

Report of the Monitoring Officer – Appointments and Constitutional Matters

Cabinet Member: All

Division and Local Member: N/A

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1. Summary

- 1.1 This report sets out decisions on appointments and constitutional matters required to be made by the County Council at its annual meeting and deals with some other related issues. In particular the report reflects the outcomes of the recent County Council elections and the wishes of the new Administration in relation to the committee structure. The report also recommends for approval revised Contract Standing Orders.

2. Recommendation(s)

2.1 Council is recommended to:-

- (1) Support the Administration’s proposal to appoint Councillor David Fothergill as the Leader of the Council for 2017-21.**
- (2) Approve the County Council Appointments Schedule to this report - (Appendix A to follow), to include, as necessary, summary revised terms of reference, and operational arrangements including delegations for the Council and its committees – see section 3.2 for more detail.**
- (3) To reaffirm the dates already agreed for ordinary meetings of the full Council for the year as set out in section 3.3 of the report and the proposed dates for the remainder of 2018/2019 which will be included within Appendix A.**
- (4) Approve the revised Contract Standing Orders set out as Appendix B as recommended by the Constitution Committee from its April meeting.**
- (5) Delegate to the Monitoring Officer authority:**
 - (i) In consultation with the Group Leaders, to make in-year amendments to committee and other appointments which are the responsibility of the Council including those to be detailed in**

Appendix A – this delegation to last until May 2021. Where changes to committee appointments are required then appointments will be made in accordance with the wishes of the group leader. Other appointments will only be referred to Full Council for confirmation in the event that group leaders are not in agreement with the proposed appointment;

- (ii) In consultation with the Group Leaders and committee chairmen, to agree the detailed calendar of meetings of committees / sub-committees of the Council for 2017/18;**

- (6) To approve the payment of Special Responsibility Allowances (SRA) for any new equivalent SRA qualifying posts created in 1 above that fit within the existing SRA bandings scheme, pending the Council considering recommendations of the Joint Independent Remuneration Panel in relation to the review of the Members' Allowances Scheme in July 2017.**

3. Background

3.1 Democratic Arrangements

3.1.1 The Council at its annual meeting following the County Council elections is required to:

- (a) Elect the Leader of the County Council for a 4 year period;
- (b) Appoint committees and sub-committees for 2017/18, agree their size (in accordance with the statutory political balance on committee requirements), terms of reference and appoint members to serve on each;
- (c) Elect chairmen and appoint vice-chairmen of committees for 2017/18 (except the Officer Appeals Committee which appoints its own chairman);
- (d) Agree any amendments to the Constitution (including the Scheme of Delegation) required as a result of the decisions made in respect of (a) to (c) above;
- (e) Approve a programme of ordinary meetings of the full Council for the year;
- (f) Approve or agree arrangements to approve a calendar of meetings for committees of the Council (noting that the Leader will agree and inform the Council of the calendar of meetings for the Cabinet).

This report covers all of these essential requirements.

3.1.2 The results of the 2017 County Council elections resulted in the following political balance on the Council.

- Conservative = 35 members
- Liberal Democrats = 12 members

- Independents = 3 members
- Labour = 3 members
- Green = 2 members

The Conservative group will therefore form the Council's Administration from 2017 – 21. By the time of the Council meeting we will have clarity on the Council's political groupings and this will then form the basis of the proposals to follow in Appendix A.

- 3.1.3 For the benefit of new members the Council currently operates a Leader and Cabinet model of governance in accordance with legislative requirements. The Council has operated this model of governance since 2001. The Conservative Administration proposes to continue this model of governance preferring this to the main alternative model of a committee system model of governance. The third option – the directly elected mayor model - is not considered appropriate for the Council's circumstances.
- 3.1.4 The Leader and Cabinet model places the majority of functions carried out by the Council as the responsibility of a small number of councillors operating as an 'Executive' or 'Cabinet'. The Leader has responsibility for agreeing the Cabinet arrangements and the executive decision-making arrangements across the Council. It is anticipated that the Leader once appointed by the Council today will appoint the Cabinet later today via a Leader's decision.
- 3.1.5 The key role of full Council in a Leader / Cabinet model is to:
- Approve the Council's budget and key policies;
 - Appoint the Leader and committees of the Council – which is one of the main tasks of today's meeting.
- 3.1.6 Following the County Council's elections the new Administration's emerging proposals provide for the continuation of the Leader / Cabinet arrangements. For the sake of continuity it is proposed at this stage to retain the existing committee structure largely unchanged. The Leader / Cabinet model offers considerable flexibility and is considered more appropriate to the Council's circumstances and operating model. The detail of the proposals for appointments and changes to the committee structure will follow in Appendix A together with the final calculations for committee places. Most importantly the Administration is recommending the appointment of Cllr David Fothergill as Leader of the Council for 2017-21 hence the recommendation at paragraph 2.1 (1).
- 3.1.7 At this stage, the only changes proposed to the committee structure are to bring the Constitution and Standards Committees together into a single Constitution and Standards Committee as recommended by the Constitution and Standards Committees of the previous Council. Further details of this proposal will be brought before the Council in Appendix A.

