

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee

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WARD(S): All

PART I **FOR DECISION**

REVISION OF THE CONSTITUTION

1 Purpose of Report

The purpose of this report is to seek the approval of the Committee to revisions of the Council's Constitution and the agreement of the Committee to place these revisions before the Monitoring Officer and full Council for their respective approvals.

2 Recommendation to Council

The Committee is requested to approve the revisions to the Council's Constitution set out in this Report and to agree to these revisions being placed before the Monitoring Officer and full Council for approval.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. The adoption of the revisions to the Council's Constitution recommended in this report will serve to enhance the delivery of these priorities through good governance procedures.

4 Other Implications

(a) Financial

There are no direct financial implications arising from this report.

(b) Human Rights Act and Other Legal Implications

There are no Human Rights Acts implications arising from this report. Local Authorities have a statutory duty to prepare, keep up to date and to publicise a constitution, whose contents are partly prescribed by statute and partly matters of local content, within a statutory framework.

Equalities Impact Assessment

There is no identified need for an EIA arising from the subject matter of this Report.

5 Supporting Information

5.1 Since the last Report to the Committee on revisions to the Constitution on 30 July 2019, there has been impetus for further revisions, including the “best practice” recommendations made by the Cabinet Committee on Standards in Public Life (“CSPL”) in their Report “Local Government Ethical Standards – a Review By the Committee on Standards in Public Life” published in January 2019, which can be implemented by local authorities without the need for primary legislation. Draft revisions to the Constitution pursuant to such impetus have been considered and approved by the Panel Member on the Constitution at their meetings on 11 September 2019 and 25th February 2020.

5.2 The draft revisions considered and approved by the Member Panel were upon the following topics:

5.2.1 Declarations of Members’ interests;

5.2.2 “Best Practice” recommendations of the CSPL in their Report referred to in paragraph 5.1 of this Report, and

5.2.3 Joint Parenting Panel Terms of Reference.

5.3 **Declarations of Members’ Interests**

5.3.1 The Council’s internal auditors have found, from an examination of the minutes of meetings, that there are several instances of declarations of interests by Members where there is no evidence of any review of the impact of such declarations and the action taken.

5.3.2 These instances arise where Members have declared a personal interest, such as the fact that a close relative works for the Council, but do not consider that the interest declared prejudices their judgement of the public interest and they participate in the debate and vote on the items under consideration.

5.3.3 The Member Panel on the Constitution asked for consideration to be given to formulating a simpler form of words that Members might use in such circumstances to enable them to participate and vote, whilst at the same time ensuring that the minutes record the propriety of such actions by Members.

5.3.4 The Panel also asked for consideration to be given to whether the form for declaration of Members’ interests could be amended to allow Members to place such interests in the Register of Members’ Interests and thus avoid the necessity for Members to need to declare such interests at every meeting.

5.3.5 **It is suggested, therefore, that to deal with the situation set out in paragraph 5.3.3 above, paragraph 4.4 of the Councillors’ Code of Conduct in Part 5.1 of the Constitution is amended to add the words “provided you declare that you are impartial on the matter after the words “If the test is not met, you may remain, speak and vote on the matter”.**

5.3.6 With regard to paragraph 5.3.4 above, Section 29(1) of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members. Section 29(2) provides that it is up to the relevant authority to determine what is to be entered in the authority's register. Section 30(1) requires Members to notify the Monitoring Officer of any disclosable pecuniary interest which the Member has at the time when the notification is given. Section 30(4) provides that where a member gives notification under Section 30(1) the Monitoring Officer must cause the interests notified to be registered in the authority's register whether they are disclosable interests or not. Section 31(2) requires a member to disclose any disclosable pecuniary interest at any meeting if the interest is not entered in the authority's register. Taking these provisions together, therefore, it is considered that if members' personal interests of the nature referred to in paragraph 5.3.3 above are notified to the Monitoring Officer he must cause them to be entered in the register of interests and provided they are so registered the Member would not need to declare them at every meeting.

