's recommendations regarding the future disciplinary procedures for the Head of the Paid Service (Chief Executive), Monitoring Officer and Chief Finance Officer (S151 Officer). The 'relevant officers'. The report (attached at Appendix 3(A)) set out the background, new model procedures from the JNC and proposed changes to existing procedures. It was proposed that the Council adopts the structures of the model procedures and applies it to all three relevant officers.
- 5.5 The report had been considered by the Employment and Appeals Committee at its meeting on 12 April 2017 and the Committee had endorsed the recommendations and recommended them to the Council following consideration by the Constitution Panel.
- 5.6 The model procedure allows a relevant officer to be accompanied at any disciplinary meetings and implies that the relevant officer could be represented by a lawyer. This proposal in the Model is wider than the statutory right given to all employees to be accompanied by a trade union official or work colleague and it was recommended that this proposal was not implemented and that relevant officers were afforded their statutory rights and nothing more.
- 5.7 With regard to the membership of the Investigating and Disciplinary Committee (IDC) and Appeals Committee (AC) it was agreed that to avoid any conflicts of interest that the one executive member on each of these Committees should not be the Leader or Commissioner with responsibility for Human Resources or Finance. It was also recommended that executive members on the IDC and AC be limited to one.
- 5.8 In discussing the actions the IDC could agree after considering any allegation members supported an amendment that required option 2 of the disciplinary procedure flow chart to read 'An informal but recorded warning'. Members felt that it was important that any warning given should be recorded to protect the Council's position and preserve a history/track record of such instances.

The Panel's recommendations are set out at recommendation (b).

- 5.9 Since the reports were considered by the Employment and Appeals Committee and the Member Panel on the Constitution, the JNC has established a list of Independent Investigators to assist Councils in dealing with matters of disciplinary measures against Chief Executives and will be included in the revised process.

Local Code of Conduct for Employees – Part 5.3

- 5.10 The Code of Conduct for Employees has been redrafted by the Interim Monitoring Officer to emphasise good practice and positive messages. The existing code was largely written in a negative and punitive fashion and repeatedly stressed

disciplinary action. The Nolan principles had also been spelt out in the redrafted Code.

The Panel recommended that the redrafted Code of Conduct for Employees as set out at Appendix 3(A) be approved. Recommendation (c).

Article 12 – Officer Roles and Statutory Functions

- 5.11 Article 12 – Officer Roles and Statutory Functions needed to be updated to reflect the current Council structure and statutory officers. The proposed revised article is set out at Appendix 4. Recommendation (d).

Review of Whistleblowing Policy

- 5.12 The Panel considered a review of the Council’s Whistleblowing Policy that had been undertaken by the Interim Monitoring Officer.
- 5.13 The main features of the new Whistleblowing Policy included
- A statement of commitment from the Leader
 - Clarity on the process to be followed
 - Greater detail on protections afforded in order to encourage open disclosure
 - Reference to support for those who are affected by the raising of concerns.
- 5.14 There was a proposal in the report that the Policy should be renamed ‘Confidential Reporting Code’. Members of the Panel felt that ‘whistleblowing’ was a term that was universally understood and that it should be retained in the title of the policy. It was agreed that the Policy should be renamed ‘Confidential Whistleblowing Code’.

The Panel recommended that the revised Code be approved. Recommendation (e).

Motions to Council

- 5.15 Councillor Plenty requested that the Panel give consideration to the wording of Procedure Rule 14 – Motions to Council. He felt that the Rule should be written so that it was fair and proportionate regardless of Group structure and that there should be scope for cross party motions to be submitted. The Panel requested the Interim Monitoring Officer to provide options that would reflected good practice.
- 5.16 The Panel agreed that there needed to be some restrictions on how many motions could be submitted to a Council meeting and did not wish to markedly increase the number of motions debated at Council. Members did however favour amending the Procedure Rule to enable a cross party motion to be submitted if members wished to do so. The proposed wording is set out in recommendation (f). The Panel agreed that the Rule should be further reviewed in December 2017.

6. Ongoing Review of the Constitution

- 6.1 Work on reviewing other parts of the Constitution is ongoing and will be programmed into future Panel Review meetings. The Council is requested to authorise the Interim Monitoring Officer and Head of Democratic Services to make any consequential changes to the Constitution that have arisen as a result of amendments agreed by the Council and restructuring decisions.

7. **Appendices**

Appendix 1 – Contract Procedure Rules

- A. Proposed New Contract Procedure Rules
- B. Original Contract Procedure Rules
- C. Schedule of the Public Contracts Regulations

Appendix 2 – Arrangements for the Dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer

- A. Disciplinary Procedure for Local Authority Chief Executive – background information and procedure flowchart
- B. Current Employment Procedure Rules
- C. Amended Employment Procedure Rules

Appendix 3 – Local Code of Conduct for Employees

- A. Current Code of Conduct for Employees
- B. Redrafted Code of Conduct for Employees

Appendix 4 – Revised Article 12 – Officer Roles and Statutory Functions

Appendix 5 – Confidential Whistleblowing Code

8. **Background Papers**

None.

A full copy of the Constitution can be accessed on the Council's website.