

Wiltshire Council

Full Council

15 October 2024

Proposed Changes to the Constitution

Summary

This report asks Full Council to consider proposed changes to the Constitution as recommended by the Standards Committee.

Proposals

That Council approve the following updated sections of the Constitution:

- 1) Protocol 2A – Terms of Reference of the Wiltshire Pension Fund Committee
- 2) Protocol 6 – Complaints Procedure

Reason for Proposals

To ensure that the constitution remains up to date and effective.

Perry Holmes - Director, Legal & Governance (and Monitoring Officer)

Wiltshire Council

Full Council

15 October 2024

Proposed Changes to the Constitution

Purpose of Report

1. This report asks the Full Council to consider proposed changes to the following section of the Constitution:
 - Protocol 2A – Terms of Reference of the Wiltshire Pension Fund Committee
 - Protocol 6 – Complaints Procedure
2. The changes have been recommended by the Standards Committee.

Background

3. The Standards Committee has responsibility for oversight of the Council's constitution and making recommendations to Council.
4. The Standards Committee has established the Constitution Focus Group to review sections of the Constitution and present it with proposals to consider.
5. The Focus Group electronically considered changes to Protocol 2A in September 2024. The Standards Committee directly considered proposals to amend Protocol 6 in April 2024 before final consideration on 3 October 2024.
6. The Wiltshire Pension Fund Committee is a joint committee of Wiltshire Council and Swindon Borough Council. Wiltshire Council is the Administering Authority for purposes of the Pension Fund.
7. In February 2024, the Local Government and Social Care Ombudsman ([LGSCO](#)) and the Housing Ombudsman ([HO](#)) each published new Complaint Handling Codes.
8. The HO's 2024 Code became statutory from 1 April 2024, meaning that member landlords such as the council are now obliged to follow its requirements.
9. The LGSCO's 2024 Code is issued as "advice and guidance" for local councils in England under section 23(12A) of the Local Government Act 1974. This means that councils must consider the Code when developing complaint handling policies and procedures and when responding to complaints. If a council decides not to follow the Code, the LGSCO would expect it to provide a good reason for this.
10. The LGSCO encourages councils to adopt the Code as soon as they are able to, but it will start considering the Code as part of its processes from April 2026 at the earliest. This means that from then, when it investigates a complaint, the LGSCO will expect the relevant council to have adhered to the Code in terms of how the complaint was handled. The delay before the LGSCO begins enforcing its new Code is intended to give councils time to adopt its requirements into their working practices.

11. Examples provided by the LGSCO of when non-compliance will be permissible relate to temporary situations such as industrial action or a cyber-attack. It is therefore not feasible for the council to be non-compliant with the LGSCO's Code on a long-term basis.
12. The new Codes do **not** apply to complaints handled under the statutory adult social care or statutory children's complaints procedures, which have their own requirements set out in legislation.

Main Considerations

Protocol 6

13. The council already has a single Complaints Procedure (Protocol 6) that covers both complaints about the council's actions as a local authority, which are overseen by the LGSCO, and the council's actions as a landlord, which are overseen by the HO.
14. The council's complaints procedure involves two stages, with a response provided by the relevant service at Stage 1, and an independent investigation undertaken by the Complaints team at Stage 2. Following this, the complainant is able to request a review by the relevant Ombudsman if they remain dissatisfied.
15. Most of the changes required for compliance with the Ombudsmen's new Codes involve relatively small adjustments to our existing complaint handling practices.
16. The most significant change is an overall **reduction** in the time permitted for responding to complaints under the LGSCO at Stages 1 and 2. The amended timescales are set out below in bold:

Complaint stage	Wiltshire Council current practice (working days)	New LGSCO Code time limit (working days)
Complaint acknowledgement	2	5
Stage 1 response	20	10
Stage 1 extension	10	10
Stage 2 response	30	20
Stage 2 extension	10	20

17. As the table shows, under the LGSCO Code, services will have 10 fewer working days to provide complaint responses at Stage 1. The Complaints team will have 10 fewer days to provide responses at Stage 2 before using the extension, but due to a longer extension period, will have the same amount of time overall (40 working days).
18. Under the Codes, the timescale for responding to a complaint only commences once the complaint has been acknowledged. Complaints must be acknowledged within 5 working days of receipt, compared with the current practice of 2 working days. It

should be noted that complaints emailed to the Complaints team receive an immediate auto-response confirming receipt, but this does not represent the council's formal acknowledgment of the complaint. The subsequent formal acknowledgement indicates how the complaint will be handled, by whom and by what date.

19. Adapting to the reduced timescales therefore represents a significant challenge for teams involved in the complaint handling process – particularly services responding at Stage 1. Following direction from the Corporate Leadership Team (CLT), the council has been preparing to meet the new timescales from 15 October 2024 when it is proposed that they be adopted by Full Council. The Complaints team has been supporting services with more guidance and training on good complaint handling practices.
20. Performance against the new timescales will be closely monitored by the Legal and Governance Performance and Outcomes Board (POB) and will be reported to the Standards Committee in the 2024-25 Annual Complaints Report. In addition, CLT have asked relevant directors to implement and report against action plans to address any service issues identified in the 2023-24 Annual Complaints Report.
21. The only change to the timescales for responding to complaints under the Housing Ombudsman is an additional 10 working days for complaints at Stage 2. This provides consistency with the timescales required under the LGSCO Code:

Complaint stage	Wiltshire Council current practice (working days)	New HO Code time limit (working days)
Stage 1 response	20	10
Stage 1 extension	10	10
Stage 2 response	20	20
Stage 2 extension	10	20

Service requests and complaints

22. The Ombudsmen's Codes state the following:

1.2 A service request may be defined as: 'a request that the organisation provides or improves a service, fixes a problem or reconsiders a decision'.

