

17 October 2019		ITEM: 5
General Services Committee		
Review of Constitution and Process		
Wards and communities affected: All	Key Decision: Non Key	
Report of: Leader of The Council Cllr Robert Gledhill		
Accountable Assistant Director: n/a		
Accountable Director: n/a		
This report is Public		

Executive Summary

This report considers the current processes in place for the recruitment and appointment of Directors and Assistant Directors and provides options for changes to those processes to increase the involvement of elected Members.

The report also includes proposed changes to other sections of the Constitution that cover: Recognition of the Shadow Cabinet; Land and Property Disposals and Acquisitions; and changes to the current Council rules regarding Portfolio Holder reports.

1 Recommendations

1.1 That General Services Committee recommend to Full Council the following amendments to the constitution:

1.1.1 That the appointment of all Directors and Assistant Directors on a permanent, interim or acting up basis, be carried out by the General Services Committee;

1.1.2 That the appointment of all permanent Directors and Assistant Directors then be ratified at a meeting of the Full Council;

1.1.3 That all formal non-minor (1) restructure, permanent or temporary, that impacts on the line management or breadth of responsibility of any Director or Assistant Director, and (2) any role title change to Director or Assistant Director, be notified to members of the General Services Committee for early engagement;

- 1.1.4 Formal recognition of the Shadow Cabinet from the largest opposition group – including the right to ask the first three questions of the Portfolio Holders on their annual reports;**
- 1.1.5 Amend the time allocated for the presentation of the Portfolio Holders' annual reports to Council to twenty minutes with a limit of seven minutes in total to cover both the introduction and summing up by the Portfolio Holder;**
- 1.1.6 Amend the Constitution regarding the delegation to the Leader in approving acquisitions and disposals up to a value of £500,000 to a limit of £200,000 with all other approvals to be considered by the Cabinet;**
- 1.2 That the Chief Executive brings forward reviews of the following:**
 - 1.2.1 The S106 process with the aim of increasing both Democratic oversight and community involvement;**
 - 1.2.2 Purdah guidance to determine whether there can be any greater flexibility in preserving Member led activities and council related meetings; and**
 - 1.2.3 A process for the recruitment of a Political Assistant for any group that has six or more Members.**

2 Introduction and Background

Recruitment

- 2.1 At present, there are two agreed documents that govern the recruitment of Directors and Assistant Directors (classified as senior management for the purpose of this report).
- 2.2 The Pay Policy requires that authority be given by Full Council to enter into a recruitment process for the permanent recruitment to any new Director post.
- 2.3 The Constitution sets out the need for the General Services Committee (GSC) to carry out the recruitment process – long listing, short listing and final interview stage – for all Directors, on either a permanent basis or where an external interim is sought. The Cabinet is then consulted on the GSC appointment.
- 2.4 The Constitution is silent on whether the process set out in 2.3 above should apply where an existing officer is asked to act up into one of these roles on an interim basis.
- 2.5 In addition, where the post fulfils one of the statutory roles, GSC has to recommend the successful candidate to Full Council for final approval.

- 2.6 The recruitment process above does not cover Assistant Directors' roles as they fall under the general delegations of the Chief Executive or relevant director.
- 2.7 There is currently no requirement within the Constitution for any formal engagement with Members on senior management restructures that impact on the roles or breadth of responsibilities of any member of the senior management team. The Local Government and Housing Act 1989 sets out the legislation that defines roles and responsibilities of the Council, Cabinet and Head of Paid Service. Interpretation of this provides for the allocation of officer functions to be managed by the Head of Paid Service.
- 2.8 The level of Member involvement varies across the local authority network and Members of the GSC are asked to determine whether they wish to increase the democratic input to senior management recruitment and to what extent.
- 2.9 This report proposes that all senior management recruitment, whether permanent, acting up or interim, be carried out by the GSC as set out in 2.3 with a final endorsement by Full Council for statutory and permanent roles.
- 2.10 This effectively creates the same level of Member involvement for all Directors and Assistant Directors as that currently set out for the six statutory officers.
- 2.11 The report also proposes that any restructure that impacts on the line management or breadth of responsibility of any member of the senior management be put to GSC in the first instance for consideration though not for formal approval.

