



Purpose: For Decision

Name of meeting	ANNUAL COUNCIL
Date	26 MAY 2021
Title	APPOINTMENT OF COMMITTEES
Report of	MONITORING OFFICER

EXECUTIVE SUMMARY

1. This report seeks to update the constitutional arrangements following changes that have occurred, and to formally establish committees, their size and terms of reference, with such appointments being up to the next annual meeting of the council.
2. There are no substantial changes proposed to the establishment, size and terms of reference of those committees currently within the constitution (other than those required to be established to implement the national Joint Negotiating Committee's agreed model concerning the changes resulting from the amendments to the Local Authorities (Standing Orders) (England) Regulations 2001).
3. Members are advised to read and consider this report in conjunction with the report on the political proportionality, alternative arrangements, allocation of seats, nominations and appointments to committees and other bodies.

BACKGROUND

4. Under the terms of the current constitution, the Council meeting in full session at its annual council meeting is required to appoint at least one overview and scrutiny committee and such other committees as the council considers appropriate. It is also required to determine the size and terms of reference for those committees (see Part 4A rule 1(h) and (i) on page 107 of the Constitution).
5. The Council is asked to establish under section 102 of the Local Government Act 1972 and under all other relevant powers the committees set out in Appendix 1 to this report, with the sizes and terms of references mentioned.
6. There are proposed changes from the pre-existing arrangements relating to three statutory officers, being the Head of Paid Service, the Chief Finance Officer, and the Monitoring Officer (referred to as the Governance Statutory Chief Officers).

7. Part 4D of the Constitution – Officer Employment Rules – already makes provision to reflect the changes made to the Local Authorities (Standing Orders) (England) Regulations 2001 brought in by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. By way of background, these changes concern a degree of statutory protection against unwarranted political interference granted to the Head of Paid Service, the Chief Finance Officer, and the Monitoring Officer so that they can perform their duties without fear or favour. As a result, these officers cannot be dismissed without recommendations being considered at full council (see Part 4D - Officer Employment Rules on p.179 -185 of the Constitution) [PART 4D - Officer Employment Rules.pdf \(moderngov.co.uk\)](#).
8. However, when these statutory provisions were brought into force on 11 May 2015, they did not tie in with the existing contractual arrangements under the Joint Negotiating Committee terms and conditions. The consequential changes to the Terms and Conditions of Service Handbook for Chief Executives agreed by the Joint Negotiating Committee (JNC) took longer to update nationally. (Disciplinary and capability matters are non-executive functions).
9. The recommended changes are, therefore, required to harmonise these arrangements through adoption of the model procedures of the JNC which have been agreed by the JNC in the light of leading counsel's opinion and the experience of the Joint Secretaries in their involvement of individual cases.
10. Under the Terms and Conditions of Service Handbook for Chief Executives, councils need to establish a standing Investigating and Disciplinary Committee (IDC), an Independent Panel, and an Appeals Committee.
11. At the moment the Appointments Committee has terms of reference relating to taking disciplinary action short of dismissal, and dismissal of any Governance Statutory Chief Officer and appeals by such officer(s) (see p.36 of the Constitution), including any issue regarding the capability of a Governance Statutory Chief Officer. [PART 3 - Terms of Ref of Committees and Boards.pdf \(moderngov.co.uk\)](#)
12. Moreover, the current Part 4D of the Constitution – Officer Employment Rules – provides at paragraph 10 (on pages 183 – 184) the appointment of a sub-committee of the Appointments Committee to provide advice to the Council and to hear appeals, comprising two independent members appointed under the Localism Act 2011 and elected members.
13. The role of the Investigating and Disciplinary Committee is, where an allegation is made relating to the conduct or capability of the chief executive or there is some other substantial issue that requires investigation, to decide whether a full investigation should take place, and if so, it appoints an independent investigator (usually from a list held by the National Joint Secretaries). The terms of reference of the Investigating and Disciplinary Committee includes the power to consider whether suspension is appropriate, and, if so, the power to suspend for a specific period of time, with the continuance of any suspension being reviewed if it has been in place for two months, and any other power reasonably required to undertake its role (including the power to appoint external advisers as appropriate, and the power to take disciplinary action short of dismissal).

