

Report for Resolution

Report to Council
29 September 2009

Report of Constitution Working Party

Subject Changes to the Constitution

Item

9

Purpose

To adopt changes to the Council's constitution as recommended by the Constitution Working Party at its meeting held on 14 September 2009.

Recommendations

Council:-

- (1) adopts the Monitoring Officer's Protocol and approves it for inclusion in the Council's constitution at Appendix 9B;
- (2) approves that:-
 - (a) the functions of the Licensing and Regulatory Committees are merged to form a new Licensing Committee;
 - (b) the Licensing Committee comprises 13 members;
 - (c) the new Licensing Committee meets in December with a view to setting up its sub-committee arrangements to deal with hearings from 1st January, 2010.
- (3) approves the increased membership of the Norwich Area Museums Committee so that the membership comprises 6 County Councillors and 6 City Councillors;
- (4) approves the amendment of Article 10 – Area Committees and Forums by deleting the second sentence of rule 10.1, 'It does however have a special relationship with Community Power Forums as set out in Appendix 19' so that rule 10.1 reads as follows:-

10.1 The Council does not have any Area Committees.

and to delete Appendix 19 from the constitution.
- (5) authorises the Head of Legal, Regulatory and Democratic Services to amend the Council's constitution accordingly.

Financial Consequences

The merger of the Licensing and Regulatory Committees to form a new Licensing Committee would provide savings in the members' allowances to the Chair and members of the one of the committees.

Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority "Aiming for excellence – ensuring the Council is efficient in its use of resources, is effective in delivering its plans, is a good employer and communicates effectively with its customers, staff and partners".

Contact Officers

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Background Documents

None

Report

Monitoring Officer's Protocol

1. Corporate Governance is an important element of maintaining high standards in local government. It is the responsibility of each elected member and officer within the authority to ensure that they comply with their respective codes as well as acting within the law and the Council's own internal rules contained within the constitution. Responsibility for ensuring that high standards are maintained falls to the three statutory officers (the Head of Paid Services, the Chief Finance Officer and the Monitoring Officer).
2. Therefore, the protocol set out in Appendix A, explains the statutory role of the Monitoring Officer, his/ her relationship with the Head of Paid Service and the Chief Financial Officer and the duties and responsibilities of officers and members to assist the Monitoring Officer in his/her role.
3. The Constitution Working Party considered the draft protocol, following a recommendation from the Standards Committee which met on 2 September 2009. The Working Party considered a number of amendments to the text of the protocol and resolved to recommend the protocol as amended to Council.

Committee Sizes

4. There have been discussions at Group Leaders meetings regarding the size of Committees and the difficulty to fill places on committees. This was referred to the Constitution Working Party who resolved to recommend to Council that the Regulatory and Licensing Committees merge to form a new Licensing Committee.
5. The rationale behind the merger of the Regulatory and Licensing Committees is that the Licensing Committee meets twice a year and in recent years it has been scheduled to meet quarterly but meetings have been cancelled because of lack of business. The number of meetings of the Licensing Sub-Committee has declined from a peak of 204 in 2005 to 13 in 2008.
6. The current membership of the Licensing and Regulatory Committees are 10 and 11 respectively (with 1 vacancy on Regulatory). The Working Party recommended a membership of 13 which would be politically balanced. Given the current composition of the Council the membership would comprise: 5 Labour Group members; 4 Green Group members; 2 Liberal Democrat Group members; and 2 Conservative Group members.
7. In order to provide time to implement the new arrangements, including finalising membership, it is suggested that the new committee meets in December with a view to setting up its sub-committee arrangements to deal with hearings from 1st January, 2010.
8. The Working Party will be considering other committee sizes further at its meeting on 5 October 2009. (e.g. a Licensing Sub-Committee as currently

constituted and a new Licensing (Regulatory) Sub-Committee to deal with taxi licensing etc).

Norwich Area Museums Committee

9. The County Council requested that the membership of the Norwich Area Museums Committee be increased so that the membership comprises 6 County Councillors and 6 City Councillors.
10. Following in principle agreement from the Group Leaders each authority has appointed 6 members to the joint Committee.
11. This arrangement needs to be formalised at Council and Appendix 18 of the Council's Constitution, Description of Joint Arrangements amended accordingly. The Constitution Working Party resolved to recommend the changes to Council.

Article 10 – Area Committees and Forums

12. The Council no longer has Community Power Forums and as general housekeeping of the constitution, it is proposed therefore to amend Article 10 – Area Committees and Forums by deleting the second sentence of rule 10.1, 'It does however have a special relationship with Community Power Forums as set out in Appendix 19' so that rule 10.1 reads as follows:-
 - 10.1 The Council does not have any Area Committees.
13. Appendix 19 which sets out the special relationship with Community Power Forums will be deleted from the constitution.
14. The Constitution Working Party resolved to recommend the changes to Council.

Monitoring Officer Protocol

General Introduction to Statutory Responsibilities

The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989. This protocol provides some general information on how those statutory requirements will be discharged at Norwich City Council.

The current responsibilities of the Monitoring Officer role rest with the Head of Legal, Regulatory and Democratic Services who undertakes to discharge his/her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so s/he will also safeguard, so far as is possible, members and officers whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

The main functions of the Monitoring Officer at Norwich City Council are:

1. Following consultation (wherever possible) with the Head of Paid Service and the Chief Finance Officer, to report to the Council and to the Executive in any case where s/he is of the opinion that any proposal or decision of the authority has given rise to, or is likely to, or would give rise to any illegality, maladministration or breach of statutory code under Sections 5 and 5A of the Local Government and Housing Act 1989; (LGHA 89).
2. To investigate any matter which s/he has reason to believe may constitute, or where s/he has received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89.
3. To act as the principal adviser to the authority's Standards Committee and to investigate complaints about member conduct.
4. To act as the principal adviser to the authority's Standards Panel.
5. To maintain the Register of Members' Interests.
6. To act as the Proper Officer for the preparation, publication and retention of records of decisions taken by or on behalf of the Council and the Executive.
7. To have responsibility for responding to complaints made to the Local Government Ombudsman.
8. To undertake, with others, investigations in accordance with the Council's whistleblowing procedures.
9. To act as Proper Officer for the Data Protection Act 1998 and the Freedom of Information Act 2000.

