

Report for Resolution

Report to Council
30 March 2010
Report of Head of Legal, Regulatory and Democratic Services
Subject Changes to the Constitution

Item
12

Purpose

To adopt changes to the Council's constitution as recommended by the Constitution Working Party at its meeting held on 1 March 2010, and also in the case of the Chief Finance Officer Protocol by the Audit Committee at its meeting on 21 January 2010 and the Scheme of Delegations by the Executive at its meeting on 10 March 2010.

Recommendations

To:-

- (1) adopt the Chief Finance Officer Protocol for inclusion in the Council's constitution as Appendix 9C.
- (2) adopt the Scheme of Delegation to Officers (Appendix 8 of the Council's Constitution) as amended by the transferral of the following functions from the Director of Corporate Resources to the Director of Regeneration and Development with effect from 1 April 2010:
 - All the functions of the Council under any and all licensing, registration, and regulatory legislation.
 - All environmental protection (including food safety), emergency planning, disaster recovery, business continuity and health and safety functions.
- (3) ask the Head of Legal, Regulatory and Democratic Services to amend the Constitution accordingly.

Financial Consequences

There are no direct financial consequences arising from this report.

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

Chief Finance 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. Statutory 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). The Head of Finance is the Council's designated Chief Finance Officer, under the provisions of Article 12 – Employees, rule 12.1 Proper Officers.
2. Therefore, the protocol has been drafted which explains the statutory role of the Chief Finance Officer, his/her relationship with the Head of Paid Service and the Monitoring Officer and the duties and responsibilities of officers and members to assist the Chief Finance Officer in his/her role.
3. At its meeting on 21 January 2010, the Audit Committee endorsed the Draft Chief Finance Officer protocol subject to the following minor amendments under the heading 'Reportable Incidents', third paragraph, by deleting 'amicably' and inserting 'possible' between 'any' and 'illegality'.
4. At its meeting on 1 March 2010, the Constitution Working Party considered that the language of the protocol was vague and requested that for clarification it be amended as follows:-
 - (a) under Working Arrangements, paragraph 13, insert 'as defined in the Local Government and Finance Act 1988' after 'suitably qualified' and before the word 'Deputy';
 - (b) under Working Arrangements, paragraph 7, delete from 'time to time' and insert 'no less frequently than annually'.

The above amendments have been made to the attached draft protocol.

5. At its meeting on 29 September 2009, the Council adopted the Monitoring Officer Protocol relating to the statutory role of the Monitoring Officer.

Scheme of Delegations

6. As part of the Council's corporate efficiency programme, the Council is being restructured to deliver its services more efficiently and within the community.
7. The Council's regulatory and environmental health functions will be provided by the Public Protection team within the directorate of the Director of Regeneration and Development with effect from 1 April 2010.

8. The Council's Scheme of Delegation (Appendix 8 of the Council's constitution) is subject to adoption by the Council and can only be amended by the Council. The Executive is responsible for maintaining a list of delegations setting out which officers are responsible for the exercise of particular Executive functions.
9. The Constitution Working Party considered the report at its meeting on 1 March 2010 and endorsed the proposed changes for adoption by the Council. The Executive considered the report at its meeting on 10 March 2010 and approved the changes to the Scheme of Delegations and resolved to recommend that Council adopts the scheme of delegations as amended.
10. The Council's scheme of delegation to officers (Appendix 8 of the Council's Constitution) needs to be revised to reflect this transferral of functions from the Director of Corporate Resources to the Director of Regeneration and Development. Therefore the following functions will be deleted from the table showing the Corporate Directors – field of responsibility, under the Deputy Chief Executive, Director of Corporate Resources, and inserted under the list of responsibilities for the Director – Regeneration and Development:-
 - (1) All the functions of the Council under any and all licensing, registration, and regulatory legislation.
 - (2) All environmental protection (including food safety), emergency planning, disaster recovery, business continuity and health and safety functions.

Draft Chief Finance Officer Protocol

General Introduction to Statutory Responsibilities

The Chief Finance Officer is a statutory appointment under Section 151 of the Local Government Act 1972. This protocol provides some general information on how those statutory requirements will be discharged at Norwich City Council.

The current responsibilities of the Chief Finance Officer role rest with the Head of Finance who undertakes to discharge these statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council. In doing so the Chief Finance Officer will also safeguard, so far as is possible, members and officers, whilst acting in their official capacities, from financial difficulties and/or criminal sanctions.

