

## Report to Governance Committee

12 June 2018

By the Monitoring Officer

**DECISION REQUIRED**



Not Exempt

### Changes to the Constitution of Horsham District Council

#### Executive Summary

The Governance Committee was created by Council on 7 December 2016. One of the functions of the Governance Committee is to receive reports from the Monitoring Officer on amendments to the Constitution and make any consequent recommendation to Full Council.

The report sets out a number of proposed variations to the Constitution including in respect of the discharge of functions delegated to Committees. The reason for the proposed changes are that a number of ambiguities have arisen and exist as a consequence of the introduction of the new streamlined Constitution. The report fully explains the context of this with reference to the New Constitution and recommends changes to address the ambiguities. The Committee are to decide whether to recommend the amendments to Full Council for approval.

#### Recommendations

The Committee is recommended to consider the proposed amendments to the Constitution as set out in paragraph 3 and Appendix 1 and if agreed to recommend approval of changes to the Constitution to the Full Council.

#### Reasons for Recommendations

To comply with Article 13, Review and Revision of the Constitution.

#### Background Papers

The Constitution of Horsham District Council 7 December 2016 (Amended April 2017).

**Wards affected:** All

**Contact:** Sharon Evans, Monitoring Officer.

## Background Information

### 1 Introduction and Background

- 1.1 It is a legal requirement for the Council to have a Constitution under Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011).
- 1.2 The Council undertook a major review of the Constitution in 2016 resulting in the adoption of a revised Constitution by Full Council on 7 December 2016. At the same time as the adoption of a revised Constitution, Full Council created a Governance Committee.
- 1.3 One of the functions of the Governance Committee is to ensure that the Council's Constitution is kept up to date and fit for purpose. This includes receiving reports from the Monitoring Officer to amend the Constitution and to make recommendations to Full Council on any changes that are not covered by the Monitoring Officer's delegated powers.

### 2 Relevant Council policy

- 2.1 The Corporate Plan 2016-19 heading Efficiency – Great value services will be better enabled by a modern, agile constitution which if flexible, permissive, well understood, and realigned to a model constitution in an accessible single-document format.

### 3 Details

- 3.1 It is understood that there has been some confusion about which of the Council's Committee is responsible for Governance. This may well be because the Audit Committee approves the Annual Governance Statement and so on a cursory look at the Constitution it could be confused that it is the Audit Committee, not the Governance Committee. A possible solution to eliminate confusion would be to Change the name of the Governance Committee. A suggestion could be a name change to 'Constitutional & Political Arrangements Committee.'
- 3.2 The present Constitution has omitted the Member / Officer Relation Protocol. The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another. Given the variety and complexity of such relations, the Protocol provides guidance on some of the issues that most commonly arise. It is therefore essential that the Protocol is inserted back in to the Constitution. Please see Appendix 1.
- 3.3 A minor amendment, shown in bold below, is needed to the formation of the Employment Committee in that it will be made up of the Leader of the Council, the Chairman of the Council and the Leader of the Opposition Group or '**a Member chosen from a pool of substitutes.**' This is needed to give clarity and the flexibility of having more than one substitute.

- 3.4 A second minor amendment, shown in bold below, is necessary to the formation of Policy Development Advisory Groups '**One Policy Development Advisory Group for each of the following portfolios: Community & Wellbeing, Finance & Assets, Leisure & Culture, Local Economy, Planning & Development and Waste, Recycling & Cleansing (11 Members including the relevant Cabinet Member)**' This is necessary for clarity and so that the constitution reflects the current Portfolios.

## **4 Next Steps**

- 4.1 These changes are not considered to fall within the delegations of the Monitoring Officer to make minor changes to the Constitution, if approved the Governance Committee will make a Recommendation to Full Council to make the changes to the Constitution. Following approval by Full Council the Monitoring Officer will publish the amendments on the Council's website.

## **5 Outcome of Consultations**

- 5.1 Consultation has taken place with the Director of Planning, Economic Development and Property and Service Managers.

## **6 Other Courses of Action Considered but Rejected**

- 6.1 The Constitution requires to be updated for effective governance it needs to be treated as a 'living' document with the need for frequent amendments to ensure it remains up to date and reflects the operation of the Council.

## **7 Resource Consequences**

- 7.1 There are no cost implications arising from these changes.