3.2 Appointments Schedule (to follow):

3.2.1 Appendix A will set out arrangements to enable the Council to meet the requirements of the Local Government and Housing Act 1989 which requires the application of certain rules to the appointment of council committees.

The Schedule will provide for:

- (a) The appointment of the Leader of the Council.
- (b) The apportionment of places to the political groups across the Council's qualifying committees under the Local Government and Housing Act 1989 in accordance with the size of the political groups.
- (c) The appointment of members to the committees of the Council.
- (d) The appointment of chairmen and vice-chairmen of the committees where appropriate.
- (e) Summary revised terms of reference and operational arrangements for its committees (as necessary) and associated revisions to the Scheme of Delegation for the Council and its committees.
- (f) Key Council appointments to internal groups, joint bodies / partnerships and outside bodies. The majority of such appointments rest with the Leader of the Council. The Leader intends to delegate authority to the Monitoring Officer to confirm these appointments and any changes to them in agreement with the Leader and following consultation with the other group leaders.
- (g) Dates of Full Council meetings through to 2019.

3.2.2 Appendix A will include any immediate changes required to the Constitution as a result of decisions to be taken. Further amendments to the Constitution are likely to follow to the July 2017 meeting as part of the annual review of the Constitution which will be reported to that meeting.

3.2.3 The recommendations include a delegation to the Monitoring Officer to make in-year changes to committee appointments in the event of a vacancy occurring and to make changes to appointments to internal, partnership and outside bodies where requested and subject to the conditions being met.

3.3 Council meeting dates

3.3.1 In May 2016 Council agreed the following dates for Full Council meetings:

2017

19 July

29 November

2018

21 February (Budget Meeting)

28 February (Budget Meeting reserve date)

16 May (Annual Meeting)

These dates remain as agreed. Dates projected through to May 2019 will be set out in Appendix A for approval.

- 3.3.2 At this stage there are draft dates in the diary for Cabinet and Committee dates through to the end of 2017. Once the Council meeting today approves the committee structure then work can begin with group leaders and committee chairs to finalise and extend the meetings calendar through to the end of 2017/18. A delegation is included in the recommendations to enable this work to be taken forward.

3.4 Contract Standing Orders

- 3.4.1 The Contract Standing Orders form part of the Council's Constitution and are the legal and procedural framework within which the Council manages its third party spend through the procurement of goods, services and works. It must be kept up to date and compliant with the relevant legislation and is a vital document guiding the work of members and officers.

- 3.4.2 The Constitution Committee in April 2017 considered and agreed for recommendation to the Council refreshed and rewritten Contract Standing Orders (the "Rules"). The amendments are intended to incorporate best practice in relation to procurement and contract management. They also include some general housekeeping amendments to reflect procurement legislation issued in 2015, known as the Public Contracts Regulations (the "Regulations") and relevant case law that is developing in this area. I appreciate that new members of the Council have not been involved in the review and are therefore taking these recommendations on trust to a certain extent. I can reassure all members that the Constitution Committee gave the new draft Rules a thorough consideration before recommending them to the Council for approval. It has not been possible to show tracked changes in Appendix B because it is a complete re-write rather than an amended document but the current version can be viewed at:
<http://www.somerset.gov.uk/organisation/key-documents/the-councils-constitution/>

- 3.4.3 In summary the revised Rules provide for the following:

1. a restructuring of the Rules to be more reader-friendly with the content adjusted to provide greater clarity for officers;
2. a more collaborative approach between commissioners and the Commercial and Procurement Team, which has resulted in a re-written set of procedures;
3. greater clarity around the definition of an exemption from the Rules versus a waiver and a more streamlined process for lower value waivers;
4. a more robust approach where there is a breach of the Rules;
5. raising the thresholds but having a tighter grip on the processes that must be followed at the various financial levels;
6. ensuring the content follows the most contemporary developments in

7. procurement and contract management best practice and legislation; a more comprehensive approach to the various stages of the procurement and commissioning cycle, including providing advice to officers in relation to pre-procurement and contract management activities; and
8. greater clarity to officers on issues related to procurement, but not previously given coverage within the Rules, such as State Aid and development agreements.

3.4.4 The Rules themselves include a requirement for them to be reviewed on an annual basis and the current set originates from October 2013. Although there had been updates during the intervening period it was clear that a more formal review was required to reflect the changing environment of the Council and bring the Contract Standing Orders into line with contemporary best practice, based on a comprehensive review of a number of other local authorities' (such as Cornwall, Devon, Dorset, Hampshire, Norfolk and Oxfordshire County Council's) Rules. The review was undertaken by Commercial and Procurement Services in collaboration with finance, information governance, legal and commissioning managers and the refreshed version was presented to and received endorsement from both the Commissioning and Governance Boards prior to consideration by the Constitution Committee.

