

**Manchester City Council
Report for Resolution**

Report to: Constitutional and Nomination Committee – 2 October 2019
Council – 2 October 2019

Subject Review of the Constitution of the Council

Report of: City Solicitor

Summary

To enable the Constitutional and Nomination Committee to consider and the Council to adopt proposed amendments to the Constitution of the Council.

Recommendation – Constitutional and Nomination Committee

The Constitutional and Nomination Committee is requested to note and recommend that the Council agree the recommendations below.

Recommendations - Council

The Council is requested to

1. Agree to suspend Procedural Rule 25.1 that relates to decisions made within the last six months
 2. Adopt, subject to 3 below, the attached revised Sections of the Constitution of the Council, namely:
 - a) Part 2
 - b) Part 3: Sections A, B, C and F
 - c) Part 4: Sections A, B, D and E
 - d) Part 5
 - e) Part 6: Sections B, C, E, F and G
 - f) Part 8
 3. Readopt the remainder of the Constitution
 4. Note in relation to Part 3 of the Constitution that responsibility for the discharge of executive functions and the delegation of such responsibility rests with the Leader of the Council and that the recommended delegations of executive functions set out in Part 3 (Sections A and F) are for the information of the Council only.
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Wards Affected: All

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Background Documents (available for public inspection):

- Constitution of the Council – as amended in May 2019 and October 2018;
- Report of the Deputy Chief Executive to Council – Draft Code of Corporate Governance – 30 January 2019;
- Report of the Deputy Chief Executive and City Treasurer to Audit Committee – Review of Effectiveness of Internal Audit – 15 April 2019;
- Report of the City Solicitor and Interim Director of HROD to Standards Committee – Review of Member/Officer Relations Protocol – 13 June 2019;
- Report of the City Solicitor to Standards Committee – Planning Protocol – 13 June 2019; and
- Reports (3) of the Chief Executive to Personnel Committee – Senior Management Capacity – 26 June 2019.

Background

- 1.1 Section 9P of the Local Government Act 2000, requires the Council to prepare and keep up-to-date a Constitution.
- 1.2 The City Solicitor is required to monitor and review the operation of the Constitution on an on-going basis and, where necessary, bring forward amendments to the Council. This report details certain matters that have arisen since the Council considered the full review of the Constitution set out in the City Solicitor's report to the Council meeting on 3 October 2018 and the interim review in May 2019. Attached to this report, and summarised below, are revised versions of certain sections of the Constitution that the City Solicitor brings forward for approval. New wording appears in bold text in the attached revised sections.
- 1.3 It should be noted that under the Leader and Cabinet form of executive governance, responsibility for the delegation of executive functions, including those local choice functions which the Council has designated as executive functions, does not rest with the Council, but is the responsibility of the Leader. The Leader may determine to exercise executive functions personally or to delegate their discharge to the Executive, a Committee of the Executive, an Executive Member, an area committee or an officer of the Council (without prejudice to the Leader's ability to exercise such functions personally). The Leader has approved the in-year changes to delegation of executive functions set out in the attached revised sections of the Constitution. Consequently, the recommended delegations of executive functions set out in Part 3: Sections A and F of the Constitution are for the purpose of information only; recommended delegations of non-executive functions set out in those sections remain, however, a matter for the Council.

Part 2 of the Constitution – Articles

- 2.1 Following discussions at Standards Committee it is proposed that approval of the Council's whistleblowing policy should rest with the Audit Committee as it is considered this policy aligns more closely with the remit of the Audit Committee. The 'Our Manchester Industrial Strategy' has been added to the Policy Framework in Article 4

Part 3 of the Constitution – Responsibility for Functions

- 3.1 A number of proposed changes have been made to:
 - Section A ("Responsibility for Local Choice Functions");
 - Section B ("Responsibility for Executive Functions");
 - Section C ("Council (Non-Executive) Functions"); and
 - Section F ("Scheme of Delegation to Officers")

of Part 3 ("Responsibility for Functions") of the Constitution. These proposed changes primarily result from the changes to the Council's senior management structure and the realignment of senior management portfolios, as detailed in

the Chief Executive's three reports to the 26 June 2019 Personnel Committee regarding senior management capacity. At that meeting the Committee noted that the City Solicitor would report to Council on the required amendments to the Constitution arising as a result of the revised arrangements set out in the proposals.

- 3.2 Some additional proposed amendments have also been made to Part 3 of the Constitution to reflect changes to legislation, provide clarity in respect of some existing delegations, for consistency and deal with a limited number of identified omissions from the Scheme of Delegation. The posts of Deputy City Treasurer and Director of Planning, Building Control and Licensing have been moved from Chapter 3B to Chapter 3A primarily to enable these post holders to exercise delegations in relation to management of their departments.