5.3.7 **Accordingly, with regard to paragraph 5.3.4 above, the form for declaring interests at Appendix 2 of the Councillors' Code of Conduct in Part 5.1 of the Constitution could be amended to include another section at the end for any other interests, of the nature referred to in paragraph 5.3.3 above, and thus they would be registered in the register of interests and members could thereby avoid the need to declare such interests at every meeting. It is recommended that the Committee approve such amendment.**

5.3.8 Registration of Interests – Paragraph 4.1 of the Code. The recommendation of the Member Panel on the Constitution from its meeting on 25th February will be circulated to the Committee.

5.4 **“Best Practice Recommendations by the Cabinet Committee on Standards in Public Life**

- 5.4.1 The Cabinet Committee on Standards in Public Life (“CSPL”) published their report “Local Government Ethical Standards – A Review by the Committee on Standards in Public Life” on 30 January 2019. A copy of which is attached in the Appendix Pack to the agenda.
- 5.4.2 The CSPL made 26 recommendations which are conveniently listed in the executive summary of their report at pages 13 to 17 and they also made 15 “best practice” recommendations which, too, are conveniently listed in the executive summary at pages 18 and 19 of their Report.
- 5.4.3 Many of the CSPL recommendations will require primary or secondary legislation or other action by central government or action by parish councils, the Local Government Association, political groups or national political parties to implement, but the “best practice” recommendations could be implemented by Councils of the own volition.
- 5.4.4 In their Feedback Report, in February 2019, following their Corporate Peer Challenge Review of the Council, the Local Government Association (“LGA”) recommended that that the Council should consider the CSPL recommendations and how they pertain to Slough.

- 5.4.5 At their meeting on 20 June 2019 the Member Panel on the Constitution considered the “best practice” recommendations made by CSPL and resolved that the Deputy Monitoring Officer report to the next meeting of the Panel on those recommendations that were relevant to the Council, along with proposals for detailed wording of any proposed amendments to the Constitution. The Deputy Monitoring Officer did so at the Panel’s meeting on 11 September 2019.
- 5.4.6 With regard to the recommendations “proper” of the CSPL, the only one which could be implemented by the Council of its own volition at the moment is recommendation number 11 on their list of recommendations on page 15 of their Report. This states that local councils provide legal indemnity to Independent Persons if their views or advice are disclosed and that the government should require this through secondary legislation, if needed. The context for this recommendation is the CSPL’s views calling for a formal strengthening of the role of Independent Persons in the complaints process and greater transparency and publication of their views via statutory enactments. It is considered, therefore, that at this stage no action is taken by the Council on this recommendation until further discussion and/or proposals emerge across the local government community on this issue or proposals for statutory enactments are made respect of the role of Independent Persons at a national level. In terms of the complaints process at this Council, the Independent Person is actively consulted and engaged in that process and his views and opinions are solicited in all cases and he is invited to any meetings involving members who are the subject of complaints. It is not considered that at this stage there is any concern at this Council with regard to the role of the Independent person which requires any immediate action.
- 5.4.7 With regard to the “best practice” recommendations by the CSPL listed at pages 18 and 19 of their Report, the following table sets out proposed wording for changes to the Constitution which have been approved by the Member Panel on the Constitution which the Committee is asked to approve.

Recommendation number	Nature of recommendation	Proposed Wording for changes or comments.
1	Inclusion in the code of conduct of prohibition on bullying and harassment including definition of that term supplemented by examples of behaviour covered by such definition.	The Code does contain a prohibition on bullying and harassment but it does not contain a definition of this term or examples of behaviour covered by such definition. Recommended that the ACAS’s definition of bullying together with ACAS’s examples of bullying behaviour be adopted for inclusion in the Code (attached at Appendix 2).
2	Inclusion in the code of provisions requiring compliance with any	The Nolan Principles are incorporated into the Councillors’ Code of Conduct. Principle 4 on