## **8 Legal Consequences**

- 8.1 Under Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011), it is a legal requirement for the Council to have a Constitution. It is the responsibility of the Monitoring Officer to monitor and review the operation of the Council's Constitution to ensure that the aims and principles of it are given full effect and to make recommendations for ways in which the Constitution could be amended in order to enable decision to be taken efficiently and effectively.

## **9 Risk Assessment**

- 9.1 The recommendations within this report are part of mitigating corporate risk by ensuring that the Constitution is up to date, consistent and user friendly.

## **10 Other Considerations**

- 10.1 The Constitution and its Procedures, Rules and Codes act as an enabling tool in helping the Council meet its obligations under the Human Rights Act 1998 and the Equality Act 2010.
- 10.2 Consideration of how projects and proposals can secure environmental, social and economic benefits and reduce negative consequences should be an integral part of decision-making and the Constitution will facilitate such considerations.

## **5d Protocol on Member/Officer relations**

### **Introduction**

- 5d. 1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another.
- Given the variety and complexity of such relations, the Protocol does not seek to be prescriptive and it may not cover all situations. However, it does seek to provide guidance on some of the issues that most commonly arise. The approach to these issues will serve as a guide to dealing with other issues.
- The Protocol is a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty. It also seeks to reflect the principles underlying the respective rules of conduct that apply to Members and Officers. Its purpose, therefore, is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct.
- Members and Officers are servants of the public and they depend on each other in carrying out the work of the Authority. Members are responsible to the electorate and serve only so long as their term of office lasts, while Officers are responsible to the Council. Their job is to give advice to the Council, as well as to individual Members, and to carry out the Council's work under the direction and control of the Council and its various bodies. Mutual respect between Members and Officers is essential to good local government. However, close personal familiarity between individual Members and Officers can damage this relationship and prove embarrassing to other Members and Officers.
- The relationship has to function without compromising the ultimate responsibilities of Officers to the Council as a whole, and with due regard to such technical, financial, professional and legal advice that Officers can legitimately provide to Members. The Protocol seeks to set a framework that assists the working relationships between Members and Officers.

### **Roles of Members**

- 5d. 2 Members undertake many different roles. Broadly these are:
- a) Expressing political values and supporting the policies of the party or group to which they belong (if any).
  - b) Representing their ward and being advocates for the citizens who live in the area.
  - c) Involvement in active partnerships with other organisations as community leaders.
  - d) Contributing to the decisions taken in full Council and in its various bodies on which they serve, as well as joint committees, outside bodies and partnership organisations.
  - e) Helping to develop and review policy and strategy.
  - f) Monitoring and reviewing policy implementation and service quality.
  - g) Involvement in quasi-judicial work through their membership of regulatory committees.

Members may not:

- h) Instruct Officers other than through the formal decision-making process. In particular, the management of staff is a matter for senior officers and not of Members.
- i) Initiate or certify financial transactions, or enter into contracts on behalf of the Council.
- j) Bring the Council or their position as Members into disrepute or use their position improperly to gain an advantage or disadvantage for themselves or any other person.

### **Roles of Officers**

5d. 3 Briefly, Officers have the following main roles:

- a) Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services.
- b) Providing advice to the Council and its various bodies and to individual Members in respect of the services provided.
- c) Initiating policy proposals.
- d) Implementing agreed policy.
- e) Ensuring that the Council always acts in a lawful manner.

### **Respect and Courtesy**

5d. 4 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and Officers. This plays a very important part in the Council's reputation and how it is seen in public. It is important that both Members and Officers remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other Members, or other Officers.

### **Undue Pressure**

It is important in any dealings between Members and Officers that neither should seek to take unfair advantage of their position.

In their dealings with Officers (especially junior Officers), Members need to be aware that it is easy for them to be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold senior official and/or political office.

Officers serve the Council as a whole. Heads of Service have a duty to implement the properly authorised decisions of the Council and its various bodies. Other Officers work to the instructions of their senior Officers, not individual Members. It follows that, whilst such Officers will always seek to assist a Member, they must not be asked to exceed the bounds of authority they have been given by their manager. Members should approach the appropriate Head of Service in the first instance with respect to controversial or corporate issues.

A Member should not apply undue pressure on an Officer either to do anything that he is not empowered to do or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of Council property and services.

