

Merton Council Council

17 May 2023

Supplementary Agenda

8 Amendments to the Constitution

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Committee: Council

Date: 17 May 2023

Subject: Amendments to the Constitution

Lead Director: Louise Round, Monitoring Officer

Lead member: Councillor Billy Christie, Cabinet Member for Finance and Corporate Services

Contact officer: Amy Dumitrescu, Democracy Services Manager

Recommendations:

- A. To agree that the following amendments to the Council's Constitution be authorised:
 - (i) The amendments to the Pensions Committee terms of reference as detailed in paragraph 2.1 below
 - (i) That all references to CHAS 2013 Ltd be removed from the Constitution as detailed at paragraph 2.4
 - B. To note that the Monitoring Officer will use her delegated authority under Article 15.2(b) of the Constitution to make consequential amendments to the Constitution to reflect the new Council structure agreed in September 2022.
 - C. To agree that changes be made to the Published Pay Policy and the Officer Employment Procedure Rules to clarify the approval process for making termination payments to officers by making it the responsibility of the Appointments Committee in accordance with Option C set out in paragraph 2.8 below.
 - D. To authorise the Monitoring officer to implement amended versions of the terms of reference of the Appointments Committee, the Pay Policy and the Officer Employment Procedure Rules which reflect Council's approvals set out in paragraphs A to C above.
 - E. To agree that the appointment of the Monitoring Officer be delegated to the Appointments Committee in respect of the upcoming appointment process only.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To consider changes to the Constitution to update sections with current working practice and to amend any other sections as detailed within the report as required.
- 1.2. The report was approved by the Standards and General Purposes Committee at its' meeting on 27 April 2023.

2 DETAILS

Pensions Committee

- 2.1. The Pensions Committee terms of reference do not currently require the annual Statement of Accounts and annual report for the Pensions Fund to be approved by the Pensions Committee. As a result, last year, External Audit refused to accept the Pensions Committee approval of the accounts. Therefore, it is recommended that the

terms of reference are amended to state an additional line “to *review and approve the Pension fund’s annual statement of accounts and the annual report*”.

New Council Structure

2.2. At its meeting on 21 September 2022, Council approved the recruitment of five Executive Director roles. Recruitment subsequently took place to fill these roles. The Constitution is therefore required to be amended to reflect the new roles, removing all reference to the previous titles and to amend all relevant delegations to refer to the new responsible Directors. Any reference to the previous Directorate names will also need to be amended. These amendments can be carried out by the Monitoring Officer using her delegated authority to make consequential changes to the Constitution under article 15(2)(b). References to specific directors appear in a number of places in the constitution, including the articles, financial regulations and contract standing orders and the Monitoring Officer will ensure such references are consistent throughout.

Delegations to Executive Directors

2.3. Because some council functions will move from their current locations under the new structure, it will be necessary also to amend the scheme of delegation to officers forming Part 3E of the Constitution using the Monitoring Officer’s delegated authority. It will also be necessary to amend the departmental schemes of management but those schemes are officer documents and do not require member level authority.

CHAS 2013 LTD

2.4. All references to CHAS will be removed from the Constitution following its sale to Veriforce.

Officer Employment Procedure Rules

2.5. Paragraph 9.4 of the Officer Employment Procedure Rules which comprise part 4H of the Constitution currently states that for chief officers, termination payments are subject to approval by the **Standards and General Purposes Committee** and that all severance packages over £100,000 shall be reported to Full Council for approval. This is at odds with the pay policy adopted by Full council which states:

*For Chief Officers, termination payments are reported to the Standards and General Purposes Committee for information on a regular basis. Payments which are in excess of a chief officer’s contractual or statutory entitlement shall require the approval of **the Appointments Committee**. In any event, all termination payments over £100,000 shall be reported to full Council for approval.*

2.6. The terms of reference of the Appointments Committee also include approving termination payments as follows:

*To determine the terms and conditions on which officers hold office (including the terms of dismissals), restructures, **exits, statutory discretion relating to termination payments**, reorganisations involving changes to staff responsibilities at Deputy Chief Officer and above.*

2.7. It is important that the process for agreeing any terminations is clear and at the moment although an argument can be made that either the Standards and General Purposes or the Appointments Committee can be approached for approval, it would be

prudent for the responsibility to sit with one body. It is the view of the Monitoring Officer that the Appointments Committee would be a more appropriate forum as the body charged with a number of staffing matters, including the appointment and dismissal of chief officers. It is worth noting that in any event, as the function is derived from the Council itself, a decision can lawfully be taken by the Full Council without prior consideration or approval by any committee although in practice it may usually be more appropriate for the matter to be considered in committee given the likely sensitive nature of any discussion relating to it, rather than the detail being debated by 57 councillors, albeit in confidential session.

2.8. Any process should comply the [statutory guidance](#) issued by the Secretary of State which indicates that termination packages of £100,000 and over should be subject to approval by full Council. For amounts below that level, the guidance suggest that this can be authorised by the Chief Executive; at present any payment outside of a chief officer's contractual and statutory entitlement arguably requires Appointment Committee approval regardless of the amount. Committee could choose to follow the guidance and allow payments bellow £100,000 to be authorised by the Chief Executive and only require those of £100,000 to have member approval. Alternatively, the threshold at which appointments Committee approval is required could be altered .The options are set out below and would apply to any officer, not just chief officers, the deciding factor being the value of the termination payment. The Committee agreed to recommend Option C which reflects the status quo.