	<p>standards investigation and prohibiting trivial or malicious allegations by councillors</p>	<p>“Accountability”, with the supplementary wording, requires Members to submit themselves to whatever scrutiny is appropriate to their office. More particularly, paragraph 5.2 of the Code requires members to co-operate at all stages of any investigation by the Monitoring Officer. Paragraph 5.5 of the Code provides that relatively minor complaints will be considered appropriately in applying the Assessment Criteria in Appendix 9 of the Code for investigation of complaints and the Assessment Criteria themselves allow the Monitoring Officer to filter complaints which are not sufficiently serious to warrant investigation, “tit for tat” or politically motivated. The flow chart for the investigation process in Appendix 8 of the Code allows for the Monitoring Officer to apply a preliminary test for whether a complaint is vexatious or malicious. It is considered, therefore, that the Code already contains provisions which address this “best practice” recommendation of the CSPL</p>
<p>3</p>	<p>Annual review of the code and, where possible, regular seeking of views of the public, community organisations and neighbouring authorities</p>	<p>The Code of Conduct at present contains no provision relating to the frequency of its review, albeit that in practice the Code is constantly being considered with a view to any necessary revisions being adopted by full council at the beginning of each municipal year. In order to address this aspect of this “best practice” recommendation of the CSPL it is proposed that a sentence be added at the end of the first paragraph of the Code titled “Purpose of the Code” in the following terms:</p> <p><i>“This Code shall be reviewed by the Council at least once every year.”</i></p> <p>With regard to the balance of the</p>

		<p>recommendation as to seeking the views of the public, community organisation and neighbouring authorities, where possible, no amendments are proposed in this Report as it is considered that the views of the Member Panel and this Committee and wider interests within the Council as to whether and how such public engagement should take place needs to be considered before any proposals can be formulated. This is relevant because one of the areas which the LGA highlighted in their Peer Review in February was the need for the Council to make a self assessment of how the council connects with its residents and partners in its decision making.</p>
4	<p>Code should be readily accessible to both councillors and the public in a prominent position on the Council's website and available in council premises</p>	<p>The Code is available on the Council's website under the tab "About the Council" on the Council's home page and the sub-tabs "Complaints and Feedback" and "Complaint about a Councillor". The Council is proposing to redesign its website as part of the transformation programme so consideration can be given at the appropriate time to making these pages more prominent. The Code is part of the Constitution which is separately available on the Council's website and hard copies of the Constitution are available from Democratic Services. It is considered, therefore, that this "best practice" recommendation of the CSPL is already addressed by the Council and so no amendments to the constitution are proposed in this Report in regard to it.</p>
5	<p>Update of gifts and hospitality registers at least once a quarter and be available in easily</p>	<p>Paragraph 4.7 of the Councillors' Code of Conduct in Part 5.1 of the Constitution requires Members to report to the</p>

	accessible format such as CSV	Monitoring Officer in writing within 28 days of receipt any gift, benefit or hospitality with a value in excess of £50.00 and for the Monitoring Officer to place the notification on the public register of gifts and hospitality which is maintained in an easily accessible format. This “best practice” recommendation is already addressed by the Council
6	Councils should publish a clear and straightforward public interest test against which allegations are filtered	It is considered that Paragraph 5.5 of the Code, the flowchart in Appendix 8 of the Code referring to a preliminary assessment of the public interest and the Members Complaints Assessment Criteria in Appendix 9 of the Code taken together provide a straightforward test against which allegations are filtered and hence this “best practice” recommendation of the CSPL is addressed by the Council and hence no amendments are proposed in that regard in this Report.
7	Local authorities should have access to at least two Independent Persons	No proposals are made in this report on this “best practice” recommendation of the CSPL because it is considered that its is necessary to canvass the views of the Member Panel and this Committee and also of the Section 151 Officer as there would be financial implications for the Council of having additional Independent Persons. The rationale of the CSPL in making this recommendation is that one Independent Person should be available to provide independent advice to the subject member and another to provide independent advice to the Council, so as to avoid the Independent Person having to be in a position of being forced to prejudge the merit of any allegation. It is suggested that whether this is a significant issue may depend upon the robustness of the Independent Person and