Similarly, an Officer must neither seek to use undue influence on an individual Member to make a decision in his favour, nor raise personal

matters to do with their job, nor make claims or allegations about other Officers. *(The Council has formal procedures for consultation, grievance and discipline, and Officers have the right to report possible wrongdoing under the Council's Confidential Reporting Code).*

### **Familiarity**

Close personal familiarity between individual Members and Officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.

Such familiarity could also cause embarrassment to other Members and/or other Officers and even give rise to suspicions of favouritism. For these reasons close personal familiarity must be avoided.

### **Breach of Protocol**

If a Member considers that he has not been treated with proper respect or courtesy he may raise the issue with the Officer's line manager. If direct discussion with the manager does not resolve the complaint it should be referred to the Head of Service or Director responsible for the Officer concerned. Breach of the Protocol may give rise to disciplinary proceedings against an Officer if the circumstances warrant it.

If an Officer considers that a Member has contravened the protocol he should consult his line manager who will if necessary involve the Head of Service or Director. In certain circumstances breach of the Protocol may also constitute a breach of the Members' Code of Conduct. If the breach is sufficiently serious this may warrant a formal reference to the Monitoring Officer as a complaint to be considered for potential investigation by the Standards Committee. Many complaints will be capable of informal resolution. The Monitoring Officer or the Chief Executive will assist in this process if necessary.

### **Provision of Advice and Information to Members**

- 5d. 5 Members are free to approach Officers of the Council to provide them with such information and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Officers should always endeavour to respond to requests for information promptly and should in any event inform the Member if there is likely to be any appreciable delay in dealing with an enquiry. As a minimum the timescale for responding to correspondence should be observed (i.e. either a full response or, if this is not possible, an acknowledgement that fully explains what is happening within 5 working days of the receipt of the enquiry).

The legal rights of Members to inspect Council documents are covered partly by statute and partly by common law.

The Access to Information Procedure Rules of the Constitution explain the position with regard to access to papers relating to the business of a Council body.

The exercise of the common law right depends upon a Member's ability to demonstrate a "need to know". In this respect a Member has no right to "a roving commission" to examine any documents of the Council. Mere curiosity is not sufficient.

The information sought by a Member should only be provided by the respective service as long as it is within the limits of the service's resources. For their part, Members should seek to act reasonably in the number and content of the requests they make.

It is important for services and their staff to keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the area that they represent. Local Members should be informed about proposals that affect their ward and should also be invited to attend Council initiated events within their ward.

If a Member asks for specific information relating to the work of a particular service, and it appears possible or likely that at a subsequent meeting an issue could be raised or question asked on the basis of the information provided, then the appropriate Cabinet Member or Committee Chairman concerned should be advised about the information provided.

Officers have to advise Members from time to time that a certain course of action cannot be carried out. Members sometimes assume that this is a case of Officers deliberately obstructing the wishes of politicians. In fact this is hardly ever the case. Officers are employed to give unbiased professional advice even if it is not what Members want to hear. They do this as much for the protection of Members as for any other reason. However, the mark of an effective Officer is that if they do have to give negative advice, this will be accompanied by suggestions as to how Members might achieve some or all of their objectives in other ways. Such Officers are invaluable to any Council.

Members may be entitled under the Freedom of Information Act 2000 to receive information which falls outside their common law rights based on the "need to know". Officers are encouraged to supply documents to Members without the need for a formal FOI request if it is apparent from the Member's enquiry that any individual would be entitled to receive such documentation. The Council's Head of Legal and Democratic Services and Monitoring Officer will be able to advise on whether any request would fall within the Freedom of Information Act.

## **Confidentiality**

- 5d. 6 In accordance with the Code of Conduct for Members, a Member must not disclose information given to him/her in confidence by anyone, or information acquired which he/she believes, or ought reasonably to be aware, is of a confidential nature, except where:-
- a) he/she has the consent of a person authorised to give it;
  - b) he/she is required by law to do so;
  - c) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - d) the disclosure is –  
reasonable and in the public interest; and

made in good faith and in compliance with the reasonable requirements of the authority.

Confidential Council/Cabinet/Committee papers are to be treated as confidential information unless the relevant body resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as confidential. The decision as to whether they remain confidential is for the body. Other information may be confidential because to disclose it would be against the Council's or the public interest. Information may also be confidential because of the circumstances in which it was obtained. Information and correspondence about an individual's private or business affairs will normally be confidential.