According to the Chartered Institute of Public Finance and Accountancy (CIPFA) there are five key roles that are critical to the achievement of a Chief Finance Officer's statutory responsibilities:

1. Maintaining strong financial management underpinned by effective financial controls.
2. Contributing to corporate management and leadership.
3. Supporting and advising democratically elected representatives.
4. Supporting and advising officers in their operational roles.
5. Leading and managing an effective and responsive financial service.

The key activities for each of these roles are set out in Annex 1.

In general terms, the Chief Finance 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 Chief Finance Officer.
3. Making lawful payments.
4. Generally not taking action that would result in unlawful payments, unlawful action, or that would bring the Council, their offices or professions into disrepute.
5. Complying with the Council's Constitution, financial procedures and standing orders.
6. Communicating effectively with the Chief Finance Officer and seeking advice on any issues relating to financial or ethical matters.

A summary of the statutory and legislative framework for this Chief Finance Officer Protocol is set out in Annex 2.

Working Arrangements

It is important that members and officers work together to promote the corporate health of the Council. The Chief Finance Officer plays a key role in this and it is vital, therefore, that members and officers work with the Chief Finance 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 Chief Finance Officer, members and the Corporate Management Team are designed to ensure the effective discharge of the Council's business and functions. The Chief Finance Officer will:

1. Be alerted by members and officers to any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) 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 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 Monitoring Officer) are kept up to date with relevant information regarding any financial management issues, accounts and audit regulations, proposed expenditure or actions which might lead to a loss or deficit, or other constitutional issues that are likely to (or do) arise.
6. Meet regularly with the Head of Paid Service and the Monitoring Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any financial management issues, accounts and audit regulations, or proposed expenditure or actions which might lead to a loss or deficit, or other constitutional issues that are likely to (or do) arise (discharged through the Corporate Governance Working Group).

7. Report to the Council, no less frequently than annually, on the Financial Regulations 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 Monitoring Officer.
8. In accordance with statutory requirements, make a report to the Council as necessary on the staff, accommodation and resources required to discharge his/her statutory functions.
9. Have an appropriate relationship with the Leader of the Council, other Group Leaders and the Chair of Audit 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 District Auditor (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)
11. In consultation, as necessary, with the Leader of the Council, Group Leaders, and the District Auditor, defer the making of a formal report under Section 114, 114A, 115, and 116 of the Local Government Finance Act 1988 where another investigative body is involved.
12. Undertake statutory Chief Finance Officer investigations if requested to support another Norfolk Local Authority.
13. Appoint a suitably qualified (as defined in the Local Government and Finance Act 1988) Deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Chief Finance Officer. The Deputy will only act in the absence of the Chief Finance Officer if urgent action is required which cannot await the return of the Chief Finance Officer. Appoint an appropriate external adviser in cases where the Chief Finance Officer is precluded from offering advice and the Deputy is unavailable or unable to advise.

Reportable Incidents

To ensure the effective and efficient discharge of the arrangements set out above, members and officers will report any breaches of statutory duty or Council policies or procedures and other financial or constitutional concerns to the Chief Finance Officer, as soon as practicable.

The Chief Finance 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 Chief Finance Officer receives a complaint of a potential reportable incident, s/he shall in appropriate cases seek to resolve the matter, by securing that any possible 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 Chief Finance Officer may determine that the matter is of such importance that a statutory report is the only appropriate response.

In appropriate cases, the Chief Finance 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 Chief Finance Officer shall be entitled to add his/her written advice to the report of any other officer of the authority.

Notwithstanding the above, the Chief Finance Officer retains the right in all cases to make a statutory report where, after consultation with the Chief Executive and the Monitoring 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 Chief Finance Officer may refer matters to the Police for investigation.

The Chief Finance Officer is available for members and officers to consult on any issues of the Council's financial powers, possible unlawful payments, impropriety and probity issues, or general advice on the financial arrangements (eg Financial Regulations, 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 Chief Finance Officer role.

The Chief Finance Officer or Deputy will record details of any advice given.