		his or her ability to hold the balance between the Council and the subject member in the context of the complaints process.
8	An independent Person should be consulted as to whether to undertake a formal investigation and given option to review and comment upon allegations which the responsible officer is minded to dismiss as being without merit, vexatious or trivial	<p>In practice the Independent Person is informed of all complaints received by the Monitoring Officer and he is consulted on the manner in which the Monitoring Officer proposes to dispose of each complaint. Paragraph 5.7 of the Code, however, permits the Monitoring Officer to determine whether any complaint merits investigation after such consultation with the Independent Person as the Monitoring Officer deems appropriate. It is proposed, therefore that the first sentence of Paragraph 5.7 of the Code be amended to read as follows in order to address this “best practice” recommendation of the CSPL:</p> <p><i>“5.7 The Monitoring Officer will determine every complaint received and shall consult with the Independent Person as to whether a formal investigation should be undertaken and shall give him the opportunity to review and comment upon any complaint which the Monitoring Officer is minded to dismiss as being without merit, vexatious or trivial”</i></p>
9	Where decision is made on allegation following formal investigation decision must be published as soon as possible on website with brief statement of facts, provisions of the code engaged, view of Independent Person, reasons of decision-maker and sanctions applied.	Paragraph 6.13(a) of the Code provides that the determination sub-committee of the Audit and Corporate Governance Committee may authorise the Monitoring Officer to publicise any findings in respect of the Subject Member’s conduct. It is proposed that rather than follow the CSPL’s recommendation for a mandatory publication, the discretionary publication power of the determination be continued

		<p>but that paragraph 6.13(a) of the Code be amended to read as follows:</p> <p><i>“(a) publish on the Council’s website any findings in respect of the Subject Member’s conduct which shall include a brief statement of the facts, the provisions of the Councillors’ Code of Conduct which have been breached, the view of the Independent Person, the reasons for the findings made and details of the sanctions applied.”</i></p>
10	Local authorities should have straightforward and accessible guidance on its website on how to make complaints, the handling process and estimated timescales for investigations and outcomes	This information is available on the Council’s website under the tab “About the Council” on the Council’s home page and the sub-tabs “Complaints and Feedback” and “Complaint about a Councillor”. The resulting page contains a link to a PDF document entitled “Councillor Complaints Guidance” which provides this information. Accordingly it is considered that this “best practice” recommendation is already addressed by the Council.
11	formal complaints about the conduct of a parish councillor towards a clerk should be made by the chair or the parish council as a whole rather than by the clerk in all but exceptional circumstances.	Each of the three parish councils within the Council’s area have their own codes of conduct and this is a matter for the parish councils to consider and implement. The Council have no power to enforce this against any of its Parish Councils
12	Monitoring Officers’ roles should include providing advice, support and management of investigations and adjudication of alleged breaches to parish councils within the remit of the principal council. They should be provided with adequate training, corporate support and resources to undertake this work	At present the Council administers complaints against parish councillors for alleged breaches of their respective codes of conduct and the Monitoring Officer carries out investigations, where appropriate, and the Council’s determination sub-committee of the Audit & Corporate Governance Committee determines such complaints where necessary. Also, the

		<p>Constitution provides in the Monitoring Officer Protocol in Part 5.6 of the Constitution that the Monitoring Officer will make a report to the Council from time to time on the staff, accommodation and resources required to discharge his duties. Furthermore Section 5(1)(b) of the Local Government & Housing Act 1989 requires the local authority to provide the Monitoring Officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties to be performed. It is not considered, therefore, that any further provisions are required in the Constitution to address this recommendation of the CSPL</p>
13	<p>Local authorities should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation</p>	<p>At present the Constitution provides, by way of the “Members Complaints Assessment Criteria” in the Code of Conduct in Part 5.1, that wherever circumstances arise where it would not be appropriate for the Monitoring Officer to investigate, the matter may be referred to the Audit & Corporate Governance Committee. No proposal is made in this Report for a Monitoring Officer from a different authority to undertake such an investigation as it is considered that it would be appropriate for the Member Panel and this Committee to consider this first and form a collective view.</p>
14	<p>Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan Principle of openness and publish their board agendas and minutes and annual</p>	<p>The Council have set up formal housing subsidiaries, namely Herschel Homes Limited and James Elliman Homes Limited and it has set up an asset management vehicle, Slough Asset Management Limited. It is also owns the entire issued share capital of GRE5 Limited, the owner of Nova House, which it acquired in order to manage fire risks in that building. These are all “local authority controlled</p>