3.4.5 The review identified a number of areas for improvement as detailed in 3.4.3 above. The purpose of the improvements are:

1. to give greater clarity to how Council officers must conduct their procurement activities;
2. to remove certain onerous restrictions and procedures;
3. to simplify certain processes;
4. to ensure that Officers conduct their procurement activities in a way that ensures compliance with the Rules and the Regulations.

3.4.6 **Fundamental changes**

- **Exemptions and waivers**

- to align the rules with the list of permitted exemptions held by Finance and clarify which activities are exempt and which require a formal waiver;
- to include a more specific list of permitted waiver grounds;
- to provide flexibility in the waiver procedure for over EU Threshold procurements and to introduce a streamlined waiver procedure with lower and higher threshold approval procedures; and
- to report higher value waivers through Governance Board.

- **Breaches**

- to strengthen our approach to breaches of the rules;
- to provide enforceable repercussions for breaches of the rules that have genuine consequences; and

- to report breaches through Governance Board.

- **Thresholds**

- to increase the thresholds and give greater distinction between the procurement process requirements at the various threshold levels; and
- to step back from previous Council decision taken regarding the Council’s application of the Transparency Code on the basis of what is reasonable for the Council. This would facilitate our taking a more proportionate approach to our procurement activity, which the Commercial and Procurement Team (CPT) will be better able to support with fewer resources.

	Current		Proposed	
	Goods and Services	Works	Goods and Services	Works
Minimum of one quote	Up to £1,000		Up to and including £25,000	
Three written quotes	Between £1,000 and £10,000		Over £25,000 but less than £75,000	Over £25,000 but less than £150,000
Open tendering	Between £10,000 and £130,000	Between £25,000 and £130,000	Over £75,000 but less than the EU Threshold	Over £150,000 but less than the EU Threshold
EU compliant tendering	Over £130,000		At and above the EU Threshold (£164,176)	At and above the EU Threshold (£4,104,394)

3.4.7 It is important to note that there are specific procedures that Officers must follow at each of the threshold levels set out above, including at the lowest threshold. Officers will be required to seek existing contractual arrangements through which they can meet their needs before they will be able to actively seek a minimum of one quotation and in doing so, they must demonstrate best value.

3.5 Members’ Allowances

3.5.1 The Joint Independent Remuneration Panel that advises the Council on members’ allowances will meet in June to review changes to the Council’s democratic arrangements and make recommendations for changes to the July Council meeting.

3.5.2 Pending this review it is recommended that any new equivalent SRA qualifying posts created that fit within the existing SRA bandings scheme should be paid the appropriate rate of SRA from the date of appointment. Any further adjustments can be picked up as part of the review.

4. Consultations

4.1 There has been consultation with members of the outgoing Council on possible constitutional changes at relevant committee meetings as at Full Council. Following the election there have been discussions with the emerging political groups on relevant constitutional matters.

4.2 In respect of the Contract Standing Orders consultation took place with a number of Council officers including representatives of the Commercial and Procurement, Information Governance, Corporate Finance, Corporate Records and Legal Services teams, on the basis that these were the officers and teams that will be the most affected and/or are those best able to offer advice and guidance in relation to specific sections of the document to be covered.

5. Legal Implications

5.1 These are as set out in the report. .

6. Impact Assessment

6.1 The Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no direct impacts of these recommendations on the provision of services. There are no direct impacts on sustainability, health and safety, community safety or privacy aspects as a result of this proposal.

7. Financial Implications

7.1 The immediate financial implications will relate to any changes to the democratic arrangements to be outlined in Appendix A. These will relate to posts qualifying for Special Responsibility Allowance payments. The proposals to be considered by the Council, if agreed, are likely to result in a small level of savings as a result of the reduction of 1 SRA post. This is pending the review of the Members' Allowances Scheme which will be brought to Council in July for consideration.

7.2 In relation to the Contract Standing Orders, the proposed reduction in the thresholds is made on the basis of analysis of procurements completed via the Council's electronic tendering system covering the period of 01 April 2016 to date. What the analysis looked at was the number of contracts (in percentage terms) procured in accordance with the thresholds and their respective procurement processes under the current Rules as against the proposed

thresholds. What the analysis showed was that nearly three-quarters of the contracts that we currently procure in accordance with the full rigour of the Public Contracts Regulations 2015 are done so unnecessarily due to the fact that the current threshold, which necessitates the application these procedures is significantly lower than that set by the European Commission as the EU Threshold. The revised thresholds seek to redress that balance and would see something in the region of 50% of our contracts being advertised to the market, meaning that those that would be dealt with under a quotation process would be made available to more SME and local suppliers. The financial implications are twofold: that greater access to our contracts by SME and local suppliers means a positive impact on the local economy, and that the Commercial and Procurement team would be able to redirect their efforts to procurement activities against which the team would be able to deliver greater benefit.

8. Background Papers

8.1 None

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