Other Constitutional Changes

- 2.12 A key item for any Cabinet Member and non-executive Member, is the annual Portfolio Holder reports that are spread across all of the Council meetings with the exception of annual council in May and the budget Council in February. These are currently allocated a time limit of 15 minutes with the introduction limited to five minutes and the summing up limited to two minutes.
- 2.13 Whilst the Mayor is able to agree some leniency to these timescales, this is often not requested or given. The recommendations in this report request that the overall time is increased to 20 minutes with the time given to Portfolio Holders of seven minutes be given as an overall time to be split between the introduction and summing up as they see fit to give them the flexibility to best put across their key messages.
- 2.14 In some way linked to this, the Shadow Cabinet formed by the largest opposition group, is not formally recognised in the Constitution. Whilst the Shadow Cabinet is recognised through both protocol and practices, inclusion within the Constitution will standardise this, including the right to ask the first questions of the Portfolio Holder regarding their annual report.

2.15 Finally, Land and Property Acquisitions and Disposals are delegated within the Constitution to the Leader for transactions up to £500,000 and to Cabinet for transactions greater than this. Historic practice has handed officers delegations to complete a number of these transactions but this report proposes that:

- All delegations to officers on this matter be rescinded; and
- That the delegation to the Leader be reduced from £500,000 to £200,000.

Reviews for Future Consideration

2.16 Members have requested three reviews for future consideration:

- A review of the S106 process to provide a greater level of democratic oversight and community involvement;
- A review of the Purdah guidance to see whether there can be any greater latitude around Member led activities and the ability for meetings to take place; and
- The creation of Political Assistant posts for any group with a minimum of six Members to enable Political Group Leaders, Cabinet and groups to be made aware of policy changes across local authorities and government.

3 Issues, Options and Analysis of Options

3.1 This report sets out a formal approach requested by Members for greater oversight in the recruitment and restructuring of senior management. This could also be done through a less prescriptive approach through, for instance, the use of the Governance Group that includes all three Group Leaders. This approach was more recently used to determine the best approach for the Acting up role relating to the Monitoring Officer and Assistant Director Legal.

3.2 Recommendations around the Shadow Cabinet simply includes current practice specifically within the Constitution.

4 Reasons for Recommendation

4.1 The recommendations have been made to increase Democratic Oversight over the areas included within this report and to provide practical support at a political level to assist the political groups in achieving their goals.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This is a report from the Leader of the Council and there have been various discussions between Members.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 As set out more fully in section 7.4, the recommendations within this report will increase the time taken to make some permanent appointments, especially for non-Statutory roles and Assistant Directors, and impact on officers' abilities to make urgent arrangements where cover or additional resource is required. This may impact on the delivery of services though to what degree will depend on the role and time period. However, the Leader can call a meeting with five days notice.

7. Implications

7.1 Financial

Implications verified by: **Sean Clark**
Director of Finance, Governance and Property

Whilst the recommendations in this report will increase the number of meetings, the related costs will be met from within existing budgets.

There is a direct cost of creating three Political Assistants' posts that will depend on the grading of the post. Once known, this will have first call on the growth allocation within the MTFs that is currently earmarked for Adults and Children's Social Care and Environmental Services.

7.2 Legal

Implications verified by: **Tim Hallam**
Interim Assistant Director Legal and Monitoring Officer

Recommendations 1.1.1 and 1.1.2. The power to appoint staff/their terms and conditions can't be dealt with by the Executive/Leader. These are matters reserved for the Council/delegated by Council. Similarly, the power to appoint officers for particular purposes is a matter reserved to the Council. There are statutory requirements (in Schedule 1 Part II of the Local Authorities (Standing Orders) (England) Regulations 2001 (the Standing Orders Regs.)) i.e. the need to ensure that at least one member of the executive is on the relevant Committee and about giving notice to the Executive before appointments are made.

Under the Constitution the Council can in general arrange for any of its functions to be delegated to a Committee, although certain functions are reserved to full Council. The General Services Committee (GSC) exercises certain functions delegated to it by full Council including some appointment functions.

The scope of the current delegation to the GSC could be changed subject to making any necessary changes to the Constitution. Subject to this, and complying with any procedural requirements, the nature of the GSCs

involvement would be a matter for the GSC. Any process would need to be fair and comply with the Standing Orders Regs.

Legally, the same considerations would generally apply for Assistant Directors (AD) as for Directors. Whilst an AD isn't defined, legally or under the Constitution, 'Deputy Chief Officer' is defined (under Section 2(8) of the Local Government and Housing Act 1989) and an AD post would fall within that definition.

Members are allowed to be involved in the appointment of Deputy Chief Officers, under the Standing Orders Regs, but they don't have to be. The GSC terms of reference don't currently include any functions relating to the appointment of ADs save for the Monitoring Officer. Whilst legally Members can be involved, in practical terms having Members involved in appointments at this level may involve needing to call meetings more often.

Under the Constitution, the Head of Paid Service (HoPS) has the power to appoint Officers to such posts. The Protocol for Member/Officer relations provides that Members 'will not get involved in day to day management of staff or services'. All Officers, apart from political assistants, have to be appointed on merit (s.7 Local Government and Housing Act 1989 (the 1989 Act)).