	<p>reports in an accessible place</p>	<p>Companies” within the Local Authorities(Companies) Order 1995 which means that the companies are required to provide to any member of the authority such information as the member reasonably requires to enable that member to carry out his or her duties. These companies’ directors are appointed by the Council and comprise officer of the Council who are required to enter into formal agreements to manage any conflicts of interests and the companies operate under a shareholder agreement with the Council which is enforced by the Section 151 Officer and which prescribes what the companies may or may not do. The Council is also a Member of Slough Urban Renewal. All these relationships have been reported for the first time in the Council’s Annual Governance Statement for 2018/19 and this will be a feature for annual statements going forward. No constitutional provisions are proposed in this report with regard to the transparency of the agendas and minutes and annual reports of these companies and the applicability of the Nolan principles as a wider canvassing of views across the Council and more detailed consideration of any mechanisms would be necessary before any detailed wording could be formulated. The officers who are appointed as directors of these companies are bound by the Nolan Principles by way their obligations in the Local Code of Conduct for Employees in Part 5.3 of the Constitution and the companies are required to file annual returns at companies house</p>
<p>15</p>	<p>Senior officers should meet regularly with political group leaders or group whips to discuss standards issues</p>	<p>At present the Chief Executive meets regularly with political group leaders to discuss all matters of concern to the group</p>

		<p>leaders, including standards issues. There are no provisions within the Constitution which formally prescribe this. No provisions are proposed in this report as it is a matter upon which it may be appropriate first to receive the views of group leaders and senior officers. No regular meetings take place with group whips to discuss standards matters. Again, no provision is proposed for the constitution in this report as this is matter upon which the views of the Member Panel and this Committee need to be ascertained first. It is not considered that it would be appropriate for senior officers to discuss the details of any formal investigations with group whips</p>
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5.5 Joint Parenting Panel – Terms of Reference

- 5.5.1 The Terms of Reference of the Joint Parenting Panel are reviewed annually by the Council’s Director of Children, Learning and Skills, the Cabinet Member for Children and Schools and the Panel.
- 5.5.2 The Director of Children, Learning and Skills Services and the Chief Executive and Non-Executive Director of Slough Children’s Services Trust had discussed a proposal to reconfigure the Joint Parenting Panel to the Corporate Parenting Panel, as was previously the case with effect from May 2020.
- 5.5.3 The Corporate Parenting Panel was the primary vehicle for Councillors to demonstrate their commitment to deliver better outcomes for children and young people in care and care leavers and this would clearly be demonstrated by the change. The Trust would be critical in delivering that responsibility and ensuring needs of children looked after were met.
- 5.5.4 There would be no change to the compulsory attendance of members or the current membership and the proposed change would assist in improving services for young people.
- 5.5.5 The JPP had approved the proposed reconfiguration of the Panel and agreed that the terms of reference (TOR) be reviewed and reported to the Member Panel on the Constitution before being agreed at Council. (attached at Appendix 3).

6. Comments of other Committees

The changes to the Constitution proposed in this Report have been formally considered and approved by the Member Panel on the Constitution.

7. Conclusion

The revisions to the Council's Constitution recommended by this Report will enhance good governance by providing an updated, clearer and more robust guide for Members and Officers in the conduct of the Council's affairs.

8. Background Papers

None

9 Appendices

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| Appendix 1 | Report on the Cabinet Committee on Standards in Public Life –
“Local Government Ethical Standards – a Review by the
Committee on Standards in Public Life” – January 2019
(See <u>Separate Appendix Pack</u>) |
| Appendix 2 | ACAS definition of Bullying |
| Appendix 3 | Revised Terms of Reference of the Corporate Parenting Panel. |