Officers should make it clear to Members if they are giving them confidential information. If a Member is not sure whether information is confidential, he or she should ask the relevant Officer, but treat the information as confidential in the meantime.

Any Council information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council.

If a Member receives confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so then he or she must first consult with the Monitoring Officer and shall not disclose the information without having regard to any advice given by that officer.

### **Provision of Support Services to Members**

- 5d. 7 The only basis on which the Council can lawfully provide support services (e.g. stationery, word processing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### **Correspondence**

Official letters on behalf of the Council should be sent in the name of the appropriate Officer, rather than over the name of a Member. There are circumstances where a letter sent in the name of a Member is perfectly appropriate, for example, in response to a letter of enquiry or complaint sent direct to that Member. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

### **Media**

Communication with the media can be an important part of a Member's workload. In general, Members provide comment and views while Officers provide factual information. If a Member is unsure about the circumstances of a particular issue he should contact the appropriate Director, Head of Service or the Head of Communications.

Officers must ensure that all enquiries from the media are directed in the first instance to the Head of Communications.

Officers must keep Members informed of press matters relating to their ward or their specific areas of responsibility. In particular, the Leader, the appropriate Cabinet Member and/or committee Chairman must be advised if the Council has been contacted by the media on a high profile issue. If a Member contacts or is contacted by the media on an issue, he or she should:

- a) Indicate in what capacity he or she is speaking (e.g. in a personal capacity, as a Local Member, as a Cabinet Member, as a chairman or on behalf of a party political group).
- b) Be sure of the facts of the matter.
- c) Seek assistance from the Head of Communications and/or the appropriate Officer(s), but not in relation to a statement which is party political in nature.
- d) Consider the likely consequences for the Council of his or her statement.
- e) Not speak on behalf of the Council unless authorised to do so.

### **The Council's Role as Employer**

- 5d. 8 In their dealings with Officers, Members should recognise and have regard to the Council's role as employer. Members should be aware that Officers could rely on inappropriate behaviour of a Member in an employment case against the Council.

### **Political Activity**

- 5d 9 There are a number of constraints that apply to an Officer who occupies a post that is designated as "politically restricted" under the terms of the Local Government and Housing Act 1989.

In summary, such Officers are prevented from:

- being a Member of Parliament, European Parliament or local authority;
- acting as an election agent or sub-agent for a candidate for election as a member of any the bodies referred to above;
- being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party or branch;
- canvassing on behalf of a political party or a candidate for election to any the bodies referred to above;
- speaking to the public with the apparent intent of affecting public support for a political party; and
- publishing any written or artistic work of which he is the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection – if the work appears to be intended to affect public support for a political party.

It is common for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the

relevant decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups provided they maintain a stance which is politically impartial. Support may include a range of activities including briefings for Members relating to their roles e.g. chairperson or spokesperson. Officers should be required to give information and advice to political groups on Council business only and not on matters which are purely of a party political nature. Such advice should be available to all party groups and not solely to the majority group. It is important that the political neutrality of Officers is preserved and that group confidentiality is maintained by Officers.

Usually the only Officers involved in attending group meetings will be the Chief Executive, Directors and Heads of Service and they will generally leave the meeting after making their presentation and answering questions. Officers are employed by the Council as a whole. They serve the Council and are responsible to the Chief Executive (Head of Paid Service) and their respective Directors/ Heads of Service, and not to individual Members of the Council whatever office they might hold.

Both Members and Officers are subject to their own Codes of Conduct which can be found in the Constitution. This Protocol provides guidance on working relationships between Members and Officers. It is essential that both are familiar with the detailed obligations in their respective Codes of Conduct which will prevail in the event of any conflict between the Codes and this Protocol.

### **Sanctions**

5d. 10 Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer. It should be noted that certain breaches may also amount to breaches of the Code of Conduct for Members.

Complaints about any breach of this protocol by an Officer may be referred to the relevant Chief Officer, the Chief Executive or the Head of Legal and Democratic Services.

### **Conclusion**

5d. 11 It is hoped that, by following good practice and securing sensible and practical working relationships between Members and Officers, we can provide one of the cornerstones of a successful local authority and thereby enhance the delivery of high value quality services to the people of the area. Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its Members and Officers.