1.4 A complaint may be defined as: 'an expression of dissatisfaction, however made, about the standard of service, actions or lack of action by the organisation, its own staff, or those acting on its behalf, affecting an individual or group of individuals.'

1.6 Organisations must recognise the difference between a service request and a complaint. This must be set out in their complaints policy. A service request is a request from a resident to the landlord requiring action to be taken to put something right. Service requests are not complaints, but must be recorded, monitored and reviewed regularly

5.2 ...It is not appropriate to have extra named stages (such as 'stage 0' or 'informal complaint') as this causes unnecessary confusion.

23. The current Complaints Procedure does define complaints as recommended under 1.4 but does not define service requests exactly as recommended under 1.2. It also refers on two occasions to “informal resolution”; a term which the Ombudsmen consider implies an additional stage of the complaints process and causes confusion for customers.
24. Therefore, in the version proposed, the recommended definition of a service request is provided, and references to “informal resolution” are replaced with the term “service requests”.

Time limit for escalating complaints

25. The Ombudsmen’s Complaint Handling Codes stipulate that customer requests for complaints to be escalated to Stage two must only be refused for reasons which are set out in the Complaints Procedure. At present, Protocol 6 does not include a time limit for complainants to make such requests following receipt of the Council’s Stage one response. This creates the potential for such requests to be received after an unreasonable long delay, with the Council being obliged to conduct a Stage two investigation. It is therefore proposed that a time limit of six months for such requests to be received (from the date of the Stage one response being issued) be added to the Procedure.

Protocol 2A

26. The Wiltshire Pension Fund Committee terms of reference (Protocol 2a) was last updated in July 2020, along with the Governance Compliance Statement, introduced under the Local Government Pension Scheme Regulations 2008.
27. Since that time a number of operational practices have changed in the way the Fund is governed. In particular, the Committee resolved to have more meetings of the full committee rather than exercise some functions through its established Investment Sub-Committee. Given the small size of the Committee with only seven elected Members it was not considered necessary or appropriate for specific functions to be exercised by a Sub-Committee. In the case of the Investment Sub-Committee, its recommendations in any case needed ratification by the full committee, adding unnecessary steps to any decision process.
28. As a result, additional meetings of the Committee have been scheduled to accommodate the further business being determined.
29. Changes have been proposed to:
- a) To remove all references to the Investment sub-Committee:
 - b) To ensure that all activities in the former Investment sub-Committee’s terms of reference are incorporated into the Committee’s terms of reference;
 - c) To reflect that the Committee meets more frequently under the new Committee meeting structure; And,
 - d) Other minor changes for clarity.

30. A further review of both of the Protocol and the Governance Compliance Statement will take place to consider relevant changes arising from the introduction of the Regulator's new general code of practice and the awaited Scheme Advisory Board's good governance review, when it is published.

31. The Governance Compliance Statement is not a constitutional document, and so responsibility for it being updated lies with the Wiltshire Pension Fund Committee.

32. The Wiltshire Pension Fund Committee was updated on the proposals at its meeting on 19 September 2024 and was content for them to move forward. It will provide further comment if appropriate at its meeting on 10 October 2024.

Overview and Scrutiny Engagement

33. The Constitution Focus Group includes a representative from Overview and Scrutiny.

Safeguarding Implications

34. There are no safeguarding implications.

Public Health Implications

35. There are no public health implications.

Procurement Implications

36. There are no procurement implications.

Equalities Impact of the Proposal

37. There are no equalities implications.

Environmental and Climate Change Considerations

38. There are no environmental implications.

Workforce Implications

39. There are no workforce implications.

Risks that may arise if the proposed decision is not taken

40. The terms of reference would be out of date from the recommended operation of the committee, and the complaints procedure would be out of date with necessary ombudsman codes.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

41. No risks have been identified if the proposed actions are taken.

Financial Implications

42. There are no financial implications.

Legal Implications

43. There are no additional legal implications.

Options Considered

44. Proposed changes to Protocol 2 could be delayed until further regulatory changes are enacted. However, this would leave the current constitution out of date from the current updated operations of the Committee.

45. In relation to Protocol 6, the council's procedures are required to be compliant with the HO code, and must have good reason to depart from the LGSCO Code. It is therefore not proposed to do so for either.

Conclusion

46. The proposed changes have been considered by the Standards Committee and recommended for approval by Full Council.

47. Any issues of numbering and formatting of the finalised documents will be updated following approval by Full Council.

Proposals

48. That the Council approve changes to the following parts of the Constitution:

- 1) Protocol 2A – Terms of Reference of the Wiltshire Pension Fund Committee
- 2) Protocol 6 – Complaints Procedure

Perry Holmes - Director, Legal and Governance (and Monitoring Officer)

Report Authors: Kieran Elliott, Democracy Manager (Democratic Services), Richard Bullen, Fund Governance Manager, Henry Powell, Democracy and Complaints Manager

Appendices:

Appendix 1 – Proposed changes to Protocol 2A

Appendix 2 – Proposed changes to Protocol 6

Background Papers

None