Option A – delegation to Chief Executive up to £50,000

a) any termination payment outside of an officer's contractual and statutory entitlement the value of which is £50,000 or less shall require the approval of the Chief Executive although she may choose to delegate authority to approve such payments to the relevant Executive Director where they are £20,000 or less.

b) any termination payment outside of an officer's contractual and statutory entitlement the value of which is greater than £50,000 but less than £100,000 shall require the approval of the Appointments Committee and does not need to be reported elsewhere;

c) any termination payment outside of an officer's contractual and statutory entitlement, the value of which is £100,000 or more shall require the approval of the Appointments Committee *and* full Council, provided that if in the view of the Chief Executive it is more appropriate for the decision to be taken solely by full Council without prior consideration or approval by the Appointments Committee, s/he may choose to put the matter straight to full Council. If the decision in question relates to the Chief Executive him or herself, then the Monitoring Officer shall have the authority to exercise the discretion to refer the matter straight to Council.

Option B- delegation to Chief Executive below £100,000

a) any termination payment outside of an officer's contractual and statutory

entitlement the value of which is less than £100,000 shall require the approval of the Chief Executive although she may choose to delegate authority to approve such payments to the relevant Executive Director where the value is £20,000 or less.

b) any termination payment outside of an officer's contractual and statutory entitlement, the value of which is £100,000 or more shall require the approval of the Appointments Committee *and* full Council, provided that if in the view of the Chief Executive it is more appropriate for the decision to be taken solely by full Council without prior consideration or approval by the Appointments Committee, s/he may choose to put the matter straight to full Council. If the decision in question relates to the Chief Executive him or herself, then the Monitoring Officer shall have the authority to exercise the discretion to refer the matter straight to Council.

Option C – Appointment Committee Approval for all Payments (status quo)

a) any termination payment outside of an officer's contractual and statutory entitlement, the value of which less than £100,000 shall require the approval of the Appointments Committee and does not need to be reported elsewhere

b) any termination payment outside of an officer's contractual and statutory entitlement, the value of which is £100,000 or more shall require the approval of the Appointments Committee *and* full Council, provided that if in the view of the Chief Executive it is more appropriate for the decision to be taken solely by full Council without prior consideration or approval by the Appointments Committee, s/he may choose to put the matter straight to full Council. If the decision in question relates to the Chief Executive him or herself, then the Monitoring Officer shall have the authority to exercise the discretion to refer the matter straight to Council.

2.9. As part of its audit role, the Standards and general Purposes Committee shall be entitled to request a report on termination payments which have been paid from time to but there is no requirement for this Committee to approve such payments.

Monitoring Officer Role

2.10. Paragraph 3.2 of the Officer Employment Procedure Rules requires full Council approval for the appointment of the Monitoring Officer. This is not a legal requirement although it is for the Head of Paid Service (Chief Executive). The Constitution designates the Managing Director of the South London Legal Partnership (SLLP) as the Monitoring Officer by default. The appointment of the Managing Director is a thorough process, involving representatives of the 4 other councils making up the shared legal service as well as the Appointments Committee on which the Leader, relevant cabinet members and opposition group leaders are represented. Given the relatively infrequent nature of full council meetings and the need to be able to move swiftly once a recruitment process has been completed, it is arguably more appropriate for the final say on the appointment to rest with Appointments Committee, as it does

for Executive Directors and the Section 151 Officer. It is therefore recommended that paragraph 3.2 be amended to remove that requirement.

2.11. The Standards and General Purposes Committee considered the above at its' previous meeting and recommended that the constitution not be amended, however the above process for Appointments Committee to appoint the Monitoring Officer would apply on this occasion.

3 ALTERNATIVE OPTIONS

3.1. The Council is advised to make these changes to ensure the Constitution is up to date and compliant with current legislation and best practice. The alternative option would be to do nothing, which is not recommended. Even if the Committee chooses not to make any changes to the thresholds at which member level approval is required for termination payments, the decision-making process should be clarified so that either the Appointments Committee or the Standards and General Purposes Committee is the body with responsibility for approval.

3.2. Specifically in relation to the appointment of the Monitoring Officer, the current incumbent will be leaving the Council at the end of July, and it is hoped to make the appointment of her successor following the process set out in paragraph 2.10 above, in the week beginning 29 May. As the next Council meeting after that is 12 July, as currently drafted, the offer of appointment would, have to wait until then. This would leave a longer than desirable gap with no permanent monitoring officer or head of the SLLP in place which is clearly not desirable. If the Committee were minded not to remove the standing requirement for the appointment to be agreed by Full Council, it is invited to ask Full Council to delegate the appointment of the Monitoring Officer to the Appointments Committee on this occasion, with the proviso that it is reported for noting to the next scheduled council meeting.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. None for the purposes of this report

5 TIMETABLE

5.1. The recommendations if approved will be implemented with immediate effect.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None for the purposes of this report

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. The Constitution provides that proposed changes to the Council's constitution be reported to this Committee for approval prior to being considered at Council. (Article 15)

7.2. The Monitoring Officer has delegated authority to make minor administrative changes to the Constitution to reflect legislative changes or for the purposes of clarification.

7.3. The guidance issued by the Secretary of State on the authorisation process for special severance payments and the requirements for transparency relating to them is

statutory guidance by virtue of section 40 of the Localism act 2022.

7.4. The process for appointing chief officers is in part governed by the Local Authorities Standing Orders England Regulations 2001). They do not require the appointment of the Monitoring Officer to be approved by a meeting of the full Council.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. None for the purposes of this report

9 CRIME AND DISORDER IMPLICATIONS

9.1. None for the purposes of this report

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None for the purposes of this report

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- None

12 BACKGROUND PAPERS

12.1. None