

Wiltshire Council

Standards Committee

26 June 2019

Recommendations of the Constitution Focus Group

Purpose of Report

1. This report asks the Standards Committee to consider recommendations of the Constitution Focus Group 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
 - Protocol 4 of the Constitution: Planning Code of Good Practice
 - Part 3C of the Constitution: Scheme of Delegation (Executive)

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 5 September 2018, 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 relevant minutes of the Focus Group meeting listed in paragraph 3 can be found at **Appendix 1**.

Main Considerations

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

5. 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.
6. 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.
7. 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.

8. 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.
9. 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.
10. The Focus Group therefore recommends 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
 16. Overall, the Focus Group considers that the proposed changes will enhance member involvement; improve administrative efficiency; be more open and transparent; and provide greater clarity.
 17. 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.
 18. 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.
 19. Additionally, it would be necessary to amend the Assessment Criteria by which complaints are assessed, and the procedure for the Assessment Sub-Committee. Both of these documents can be approved by the Standards Committee.
 20. The proposed changes to the Assessment Criteria are listed at **Appendix 4**. The proposed changes to the Assessment Sub-Committee Procedure are listed at **Appendix 5**.
 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.

Protocol 4 of the Constitution

22. Following the final report of the Planning Committee Systems Task Group, the Overview and Scrutiny Management Committee resolved at its meeting on 5 June 2018 to endorse a series of recommendations relating to the operation of the council's planning committees and associated matters.
23. One of those recommendations was that the arrangements in place for site visits by the Southern Area Planning Committee should be adopted across all the planning committees. This arrangement was not consistent with the arrangements as set out in Protocol 4 of the Constitution, and the matter was referred to the Focus Group, with proposed wording to give effect to the recommendation agreed with the Chairman of the Planning Committee Systems Task Group and the Cabinet Member for Spatial Planning, Development Management and Property.

24. At its meeting on 5 September 2018 the Focus Group considered the proposal and were broadly content with the wording., However it was felt that sections of the main protocol needed revision , and that ,therefore, any change should await a wider review of the protocol as a whole to ensure it was comprehensive, consistent and cohesive.
25. The Focus Group therefore met on 24 May 2019 and 14 June 2019 to discuss a proposed revision of the Protocol. The Chairmen of all Area Planning Committees and the Strategic Planning Committee, and the Cabinet Member for Spatial Planning, Development Management and Property, were invited to attend the meeting to discuss any proposals.
26. The proposed changes include:
- updates to reflect legislative and procedural changes;
 - enhancing guidance to support and assist members in discharging their planning responsibilities; ,
 - updating the site visit rules;
 - simplifying the public participation arrangements; and
 - providing greater emphasis on matters that must be considered when making determinations.
27. The Focus Group over its meetings asked for a series of changes including:
- to provide greater clarity on the applicability of the Code in relation to member involvement in enforcement matters;
 - consistent referencing;
 - clarity in relation to what constituted a material interest and relevant non-pecuniary interests;
 - advice to be taken by members before participating in a personal capacity;
 - strengthening of sections on predetermination and bias, and how this related to meetings with parties to the development,; and
 - highlighting that a refusal by a member to attend relevant planning training could render decisions of a committee open to potential successful legal challenge.
28. As a great deal of the Protocol has been retained but re-ordered, a schedule of the proposed changes is set out at **Appendix 6**. The protocol itself may be reformatted and renumbered in accordance with the Standards Committee's request for standardisation of presentation of the Constitution. The public speaking note would not form part of the main Protocol.

Part 3C of the Constitution: Executive Arrangements

29. The Joint Strategic Economic Committee (JSEC) is a joint committee of Swindon Borough Council and Wiltshire Council comprising members of and delegated authority from each Executive. It was established to provide local democratic and financial accountability for the Strategic Economic Plan and use of Local Growth

Fund and other funding streams by the Swindon and Wiltshire Local Enterprise Partnership (SWLEP).

30. At the time of the JSEC being constituted the SWLEP Board, which included the Leaders of each unitary council, did not meet in public. Since that time there have been various changes to the governance of the SWLEP, culminating in it being incorporated as a company limited by guarantee in January 2019. This change of legal status changed the nature of the relationship between the SWLEP, Wiltshire Council as the Accountable Body, and Swindon Borough Council and necessitated a review of the governance framework between these parties, which was the subject of a report to Cabinet on 26 March 2019. The report envisaged the dissolution of the JSEC under the new governance arrangements.
31. In accordance with Part 7 of the Constitution, Cabinet Procedure Rules, the Leader of the Council may amend the Scheme of Delegation relating to cabinet functions at any time during the year by informing the Proper Officer. This would then be reported to the next ordinary meeting of the council. As a result of the changes to the governance framework supporting the SWLEP, therefore, it is anticipated that the Leader will report to Full Council on 9 July that the JSEC is dissolved and its terms of reference removed from the Constitution. .
32. The work of the SWLEP will continue to be scrutinised by a joint task group of both councils, and the Cabinet Member for Economic Development and Salisbury Recovery will sit on its Board of Directors.

Article 15.3.2 Changes

33. Under Article 15.3.2 of Part 2 of the Constitution the Monitoring Officer has delegated authority to amend the constitution to reflect decisions of Full Council, changes in the law, to correct errors or clarify ambiguities where to do so does not alter (but gives effect to) the executive arrangements or the principles enshrined in the Constitution.
34. As agreed by the Standards Committee at its meeting on 17 January 2018 work has been ongoing in updating the terminology and formatting of the Constitution, with the updated documents reported to the Focus Group. To date, Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 16, and Protocol 1 have had their formatting and numbering updated to be consistent.

Safeguarding Implications

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

Equalities Impact of the Proposal

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

Risk Assessment

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

Financial Implications

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

Legal Implications

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

Public Health Impact of the Proposals

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

Environmental Impact of the Proposals

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

Proposal

42. **To recommend 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.**
43. **That, subject to Council's approval of the revised arrangements, the Standards Committee adopt the proposed revisions to the Assessment Criteria and Assessment Sub-Committee procedure.**
44. **To recommend Full Council approve the revisions to Protocol 4 of the Constitution.**
45. **To note the changes to Part 3C of the Constitution which are expected to be reported to the next meeting of Full Council in relation to the Joint Strategic Economic Committee.**
46. **To note the ongoing updates to the Constitution by the Monitoring Officer under the Article 15.3.2 of Part 2 delegated authority.**

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Background Papers

[Overview and Scrutiny Management Committee 5 June 2018](#)
[Part 7 of the Constitution – Cabinet Procedure Rules](#)

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
Appendix 2 – Revised Protocol 12
Appendix 3 – Revised Part 3B
Appendix 4 – Revised Assessment Criteria
Appendix 5 – Revised Sub-Committee Procedure
Appendix 6– Schedule of Protocol 4 Changes