

Wiltshire Council

Full Council

9 July 2019

Proposed Changes to the Constitution (Standards)

Summary

This report sets out proposed changes to Part 3B and Protocol 12 of the Constitution.

Proposal

That Full Council approve the proposed changes to Part 3B and Protocol 12 of the Constitution.

Reason for Proposal

To ensure the council's constitution is up to date, clear and effective.

Ian Gibbons, Director of Legal, Electoral and Registration Services (and Monitoring Officer)

Wiltshire Council

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9 July 2019

Proposed Changes to the Constitution (Standards)

Purpose of Report

1. This report asks Full Council to consider recommendations of the Standards Committee in relation to the following:
 - Protocol 12 of the Constitution: Arrangements for dealing with Code of Conduct Complaints and Part 3B of the Constitution: Responsibility for Functions

Background

2. The Standards Committee has responsibility for oversight of the Council's constitution. It has established a cross party working group, known as the Constitution Focus Group, to advise and assist in carrying out this function.
3. The Focus Group met on 20 March 2019, 10 April 2019, 24 May 2019 and 14 June 2019 to review sections of the constitution, including those as detailed in paragraph 1.
4. The Standards Committee considered those recommendations at its meeting on 26 June 2019.
5. The relevant minutes of the Standards Committee and Focus Group meetings can be found at **Appendix 1**.

Main Considerations

Protocol 12 of the Constitution and Part 3B of the Constitution

6. At its meeting on 23 January 2019 the Standards Committee requested the Constitution Focus Group to oversee a review of the procedures relating to code of conduct complaints in response to concerns expressed to the Committee regarding the timeliness of dealing with complaints under the process. This also followed a review of the processes adopted by other local authorities in handling of code of conduct complaints. The arrangements operated by Wiltshire Council were last reviewed in February 2017.
7. Following a meeting between officers, the Chairman and Vice-Chairman and the council's Independent Persons on 12 March 2019, and initial meetings of the Focus Group, an update on the proposed new procedure was considered by the Standards Committee on 1 May 2019.
8. In reviewing the arrangements there was a focus on streamlining the complaints process to make it more efficient and effective, as well as reduce the risk of delays. The Focus Group noted the purpose of the multiple stages of review in the existing

procedure to ensure member involvement in the process of officers determining complaints made against elected members.

9. The Focus Group noted arrangements in other authorities where assessments of complaints were determined by a member sub-committee. The advantage of such an approach was it was felt to enhance the role of members in the process by ensuring involvement for all complaints, not merely those which were requested for review, and would therefore obviate the need for a review stage.
10. Such an approach was also felt to be more administratively efficient, as rather than a series of ad hoc sub-committees a standing assessment sub-committee would be regularly scheduled and known in advance to all members of the committee and supporting officers. At present, the uncertainty of whether reviews may be received leads to clusters of complaints being reviewed that must be dealt with on separate dates at short notice, which can result in delays due to availability constraints of members, officers and Independent Persons. It would also provide greater certainty to complainants and subject members as to when their complaint would be determined.
11. The Focus Group therefore recommended that the Review Sub-Committee becomes an Assessment Sub-Committee. This sub-committee would meet on a monthly basis and receive a report and recommendation from the Monitoring Officer on all complaints that have been received. As the Monitoring Officer is already responsible for preparing a decision notice for all complaints, this should not add to the workload of the team.
12. The Sub-Committee would consist of five elected members to be appointed by the Standards Committee on an annual basis, with all members and substitute members of the Standards Committee being able to serve as substitutes for the Sub-Committee. It is proposed the sub-committee comprises five members because, with monthly meetings considering all complaints, the possibility of conflicts of interest or absence would be higher. A membership of five would ensure a core group of experienced members, while allowing for regular substitution to enable all members and substitute members of the Standards Committee to contribute from time to time, as well as leaving sufficient members to sit on any Hearing Sub-Committee that may be required. The Sub-Committee may also include up to 2 non-voting co-opted members.
13. In terms of participation from subject members and complainants, the Focus Group recommends retaining the procedure as exists for the Review Sub-Committee where each party may make a three-minute statement before the determining sub-committee. The procedure would require parties relating to one complaint to be heard separately from any other complaint.
14. It was also recommended that any investigation report finding no breach should be taken before the Assessment Sub-Committee to formally confirm no further action, rather than this being a determination of the Monitoring Officer.
15. Additional changes to the Protocol are proposed:
 - to emphasise the requirement of complainants to provide sufficient information for a complaint to be taken forward
 - to slightly increase the length of time for an investigation;

- to provide that only in exceptional circumstances should a complaint against a member who has subsequently resigned be taken forward; and
 - to provide greater clarity in the interpretation of some provisions.
16. For the avoidance of doubt, the existing sub-committees of the Standards Committee are not subject to the requirements of political balance. This would also apply to the Assessment Sub-Committee.
 17. In considering the recommendations, the Standards Committee considered that the proposed changes will enhance member involvement; improve administrative efficiency; be more open and transparent; and provide greater clarity.
 18. To implement these changes there would need to be amendments to Protocol 12 of the Constitution, which sets out the arrangements for dealing with Code of Conduct complaints, and Part 3B of the Constitution, which contains the terms of reference of the Standards Committee and its sub-committees.
 19. The proposed changes to Protocol 12 are listed at **Appendix 2**. The proposed changes to Part 3B are listed at **Appendix 3**. Both may be reformatted and renumbered in accordance with the Standard Committee's request for standardisation of presentation of the Constitution.
 20. The Standards Committee has approved changes to the Assessment Criteria by which complaints are assessed, and the procedure for the Assessment Sub-Committee, should Council approve the constitutional changes.
 21. In order to allow sufficient time to organise any new meetings within the council's committee calendar, and to advise Parish and Town Councils of the changes, if agreed, it is recommended that the revised approach should take effect from January 2020, with the Standards Committee appointing membership to the Sub-Committee in late 2019, and thereafter following the Annual Meeting of Full Council.

Safeguarding Implications

22. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

23. There are no equalities impacts arising from this report.

Risk Assessment

24. There are no risk issues arising from this report.

Financial Implications

25. There are no financial implications arising from this report.

Legal Implications

26. The recommendations in this report are consistent with the council's duties under relevant legislation.

Public Health Impact of the Proposals

27. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

28. There are no environmental impacts arising from this report.

Proposal

29. **That Full Council approve the revisions to Protocol 12 and Part 3B of the Constitution in relation to the arrangements for dealing with Code of Conduct complaints, such revised arrangements to take effect from 1 January 2020 after town and parish councils have been informed of the changes.**

Ian Gibbons, Director, Legal, Electoral and Registration Services (and Monitoring Officer)

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Background Papers

None

Appendices

Appendix 1 - Minutes of the Constitution Focus Group: 5 September 2018, 20 March 2019, 10 April 2019, 24 May 2019 and 14 June 2019 and of the Standards Committee on 26 June 2019.

Appendix 2 – Revised Protocol 12

Appendix 3 – Revised Part 3B