14. Following such investigation, the investigator reports back to the IDC. The IDC then is convened to hold a hearing and to determine whether there will be a recommendation to the council to dismiss the particular statutory officer, there is no case to answer or there should be action short of dismissal.
15. The guidance from the JNC highlights the need to make arrangements as to membership of the Investigating and Disciplinary Committee that are flexible in the event that a member of the standing committee has a conflict of interest. It must be politically balanced, and the guidance goes on to suggest that it comprises five members, including at least one member of the cabinet.
16. If the IDC has made a recommendation to dismiss, this must be considered by the Independent Panel which the JNC has agreed that the Independent Panel should comprise of independent persons (at least two in number) who have been appointed by the council, or by another council, for the purposes of the council's members' conduct under section 28(7) of the Localism Act 2011. It is proposed that it should comprise three such independent persons to ensure that there is no deadlock.
17. The Independent Panel is convened to review the recommendation and to make a recommendation of its own. The terms of reference of the Independent Panel includes offering any advice, views, or recommendations it may have to the council on the proposal for dismissal.
18. Full council then receives both reports and recommendations before making their final decision.
19. But if the disciplinary action proposed falls short of dismissal, the matter goes to the Appeals Committee to make a final decision. The guidance states that the Appeals Committee must be politically balanced and comprise five members (including at least one member of the cabinet) who are not members of the IDC. The terms of reference of the Appeals Committee shall include the power to hear such appeals against action taken short of dismissal and to take a decision either to confirm the action or to impose no sanction or a lesser sanction and any other power reasonably required to undertake its role.
20. The procedure which applies to the Head of Paid Service (Chief Executive) shall also apply to the other Governance Statutory Officers, given that the degree of statutory protection also applies to these officers too, and the relevant terms of reference should accordingly include all Governance Statutory Officers.
21. It is also recommended to widen the eligibility of membership to the Audit Committee so that there is no automatic ban on Cabinet members or members of an overview and scrutiny committee, but ideally the Audit Committee should not comprise such members due to potential conflicts of interest.

STRATEGIC CONTEXT

22. Good governance arrangements are essential to the delivery of the council's services and the decision-making process that support this.

CONSULTATION

23. None given the existing recognition of the JNC's terms and conditions.

FINANCIAL / BUDGET IMPLICATIONS

24. None directly arising from this report.

LEGAL IMPLICATIONS

25. As set out in the report and its appendices.

EQUALITY AND DIVERSITY

26. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is not considered that the content of this report has any negative impact on any of the protected characteristics.

OPTIONS

27. To establish the committees with the size and terms of reference set out.
28. To make alternative arrangements.

RISK MANAGEMENT

29. The recommendations are to ensure that the council meets its corporate governance requirements and responds to changing requirements and demands. These should lessen the risks arising from any challenge to the decision-making process by way of judicial review or other such legal action.

EVALUATION

30. The council is required to establish certain committees at its annual council meeting.
31. The council has previously established committees, and the recommended changes are to bring arrangements in line with the JNC's model, applying to all Governance Statutory Chief Officers, and the widening of eligibility for the Audit Committee membership.
32. An effective governance system for the council is essential to enable business to be transacted openly and in a timely manner.

RECOMMENDATIONS

33. That the committees, with the sizes and terms of reference set out in this report and its appendices, be appointed up to the next annual meeting of the council.
34. That the Monitoring Officer be authorised to make consequential changes to the Constitution.

APPENDICES ATTACHED

35. Appendix 1 – Establishment of council committees.

BACKGROUND PAPERS

36. Circular from the Joint Negotiating Committee for Chief Executives of local authorities dated 7 May 2019.

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