

From: Gary Cooke, Cabinet Member for Corporate and Democratic Services
Ben Watts, General Counsel

To: **County Council – 16th March 2017**

Subject: Constitutional Amendments to reflect recent decisions of the County Council

Classification: **Unrestricted**

Summary:

The purpose of this report is to amend the Constitution to reflect the recent changes to chief officer roles as agreed by the full council.

Recommendation:

That the County Council approve the changes to the Constitution as detailed in paragraph 3 of the report.

1. Introduction

- 1.1 The Constitution has served the Council well since it was first written in 2001. It has gone through a significant number of iterative versions driven by ad-hoc legislative, regulatory changes required of all local authorities and the changes that have been consequential from decisions that are taken by the Council.
- 1.2 The process for making changes to the Constitution is set out in Article 14.2:

“Changes to the Articles of the Constitution must be approved by the full Council after consideration of the proposal by the Selection & Member Services Committee and appropriate public consultation. Changes to factual references or changes required by a change in the law will be made by the Monitoring Officer. Changes to the Appendices of the Constitution will be published by the Monitoring Officer to reflect decisions duly taken by the Council, Leader, Cabinet, a Committee or Senior Officer.”
- 1.3 This process rightly reserves to Members any changes to the Articles of the Constitution which are the basic rules governing the Council’s business. It requires any amendment to the Articles to be approved by the full Council after consideration of the proposal by Selection and Member Services Committee.
- 1.4 At the County Council meeting on 26 January 2017, members made decisions that affected the management structure of the council and a number of the designated officer posts in Article 11 of the Constitution. This

paper proposes the consequential changes that are required to give constitutional effect to the decision taken by Members in January. At the same time, Article 11 is also amended to reflect changed job titles and responsibilities as a result of previous decisions taken by the County Council.

- 1.5 The paper also provides an update on work that will be undertaken over the course of the next year to review the entire Constitution. It is recognised that, whilst legally sound, the document is long and could benefit from a review to consider what improvements could be made to benefit those who might read it, including elected members, our partners, residents and staff.

2. Financial Implications

- 2.1 There are no financial implications to the constitutional changes as outlined in this report.

3. Proposed Amendments to the Articles of the Constitution

- 3.1 At the County Council meeting on 26 January 2017, Members approved two new Corporate Director posts to deliver the statutory functions of the Director of Adult Social Services and the Director of Children's Services.
- 3.2 The constitutional provisions for these two roles are set out in Articles 11.6 and 11.7 of the Constitution.
- 3.3 Proposed changes to Article 11.6 and 11.7 to reflect the decision are marked in red on Appendix 1 to this report. These include factual changes and some amendments that are consequential to the decision that was taken, which were reflected in the County Council paper and the job descriptions for these new roles.
- 3.4 Article 11.3 also includes proposed changes marked in red on Appendix 1 to this report. These extend the responsibilities placed on the monitoring officer to ensure good governance around the Council's portfolio of companies. Responsibilities are also extended to reflect decisions made by the Council in relation to commissioning activity and the creation of Invicta Law.
- 3.5 Other amendments to Article 11 are proposed to reflect changed job titles and reporting lines as a result of the decisions of the County Council on 26 January 2017 and 11 December 2014 (Facing the Challenge: Commissioning Framework). Again, these changes are marked in red on Appendix 1 to this report.
- 3.6 The Selection and Member Services Committee endorsed the above changes at their meeting on 1st March 2017.
- 3.7 By way of update, given the proposed changes above it is important to apprise members of the interim arrangements that have been put in place to facilitate a managed transition to the new structure. The recruitment process leading to appointment for the two new Corporate Director roles has commenced. Patrick Leeson and Andrew Ireland will continue in their current leadership roles to provide continuity and certainty for staff during the recruitment period. Accordingly, Andrew Ireland will retain the responsibilities

in both Article 11.6 and 11.7 until any appointee is in post. The current Accountability Protocol outlined in Appendix 2 Part 8 of the Constitution will therefore remain in place for the time being.

