

<b>CONSTITUTION WORKING PARTY</b>		
<b>Report Title</b>	CONSTITUTIONAL UPDATE	
<b>Key Decision</b>	N/A	
<b>Ward</b>	All	
<b>Contributors</b>	Head of Law	
<b>Class</b>	Part 1	Date 15 November 2011

## **1. Summary**

This report proposes minor amendments to the Constitution to ensure that it is kept to date. It suggests that they be referred to full Council on 30<sup>th</sup> November 2011 for approval.

## **2. Purpose**

To ensure that the Constitution reflects current circumstances and is reviewed in accordance with the requirements of the law and the Council's own Articles and Procedure Rules

## **3. Recommendation**

To recommend to Council that the amendments shown in the marked up draft at Appendix 1 are approved, and that the amended Constitution be adopted and made publicly available

## **4. Background**

- 4.1 It is a legal requirement that the Council adopt and maintain a Constitution and that it is publicly available. Since its adoption in 2002, the Constitution has remained under review with a number of changes as a result, for example, in relation to the chairing of Overview and Scrutiny Committees, the establishment of an Audit Panel, amendments to the Member Code of Conduct, changes to the provisions relating to the Council's remuneration panel, schemes of delegation, to name but some. It is a constitutional requirement that it be kept under review and amended as necessary.
- 4.2 Appearing elsewhere on this agenda are particular proposals relating to Adoption Panel, Scheme of Delegation and the Positive Ageing Council. The recommendations in this report are additional to those contained in those particular reports though the recommendations in those reports are reflected in Appendix 1. Were the Council not to

agree them, the amended draft would need to be amended accordingly.

- 4.3 It is also anticipated that once the Localism Bill and Health and Social Care Bill are enacted, they will require further changes to the Council's Constitution. The changes arising from those pieces of legislation are not dealt with in detail here, though some of them are flagged, for information. There will need to be further work when the provisions of those enactments are settled with further reports prepared. The amendments suggested in this report are based on existing provisions and their appropriateness in the current circumstances .

## **5. Bribery Act**

- 5.1 The Bribery Act came into effect in July 2010. It makes it an offence to offer, or promise to give a financial advantage with the intention of inducing that person to perform improperly a function or activity of a public nature or to reward a person for doing so. Commercial organisations who fail to prevent bribery commit a criminal offence. The Council qualifies as a commercial organisation and so is capable of committing the offence.

- 5.2 In response, the Council adopted a bribery policy which is intended to minimise the potential liability of the Council. It reflects the express principles set out in the current statutory guidance, namely:

- Proportionate procedures
- Top level commitment
- Risk assessment
- Due diligence
- Communication and training
- Monitoring and review

- 5.3 Much has been done to communicate the Council's and individual responsibilities in relation to the Bribery Act, but it is now proposed that specific references ought to be made to the requirement to have a policy reflected in the Council's Code of Corporate Governance, which is attached to the Constitution. This minor amendment (and others being proposed to the Standards Committee in relation to Code of Conduct etc) would demonstrate that the Council takes its duties in this respect very seriously. It is for this reason that the proposed amendment to the Code of Corporate Governance in Appendix 1 is suggested.

CWP is also asked to note that at the next meeting of the Standards Committee, an item on the agenda will propose that the Council's Money Laundering Avoidance Policy, Anti-Fraud and Corruption Policy and Whistleblowing Policy be amended to reflect Bribery Act requirements.

## **6. Structure Chart**

Following the reduction in the number of Council directorates from 5 to 4, it is proposed that the amended structure chart appearing in Appendix 1 be included in the Constitution

## **7. Head of Scrutiny**

Section 21ZA Local Government Act 2000 (as amended) provides that the Council should designate an officer as Scrutiny Officer, whose functions are:

- to promote the role of the overview and scrutiny committee
- support overview and scrutiny committee and its members
- to provide support and guidance to the members of the Council (and the executive) and officers in relation to overview and scrutiny functions

The Head of Scrutiny may not be the Head of Paid Service, Chief Finance Officer, nor Monitoring Officer.

Though in practice the Council acknowledges that the Head of Corporate Policy and Governance fulfils this role, it has never been formalised in the Constitution and so it is suggested that the amendments appearing at Appendix 1 in this respect be approved

## **8. Financial regulations**

Some amendments are necessary to financial regulations to reflect the change in the organisation of the Council's directorates. The Executive Director for Resources has prepared a new set of regulations in her capacity as the Council's section 151 officer. She now presents those to the CWP as part of Appendix 1 and asks the Council to include them in the amended Constitution .

## **9. Expected changes**

It is clear that the advent of the Localism Act and Health and Social Care Act will require constitutional changes, and members are referred to the briefing on this elsewhere on the agenda. These are likely to include such matters as amendment to the ethical framework, provisions relating to pay accountability, possible co-options schemes, contract procedures and schemes of delegation. However it is not possible to be definitive at this stage about what those changes might finally be and further report(s) will be brought back in due course following Royal Assent which is expected shortly.

## **10. Legal implications**

The legal implications are broadly set in the report. It is a legal requirement to have, maintain and publish a Constitution and for it to contain those matters continued in Direction from the Secretary of State. The current Constitution and the proposed amended Constitution reflect Secretary of State direction. It is a matter for full Council to agree amendments to the Constitution.

**11. Financial implications**

There are no specific financial implications arising from this report.

**12. Crime and Disorder implications**

The changes contained in the Bribery Act are designed to prevent malpractice and criminal behaviour. Reflecting the requirements in the Council's constitutional documents will help to keep the profile of the legal provisions of the Act high, and reduce the Council's potential exposure to liability under the Act.

**13. Equalities implications**

There are no specific equalities implications but members are reminded of their duties under the Equality Act 2010 to have regard to the need to eliminate discrimination and promote equality of opportunity for those with protected characteristics.

**14. Environmental implications**

There are no specific implications.

**15. Conclusion**

In order to keep the Constitution up to date, CWP is recommended to agree the changes suggested in this report and to refer them to full Council for approval.

**16. Background papers**

There are none.

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