Key Roles of the Chief Finance Officer

Maintaining Strong Financial Management Underpinned By Effective Financial Controls

1. Advising on corporate risk profiling and management, including safeguarding assets, risk avoidance and insurance.
2. Advising on effective systems of internal control.
3. Ensuring there is an effective system of internal financial control.
4. Ensuring that financial management arrangements are sound and effective.
5. Ensuring a prudential financial framework is in place.
6. Ensuring that any partnership arrangements (or other innovative structures for service delivery) are underpinned by clear and well documented internal financial controls.
7. Securing effective arrangements for prudential borrowing, treasury management, pensions and trust funds.
8. Ensuring there is an effective internal audit function and assisting management in providing effective arrangements for financial scrutiny.
9. Advising on anti-fraud and anti-corruption strategies and measures.
10. Securing effective systems of financial administration.
11. Ensuring that statutory and other accounts and associated claims and returns in respect of grant are prepared.
12. Contributing to the management of the authority.
13. Ensuring that the authority's financial resources are well managed.
14. Contributing to cross-authority issues and to the development of the authority.

Contributing To Corporate Management and Leadership

15. Contributing to the effective leadership of the authority.

Supporting and Advising Democratically Elected Representatives

16. Advising on protocols setting out the respective roles and responsibilities of Councillors and officers for financial management.
17. Providing advice to Councillors on developing an overall financial strategy that serves policy and service objectives.
18. Helping Councillors to identify priorities, prepare the annual funding plan/budget and identify how resources will be used.

19. Helping Councillors to monitor financial performance against the annual funding plan/budget.
20. Ensuring that all 'branches' of the authority (including the full Council, Executive and Scrutiny functions where such arrangements exist, administration and opposition groups and individual Councillors) receive advice and information.

Supporting and Advising Officers in Their Operational Roles

21. Ensuring that there is an effective approach to financial management.
22. Ensuring that financial strategies serve policy and service objectives.
23. Ensuring that the authority's resources are well managed.
24. Ensuring that budgets are properly managed.
25. Ensuring that financial advice and information is provided.
26. Advising on performance management and measurement.

Leading and Managing an Effective and Responsive Financial Service

27. Securing high standards of performance and service to the public.
28. Demonstrating accountability to members of the public and the community by providing robust financial and performance information.
29. Establishing a good, professional working relationship with external auditors, inspectors and other statutory agencies.
30. Ensuring that the services provided by the finance function are in line with the expectations and needs of its internal stakeholders.
31. Ensuring there are high standards of performance throughout the finance function.
32. Leading and managing the finance function.
33. Acting as head of profession for all finance staff in the authority.

Annex 2

Chief Finance Officer Protocol

Summary of Statutory and Legislative Framework for Chief Finance Officer Protocol

Description		Source
1	Responsibility for the proper administration of the financial affairs of the Council	Section 151 Local Government Act 1972
2	The treasurer is not merely the servant of the authority but holds a fiduciary responsibility to the local taxpayers	Attorney General v De Winton 1906
3	Duty to nominate a member of his/her staff as chief financial officer (if unable to act owing to absence or illness)	Section 114 Local Government Finance Act 1988
4	Duty to report on decisions incurring unlawful expenditure, unlawful loss or deficiency to the Council, or unlawful item of account	Section 114, 114A, 115, 116 Local Government Finance Act 1988
5	Duty to report if the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure	Section 114 Local Government Finance Act 1988
6	Duty to report on the adequacy of the Council's proposed financial reserves and report on previous years' financial reserves if it appears that controlled reserves are, or are likely to be, inadequate, including recommendations for appropriate actions to rectify	Section 25 and 27 Local Government Act 2003
7	Duty to report on the robustness of the Council's budget calculations and assist the Council in carrying out regular budget monitoring	Section 25 and 28 Local Government Act 2003
8	Responsible for: <ul style="list-style-type: none"> the Council's accounting records and that they are maintained in accordance with proper practices and kept up to date accounting control systems and ensuring that they are observed grant claims measures to enable the prevention and detection of inaccuracies and fraud identification of the duties of officers dealing with financial transactions and divisions of responsibility 	Accounts and Audit Regulations 2003 (Amended 2006) Local Authorities (Capital Finance and Accounting) (England) Regulations 2003

	<ul style="list-style-type: none"> • writing off of accounts • certifying the statement of accounts • providing internal audit 	
9	Responsibility for borrowing, investment accounts and financial administration	Sections 1-92 Local Government Act 2003
10	Regulation 5 will require responsible financial officers ("RFO") who are required to prepare statements of accounts to certify that those statements of accounts give a <u>true and fair</u> view of the financial position of the authority at the year end and of its income and expenditure for the year. This form of words is accepted in accounting circles in the UK as confirming that published accounts meet the highest standards of accounting practice. This change will bring the certification of this category of local government accounts into line with the certification of the accounts of private sector companies, central Government and charities.	Accounts and Audit Regulations 2009 (due to be implemented)