4. Modernising the Constitution

- 4.1 Over the course of the next nine months, the General Counsel and Head of Democratic Services are carrying out a complete review of the Constitution. This work will focus on making the Constitution easier to understand and use for those who might read it. The General Counsel and Head of Democratic Services have been reflecting upon conversations with Members and Officers about the possibility for improvements and changes.
- 4.2 Members have expressed a strong view that they would like to have a constitution that is dynamic and capable of moving better with the organisation's changing needs. This review process is intended respond to that concern and to remove the need for future wholesale contemplation of the constitution and will allow changes to be made more quickly.
- 4.3 Although the requirement to have a Constitution, as well as a significant degree of what should be included in it (e.g. members' allowance scheme, procedure rules etc) is set out through legislation, the Constitution should be more than just an organisational rule book. It should also reflect the character and culture of the council and support the effective operation of Council business. It must be locally driven, and be fit for purpose to support KCC in the delivery of its objectives. As such, it should be, and has been periodically reviewed and updated to ensure it is fit for purpose to meet the Council's requirements, as well as any statutory requirements.
- 4.4 Importantly, the Constitution has not been significantly reviewed and updated since KCC began the process of becoming a Strategic Commissioning Authority. Whilst the move to an operating model that focusses on commissioning does not fundamentally change the formal decision making process, committee procedures or wider statutory requirements set out in the Constitution, it has changed KCC business model in important ways. Similarly, the member role in commissioning has matured significantly. The roles of bodies like the Commissioning Advisory Board have been important in driving forward the member role in commissioning.
- 4.5 The operating environment for the council has changed significantly in recent years. That environment and reducing budgets has led to an increased focus on new operating models and different types of service delivery. Our increasing commercial focus has changed the structure of the council's services, through the creation of trading vehicles like GEN2, Invicta Law and the Business Service Centre (BSC). It has also put in place new accountability structures like Shareholder Boards to ensure there is appropriate democratic oversight of company performance.
- 4.6 The above examples highlight how the operating model has changed at a strategic level. Reviewing the Constitution is necessary to reflect the reality of the operating model of the Council as it is in practice, but also to protect the interests of the Council, its Members and Officers.

- 4.7 The review of the Constitution will include careful consideration of how the document is presented to address specific concerns about the length and usability of the document.
- 4.8 Any amendments to the Articles of the Constitution will continue to be approved by the full Council after consideration of the proposal by the Selection & Member Services Committee. The County Council will also receive regular updates in relation to the progress of the review including a final report in December 2017.

Recommendation:

That the County Council approve the changes to the Constitution as detailed in paragraph 3 of the report.

5. Contact details

Report Author and Relevant Director:

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Appendix 1

Proposed changes are marked in red.

Article 11 – Officers

11.1 Management Structure

- (1) **General.** The Council engages those officers it considers necessary to carry out its functions.
- (2) **Structure.** The overall management structure is determined by the Council on the advice of the Head of Paid Service and the Leader. The Head of Paid Service reports to the Cabinet and the Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers. A description of the overall directorate structure of the Council showing the management structure and deployment of officers is set out at Appendix 8.
- (3) **Chief Officers.** The most senior posts in the structure are designated as Chief Officers within the terms of the Local Government Acts; these are set out in Appendix 8. The most senior officer is the Head of Paid Service
- (4) **Appointment of Officers.** The Head of Paid Service is appointed by the full Council on the recommendation of the Personnel Committee. Other Senior Managers (Chief and Deputy Chief Officers in terms of the Local Government Act 1972) are appointed by the Personnel Committee acting on its behalf. Appointment of all other officers is delegated by the Council to Senior Managers. The recruitment, selection and dismissal of officers will comply with the Personnel Management Rules set out in Appendix 2.
- (5) **Head of Paid Service, Monitoring Officer, Chief Finance Officer, Director of Adult Social Services and Director of Children's Services.** The Council will designate officers to act as each of the following:
 - (a) Head of Paid Service (Corporate Director Strategic & Corporate Services)
 - (b) Monitoring Officer (~~General Counsel Director of Governance & Law~~)
 - (c) Chief Finance Officer (Corporate Director of Finance & Procurement)
 - (d) Director of Adult Social Services (~~Corporate Director Adult Social Care and Health Corporate Director Social Care, Health & Wellbeing~~)
 - (e) Director of Children's Services (~~Corporate Director Children, Young People and Education Corporate Director Social Care, Health & Wellbeing~~)

The officers designated are listed in Appendix 8 and will have the functions described in Article 11.2–11.7 below.

11.2 Functions of the Head of Paid Service

- (1) The core roles of the Head of Paid Service are:

- (a) overall corporate management and operational responsibility (including overall management responsibility for all staff **including Chief Officers**)
 - (b) the provision of professional advice to all parties in the decision making process (the executive, overview and scrutiny, full council and other committees)
 - (c) together with the Monitoring Officer, responsibility for a system of record keeping for all the local authority's decisions (executive or otherwise)
 - (d) representing the council on partnership and external bodies (as required by statute or the council)
 - (e) arrangements for internal control and the inclusion of the Annual Governance Statement in the annual accounts.
- (2) The Head of Paid Service will report to the Council on:
- (a) the manner in which the discharge by the authority of its functions is co-ordinated
 - (b) the number and grades of staff required by the authority for the discharge of its functions
 - (c) the organisation of the authority's staff
 - (d) the appointment and proper management of the authority's staff.