Legally, the same considerations would generally apply for interim as for permanent appointments, including the requirement to comply with the Standing Orders Regs.

Recommendation 1.1.3; Under the Constitution this is not one of the functions reserved to Council. The Chief Executive/HoPS has the power to allocate roles to Directors, other than those statutorily prescribed, under delegation (Chapter 6, part 1, para. 7.1 (h)). Since it's an Executive function, in practice the HoPS reports as necessary to the Executive.

Under the Constitution, there is a general requirement – not specific to staffing matters – that Members should be informed/consulted depending on the nature and sensitivity of a decision. Legally it isn't necessary in all cases for Officers to consult Members. Whether it is necessary to consult is, for example, likely to depend on the nature and extent of the proposed restructure.

Notifying the GSC, as necessary, for the purposes of early engagement on proposed restructures would in principle be consistent with the above. The Constitution would need to be amended to reflect what is proposed.

Recommendation 1.1.4. There is nothing in legislation about the role of the opposition and so nothing required by statute. The Constitution could be amended to provide for the 'Shadow Cabinet' to be defined and procedurally to allow Members of that to ask first questions of PFHs at meetings of Full Council. It would be advisable to clarify what is meant by the "Shadow

Cabinet”. Possibly, rather than that term being defined, the Constitution could for example instead refer to “the leader of the second largest group”. However this is defined, the Standing Orders would need to be amended in relation to this.

Recommendation 1.1.5. The Constitution could be amended to procedurally allow for presentation time limits to be changed.

Recommendation 1.1.6. There is nothing legally which expressly reserves disposals of property to ‘the Council’. Hence, as an executive function, this could potentially be dealt with by Cabinet, subject to making any necessary changes to the Constitution/the relevant scheme(s) of delegation. In any event, the Council has to comply with the requirements of s123 Local Government Act 1972 in respect of getting the best price available for land.

Recommendation 1.2.1; arrangements could be put in place outside of the Constitution to facilitate this review.

Recommendation 1.2.2; the Monitoring Officer, and other Officers, could, outside of the Constitution, look at this. The Courts have been quite clear that normal Council business goes on during Purdah. This is separate from the use of Council business to promote political groups.

Recommendation 1.2.3: There is a statutory maximum of three political assistants; generally for the three largest political groups. They have to have at least one tenth of the total membership of the authority unless there is only one group that so qualifies. It appears that all three political groups would qualify. There can be no more than one appointment per group. They are filled according to the political wishes of the group, as opposed to the normal rules of appointment on merit. Members can/should be involved in their appointments. Usually the groups advise Officers of their views as to appointment and they don’t go through the normal processes of recruitment. They are though employees of/paid by the Council. They are barred from carrying out any functions of the Council and tend to act as political advisers to the groups. So far as the constitution is concerned, the only change that may need to be made is in respect of appointments, although given that these are political appointments and the group leaders just give notice, this may not be necessary.

7.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**
Strategic Lead: Community Development and Equalities

If approved, recommendations 1.1.1 – 1.1.3 would be subject to the Council’s Equality and Diversity Policy. As the reviews at recommendation 1.2.1 – 1.2.3 are progressed, community and equality impact assessments will be applied as required.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder, or Impact on Looked After Children)

The changes to the appointments process will increase the timescales for appointing Assistant Directors and non-statutory Directors considerably. This will impact on the ability of the council to meet statutory requirements and to hold senior managers to account as this will be outside of the control of senior officers. This will especially be the case for unforeseen circumstances where temporary cover is needed - for instance, long term sickness.

By law, officers have to have regard to the statutory duties of the council and the responsibilities that they hold personally. The ED2 process will need to be used for urgent decisions to ensure that the Council and the public are protected.

There may also be other legal requirements that replace the process set out in this report, for example, redeployment obligations into a senior management role.

The Pay Policy would need to be amended and approved by Council in year if the recommendation is agreed and takes effect before 1 April 2020.

Regarding restructures, there will need to be consideration to the formal consultation process, timings and outcomes where appropriate. Member engagement should not delay or impact on outcomes or policy. Similar to comments in relation to recruitment – the council needs to act quickly on occasions and this could reduce our ability to act quickly to cover functions.

There are also a number of restructures that have a minor impact on senior management – as written, a GSC would have to be called for these and would be difficult to identify a measure that could differentiate between what members would like to see and what they would consider immaterial. This is a matter that would be given to the Leader of the Council to exercise judgement.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

9. Appendices to the report

None

Report Author:

Cllr Rob Gledhill

Leader of the Council