10. To maintain the Constitution under the Local Government Act 2000.

In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on members and officers:

1. Complying with the law (including any relevant Codes of Conduct).
2. Complying with any general guidance issued, from time to time, by the Standards Committee and the Monitoring Officer.
3. Making lawful and proportionate decisions.
4. Complying with the Council's Constitution and standing orders.
5. Generally not taking action that would bring the Council, their offices or professions into disrepute.
6. Communicating effectively with the Monitoring Officer and seeking advice on any issues relating to constitutional or ethical matters.

The main statutory references for the Monitoring Officer's functions are set out in Appendix 1.

Working Arrangements

It is important that members and officers work together to promote the corporate health of the Council. The Monitoring Officer plays a key role in this and it is vital therefore, that members and officers work with the Monitoring Officer (and his/her staff) to enable him/her to discharge his/her statutory responsibilities and other duties.

The following arrangements and understandings between the Monitoring Officer, members and the Corporate Management Team are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:

1. Be alerted to any issue(s) of governance that may be of concern to members and officers, including in particular, issues concerning the legal power to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that they are aware of or are likely to arise.
2. Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Executive, committee meetings and/or Strategic Directorate (or equivalent arrangements).
3. Have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take such a decision where one should have been taken) at or before the Council, Executive, committee meetings and/or Strategic Directorate (or equivalent arrangements).

4. In carrying out any investigation(s) have unqualified access to any information held by the Council and to any member or officer who can assist in the discharge of his/her functions.
5. Ensure the other statutory officers (Head of Paid Service and the Chief Finance Officer otherwise known as Section 151 Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise.
6. Meet regularly with the Head of Paid Service and the Chief Finance Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that arise or are likely to arise (discharged through the Corporate Governance Working Group).
7. Report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Constitution Working Party, Leader of the Council, the Head of Paid Service and Chief Finance Officer.
8. In accordance with statutory requirements, make a report to the Council as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions.
9. Have an appropriate relationship with the Leader of the Council, Group Leaders and the Chair of Standards and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business.
10. Develop effective working liaison and relationship with the Standards for England, the District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to them, refer any breaches to them or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council in consultation with the Chief Executive and the appropriate Corporate Director.
11. Maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality.
12. Give informal advice and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received by the Standards Committee) and, if appropriate, make a written report to the Standards Committee.
13. In consultation, as necessary, with the Leader of the Council, Group Leaders, Standards Committee and the Standards for England, defer the

making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved.

14. Undertake statutory Monitoring Officer investigations if requested to support another Norfolk Local Authority.
15. Subject to the approval of the Standards Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues.
16. Advise on all applications from Council employees (or prospective employees) for exemption from political restriction in respect of their posts and where appropriate sign the certificate of opinion required by the independent adjudicator.
17. Appoint a Deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer. The Deputy will only act in the absence of the Monitoring Officer if urgent action is required which cannot await the return of the Monitoring Officer.

To ensure the effective and efficient discharge of the arrangements set out above, members and officers as soon as reasonably practicable will report to the Monitoring Officer, any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns of which they are aware.

The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality etc, or by identifying alternative and legitimate means of achieving the objective of the proposal.

Where the Monitoring Officer receives a complaint of a potential reportable incident, s/he shall in appropriate cases seek to resolve the matter amicably, by securing that any illegality, failure of process or breach of code is rectified, that the complainant is informed of the rectification, with or without a compensation payment and/or apology. However, it is recognised that the Monitoring Officer may determine that the matter is of such importance that a statutory report is the only appropriate response.

In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potential reportable incident and to ensure the satisfactory resolution of the issue.

In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer shall be entitled to add his/her written advice to the report of any other officer of the authority.

Notwithstanding the above, the Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Chief Executive and the Chief Finance Officer, s/he is of the opinion that this is necessary in order to respond properly to a reportable incident. In addition, in appropriate cases, the Monitoring Officer may refer matters to the Police for investigation.

The Monitoring Officer is available for members and officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (eg Standing Orders, policy framework, terms of reference, scheme of delegations etc).

To ensure the effective and efficient discharge of this protocol, the Chief Finance Officer will ensure adequate insurance and indemnity arrangements are in place to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

Appendix 1

Monitoring Officer Protocol

Summary of Main Monitoring Officer Functions

	Description	Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Receive copies of whistleblowing and allegations of misconduct	Code of Conduct for Members and Co-opted Members of Tameside Council
6	Investigate misconduct in compliance with Regulations (when made) and directions of Ethical Standards Officers	Regulations when made. Directions when made in individual cases. LGA 2000 Section 66(1)+66(6)
7	Establish and maintain registers of members interests and gifts and hospitality	Section 81 LGA 2000 and Code of Conduct for Members and Co-opted Members of Tameside Council
8	Advice to members on interpretation of Code	Code of Conduct for Members and Co-opted Members and regulations when made
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	DETR Guidance
10	Liaison with Standards for England and Ethical Standards Officers	New ethical framework, practical implications
11	New ethical framework functions in relation	Section 83(12) LGA 2000

to Parish Councils

12 Compensation for maladministration Section 92 LGA 2000

13 Advice on vires issues, maladministration, DETR guidance
financial impropriety, probity and policy
framework and budget issues to all
Members