11.3 Functions of the Monitoring Officer

The Monitoring Officer will:

- (1) Maintain an up-to-date version of the Constitution and will ensure that it is widely available for inspection by Members, officers and the public.
- (2) After consulting with the Head of Paid Service and the Chief Finance Officer, report to the full Council (or to the Leader or Cabinet in relation to an executive function) if he considers that any proposal, decision or omission would give, is likely to give, or has given, rise to a contravention of any enactment or rule of law, or any maladministration or injustice. Such a report has the effect of stopping the proposal or decision being implemented until the report has been considered.
- (3) Contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (4) Receive complaints relating to alleged breaches of the adopted Code of Conduct and to process complaints in accordance with the adopted Arrangements for dealing with Code of Conduct Complaints.
- (5) Ensure that records of executive decisions, including the reasons for those decisions and relevant officer reports and background papers, are made publicly available.

- (6) Provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Members.
- (7) Ensure appropriate governance for the council in the execution of its role as a shareholder of its portfolio of companies
- (8) Contribute to the corporate management of the Council, in particular through the provision and commissioning of professional legal advice.

11.4 Functions of the Chief Finance Officer

The Chief Finance Officer will:

- (1) After consulting with the Head of Paid Service and the Monitoring Officer, report to the full Council (or to the Leader or Cabinet in relation to an Executive function) and the Council's external auditor if he considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.
- (2) Have responsibility for the administration of the financial affairs of the Council.
- (3) Maintain an adequate and effective internal audit.
- (4) Contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (5) Provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Members and will support and advise Members and officers in their respective roles.
- (6) Provide financial information about the Council to Members of the Council, the media, members of the public and the community.

11.5 Duty to provide sufficient resources to the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer

The Council will provide the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer with such staff, accommodation and other resources as are, in their opinion, sufficient to allow their statutory duties to be performed.

11.6 Functions of the Director of Adult Social Services

- (1) The Director of Adult Social Services is known in Kent as the **Corporate Director Adult Social Care and Health** ~~Corporate Director Social Care, Health & Wellbeing~~.
- (2) The functions of the Director of Adult Social Services include:
 - (a) Providing accountability for assessing local needs and ensuring availability and delivery of a full range of quality adult social services
 - (b) Providing professional leadership, including workforce planning

- (c) Championing the rights of adults with social care needs and their carers in the wider community, including proactive and person-centred services
- (d) Leading the implementation of standards to drive up the quality of care
- (e) Promoting local access and ownership and driving partnership working to delivering a responsive whole system approach to social care
- (f) Delivering an integrated whole systems approach to supporting communities, in particular by working closely with the Director of Children's Services to support individuals with care needs through the different stages of their lives
- (g) Promoting social inclusion and well-being to deliver a proactive approach to meeting the care needs of adults in culturally sensitive ways
- (h) Discharging all statutory obligations, requirements and responsibilities on behalf of the council regarding the safeguarding and protection of vulnerable adults
- (i) Ensuring that the obligations and responsibilities at (h) above are complied with by the directorate as well as internal and external commissioned providers.
- (j) Immediately notifying the Head of Paid Service and Monitoring Officer in relation to a failure to discharge statutory obligations, requirements and responsibilities by the Corporate Director, the directorate or an internal or external commissioned provider
- (k) Ensuring that appropriate training is in place for all staff within the directorate around discharging statutory obligations and statutory guidance relating to vulnerable adults and that appropriate contractual provisions are in place to apply the same requirement to internal and external commissioned providers.
- (l) Implementing such working arrangements as are necessary with the Corporate Director Children, Young People and Education and Lead Cabinet Members to ensure that statutory compliance is achieved and any overlaps are managed effectively and in compliance with legislation and best practice.

11.7 Functions of the Director of Children's Services

- (1) The Director of Children's Services is known in Kent as the **Corporate Director Children, Young People and Education**. ~~Corporate Director Social Care, Health & Wellbeing~~
- (2) The functions of the Director of Children's Services include:
 - (a) professional responsibility and accountability for the effectiveness, availability and value for money of all local authority children's services;
 - (b) leadership both within the local authority to secure and sustain the necessary changes to culture and practice, and beyond it so that services

improve outcomes for all and are organised around children and young people's needs; and

(c) building effective partnerships with and between those local bodies, including the voluntary and community sectors, who also provide children's services in order to focus resources (financial, human, physical or any other) jointly on improving outcomes for children and young people.

(d) Discharging all statutory obligations, requirements and responsibilities on behalf of the council regarding the safeguarding and protection of vulnerable young people between the ages of 0 and 25.

(e) Ensuring that the obligations and responsibilities at (d) above are complied with by the directorate as well as internal and external commissioned providers.

(f) Immediately notifying the Head of Paid Service and Monitoring Officer in relation to a failure to discharge statutory obligations, requirements and responsibilities by the Corporate Director, the directorate or an internal or external commissioned provider

(g) Ensuring that appropriate training is in place for all staff within the directorate around discharging statutory obligations and statutory guidance relating to vulnerable adults and that appropriate contractual provisions are in place to apply the same requirement to internal and external commissioned providers.

(h) Implementing such working arrangements as are necessary with the Corporate Director Adult Social Care and Health and Lead Cabinet Members to ensure that statutory compliance is achieved and any overlaps are managed effectively and in compliance with legislation and best practice.