

Report of the Monitoring Officer – Constitutional issues and appointments

Committee Chairman: Cllr Nigel Woolcombe-Adams - Chairman of Constitution
Constitution Committee: Cllr Alan Gloak - Chairman of the Standards Committee; Cllr
Harvey Siggs - Cabinet Member for Resources (in relation to the Scheme of Members'
Allowances

Division and Local Member: N/A

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Monitoring Officer

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1. Summary

1.1 This composite report brings forward recommendations :

- (a) From the Standards and Constitution Committees for a proposed amalgamation of these Committees into a single Constitution and Standards Committee. These recommendations are for the Council to note and refer for consideration and decision by the new Council in May 2017;
- (b) From the Standards Committee in relation to code of conduct training for members of the new Council;
- (c) For amendments to the appointment of a Deputy Section 151 Officer following changes with the Finance and Property service,

The report also brings forward a brief report on progress with the review of the Members' Allowances Scheme being undertaken by the Joint Independent Remuneration Panel.

2. Recommendations

2.1 **Council is RECOMMENDED to:**

- (1) Note the recommendations from the Standards and Constitution Committees for the proposed amalgamation of the two Committees to form a single Constitution and Standards Committee and to refer them to the new Council for consideration in May 2017 – paragraphs 3.1.4(2) and 3.1.5 refer.**
- (2) Agree that all members are requested to undertake the Code of Conduct training being provided as part of the induction of the new Council and that all Group Leaders are asked to encourage their members to do so – section 3.2 refers.**
- (3) Appoint Martin Gerrish and Martin Young, Strategic Managers in Finance as Deputy Section 151 Officers in accordance with section 3.3 of this report.**

- (4) Note the progress with the review of the Scheme of Members' Allowances which will lead to the recommendation of the adoption of a revised Scheme to Council in July 2017 – section 3.4 of the report and Appendix A refers.**

3. Background

3.1 Proposed amalgamation of the Constitution and Standards Committees

3.1.1 As part of the current review of the Constitution, the Standards Committee has reviewed the Council's standards arrangements and in particular the continuing need for a stand-alone Standards Committee. Since 2011 and the change in the relevant legislation, the Council has retained a separate Standards Committee even though it is no longer required to do so. The Committee has continued to include co-opted non-voting members and its role has remained unchanged advising the Monitoring Officer on process matters in relation to member conduct and complaints. The elected members of the Committee also comprise the membership of Hearing Panels held on an 'as and when' required basis to consider possible breaches of the Code of Conduct. The Council has long had reservations about the current legislation applied to member conduct but there is no sign of any national review of the provisions.

3.1.2 The legal position can be summarised as follows:

- As stated above there is now no legal requirement for the Council to have a Standards Committee. However, all councils retain the ability to continue to appoint a Standards Committee as an 'ordinary' committee of the council. Any such committee must now be chaired by an elected member and co-opted members cannot have a vote if it is a decision-making Committee of the Council. Also the elected membership of the Committee is required to represent the political balance of the Council unless all councillors agree otherwise. The Council decided following the legislation to retain a Standards Committee, to include co-opted members (non-voting) as part of the Committee's membership, to waive the requirement for political balance of the elected membership, and to allow the Committee to appoint its own Chairman.
- The Council is required to appoint at least one Independent Person to advise the Monitoring Officer on complaints made against members. The Council has appointed an Independent Person and Deputy Independent Person to cover this requirement.

3.1.3 The Committee considered a commentary on our arrangements:

- Members agreed that retaining the Committee after the change in the legislation had been valuable to help the Monitoring Officer put in place appropriate processes and procedures in relation to standards of conduct and member complaints. Retaining co-opted members was considered appropriate to bring a degree of balance to the political membership of the

Committee even though legally their role is now restricted to a non-voting capacity.

- Now that well established processes and procedures for dealing with complaints are in place, the Committee's formal business has reduced significantly leading to infrequent meetings and the self-examination of whether retaining a stand-alone Standards Committee can continue to be justified. In the event that the Council decides not to retain a separate Standards Committee, the Monitoring Officer will need to have access to a group of members to review processes and procedures as and when required on behalf of the Council.
- The Committee accepted that irrespective of whether the Council retains a Standards Committee, the Monitoring Officer will continue to have access a group of elected members to form a Hearing Panel as and when required.
- The Committee agreed that the Independent Person and Deputy Independent Person appointed by the Council have been valuable to the Monitoring Officer when handling complaints against members and during the Hearing Panel processes. In addition they have regularly attended meetings of the Standards Committee. Given the legal status of these appointments, these must be retained irrespective of whether the Council retains a separate Standards Committee.
- The Committee were aware that meetings incur costs and therefore value for money is a key consideration when reviewing and changing structures. The aim must be to streamline our arrangements as far as is possible so as to achieve the best possible value for money but without compromising business need.

3.1.4 Options for the future:

(1) Leave the current arrangements unchanged:

The Committee concluded that maintaining a separate Standards Committee is not a viable option into the future as there is and will be insufficient business to be dealt with. However, for the reasons outlined above, the Monitoring Officer needs to continue to have access to a group of elected members for the reasons outlined.

(2) Amalgamate the Standards Committee with another Committee

This has been a common approach in other County Councils whose arrangements have been researched. In many cases member conduct and standards have been amalgamated with the Audit Committee function since the changes imposed in 2012. Less common has been amalgamation with another governance or constitution committee.

Having considered the options the Standards Committee's preferred option is still for the new Council to establish a single Governance & Standards Committee. This could have responsibility for:

- Standards of conduct by members – both the policy **and** to provide the membership of a Hearing Panel if required
- The Council's Constitutional arrangements in relation to governance and standards and to include including decision making, scrutiny, member and officer conduct, public meeting arrangements and various supporting protocols setting out procedures and expected / required behaviours.

The Committee considered that:

- Political proportionality requirements should not be applied to the elected membership of the new Committee so enabling all political groups to have equal representation as per the current Standards Committee
- The current non-voting co-opted members of the Standards Committee should be included within the membership of the new Committee;
- That the Chairman should be appointed by the Committee rather than the Council as is the case with the existing Standards Committee.

This option would:

- Ensure sufficient business for a single committee meeting 3 to 4 times a year and with the ability to be supported effectively by the Monitoring Officer, the County Solicitor and the Community Governance Team. In support of bringing the two committees together into one, the Committee noted that the Constitution Committee has also been subject to cancelled meetings over a period of time as a result of limited business.
- Bring together all key governance arrangements and conduct provisions within a single committee.
- Gives scope to involve co-opted members in a wider role offering independent advice on all relevant aspects of the Council's constitutional arrangements. This would bring an independent voice to support the aim to maximise the transparency of the Council's arrangements and support the wider public understanding of how the Council works.
- Provide consistency of membership between the Committee and hearing panels.
- Be cost effective – with a reduction in costs.

The above is the basis for the Committee's recommendations to the new Council for consideration in May 2017.

This was felt to be a preferred option to adding the functions of the standards committee and potentially the Constitution Committee to the functions of the Audit Committee. The latter is one of the Council's main committees and already has an expansive remit and busy meetings schedule ensuring that the Council operates within a framework of robust governance, risk management and control. The fear is that adding additional functions would potentially compromise the work of that Committee and the new functions would be lost

within the wide remit. It would also be difficult to include the Standards Committee's wishes in respect of the Committee membership and arrangements.

3.1.5 The Constitution Committee has also considered this issue on the back of the recommendation from the Standards Committee for a merger of the two Committees. By way of background we face a similar business situation with the Constitution Committee. Thanks to the work of this Committee, the Council has well-established constitutional arrangements in place and this has meant a significant reduction in the business of the Committee over the last 18 months. The Committee endorsed the proposed amalgamation of the two committees to create a single Governance and Standards Committee and in accord with the recommendations of the Standards Committee. The Committee was prepared to support the proposal for political proportionality to be applied to the elected membership of the single Committee on the basis that where a decision fails to achieve unanimous agreement at a meeting of the Committee then it should be a requirement for that decision to be referred to Full Council for consideration and approval.

3.2 **Code of Conduct training for members**

3.2.1 The Standards Committee reviewed the Code of Conduct training plans being prepared for the new Council. The Committee is strongly of the view that all members should attend this training early in the quadrennium reflecting the continuing importance of maintaining high standards of conduct by elected members. The recommendation to Council set out in para 2.1(2) reflects the fact that attending such training is not a legal requirement.

3.3 **Appointment of Deputy Section 151 Officers**

3.3.1 The Director of Finance and Performance has restructured his finance teams, reducing the number of strategic managers by two, and has taken steps to meet MTFP savings in his service areas. As a result he needs the flexibility to have two deputies to cover various regular meetings and to cover in his absence. The Director also holds the statutory role of Section 151 Officer and Council needs to formally approve the appointment of deputies who will undertake the statutory role in his absence. His deputies will be Martin Gerrish and Martin Young. Appendix E of the current Officer Scheme of Delegation refers to officers authorised to substitute for a Director. This section needs to be amended as below to reflect the change in officers as a result of the restructure.

3.3.2 Extract from the Officer Scheme of Delegation

Finance and Performance Director

In the event that the post-holder is unavailable or unable for any reason to exercise any and all powers given to this post, then the following officer(s) are authorised to exercise any and all such powers on behalf of the post-holder relating to any relevant legislation, Council policy framework and business needs:

Martin Gerrish – Strategic Manager, Governance, ECI and Corporate Services
Martin Young – Strategic Manager, Adults and Children's Services

Together with the following managers in respect of their areas of service responsibility:

Strategic Manager - County Solicitor (Honor Clarke)

Strategic Manager – Pensions Management (Stephen Morton)

Strategic Manager - Governance and Risk (Julian Gale)

Strategic Manager – Performance (Emma Plummer)

Section 151 Officer (of the local Government Act 1972) (Kevin Nacey)

Council appointed the Finance and Performance Director (Kevin Nacey) as the Council's Section 151 Officer. In the event that he is unavailable or unable for any reason to exercise any and all powers given to him as Section 151 Officer (Chief Finance Officer) pursuant to any legal provision or authority or under the Constitution of Somerset County Council, the Strategic Managers in Finance (Martin Gerrish and Martin Young) are authorised to exercise any and all such powers on his behalf.

3.4 Review of the Scheme of Members Allowances

- 3.4.1 Members will be aware of the review of the Scheme of Members' Allowances being undertaken by the Joint Independent Remuneration Panel. Attached as Appendix A is a progress report of the review to be noted by the Council.

4. Implications

4.1 Legal & Risk:

As set out in the report.

- 4.2 **Financial, equalities, sustainability and community safety implications:** If the recommendation to amalgamate the Constitution and Standards Committees is agreed by the new Council it will be likely that there will be some cost savings as a result of reduced Special Responsibility Allowance payments. There are no direct equalities implications arising from any of the proposals in this report. There are also no sustainability or community safety implications.

5. Background papers

- 5.1 None

Note: For sight of individual background papers please contact the report author