Part 4 – Rules of Procedure

- 4.1 It is proposed to make changes to the Council Procedure Rules (Part 4 Section A) to clarify and to simplify the rules relating to questions at Council, in particular who can be asked questions relating to Joint Authorities and Joint Committees. Rule 24 is deleted and Rule 23 amended to provide that questions about any matter which relates to the work of the Greater Manchester Combined Authority, the Greater Manchester Transport Committee or the Greater Manchester Police and Crime Panel may be addressed to the Leader of the Council or a member of the Executive (as appropriate) under existing Rule 23.2 (rather than to the "nominated spokesperson" of the joint authority or joint committee as previously provided for by Rule 24). Rule 13.4 concerning the business of ordinary Council meetings is amended accordingly.
- 4.2 The Access to Information Procedure Rules in Section B of Part 4 are proposed to be amended to clarify that the City Solicitor should identify the relevant Scrutiny Committee for the purposes of urgent decisions.
- 4.3 Minor Changes are proposed to the Executive Procedure Rules (Part 4 Section D of the Constitution) to clarify the position regarding reports from Scrutiny Committees to the Executive and to remove the requirement for a standing item for such reports in order to reflect the current practice that such reports are taken to the Executive as and when issued.
- 4.4 It is proposed to amend the Scrutiny Procedure Rules (Part 4 Section E) for clarification and to align with current practices to make it clear that the Chair of any Scrutiny Committee may call-in a decision for scrutiny and that the Chief Executive shall notify the chair of the relevant scrutiny committee of a call-in before the item is placed on the agenda for the next relevant scrutiny committee meeting

Part 5 – Financial Procedures

- 5.1 It is proposed to amend Part 5 of the constitution throughout to update out of date references, to reflect statutory changes and name changes to senior

officer roles. All changes to Part 5 have been made in accordance with instructions received from the Deputy Chief Executive and City Treasurer.

- 5.2 Section A (“Status of Financial Regulations”) Paragraph 6 is proposed to be amended by the introduction of additional text to strengthen requirements to declare and review conflicts of interest.
- 5.3 Changes are proposed to Section C (“Policies, Risk Management and External Arrangements”) to add to the remit of the Audit Committee the review and approval of the Internal Audit Strategy and Annual Audit Plan in paragraphs 41 and 42.
- 5.4 Section D (“Financial Systems and Procedures”), Chapter 1 (General) is proposed to be amended as follows:
 - In Paragraph 36 by the addition of an additional approval requirement in relation to release of funds approved in the budget but not yet allocated to departmental cash limit.
 - In Paragraph 48 by the inclusion of references to capital projects and project officers.
- 5.5 Section D (“Financial Systems and Procedures”), Chapter 2 (Accountancy) is proposed to be updated:
 - By the addition of reference to timescales set by the Deputy Chief Executive and City Treasurer in Paragraph 10.
 - to include reference to accounting policies being reported to the Audit Committee in Paragraph 41
- 5.6 Chapter 3 of this Section (Income and Expenditure) is proposed to be updated to set out roles and responsibilities in relation to money laundering and in relation to Council’s Anti-Fraud Policy and Anti Bribery and Criminal Facilitation of Tax Evasion Policy.
- 5.7 Minor changes have been made to Section D (“Financial Systems and Procedures”), Chapter 4 (Assets) including adding to the responsibility of all Chief Officers and Heads of Service the requirement that Items lost or stolen must be promptly reported to the Council’s in-house Insurance and Claims Service.
- 5.8 A change is proposed to the Contract Procurement Rules in Section E of Part 4 to the Constitution to clarify at Paragraph 9.1 that consultation with potential suppliers pre invitation to tender is subject to the requirement that this does not prejudice **or favour** any potential Candidate.

Part 6 – Codes and Protocols

- 6.1 The Planning Protocol for Members and Officers in Part 6 Section B has been amended to give effect to the changes agreed by the Council's Standards Committee at its meeting held on 13 June 2019 and reported to Council on 10 July 2019 to clarify the position regarding pre and post application discussions with officers and Members .
- 6.2 The Use of Council Resources Guidance for Members (Part 6 Section C) has been updated to give effect to the changes agreed by Standards Committee made at its meeting held on 13 June 2019 (and reported to Council on 10 July 2019) mainly to clarify the procedures that apply when a member leaves the Council.
- 6.3 Very minor changes have been made to the Employee Code of Conduct contained in Part 6 Section E to update web links, policy references and role titles where these have changed in year
- 6.4 The Member/Officer Protocol has been updated to reflect the changes approved by the Standards Committee made at its meeting held on 13 June 2019 and reported to Council in July 2019 namely to strengthen the need for Members to respect that Officers must remain impartial at all times; to add a paragraph that the Monitoring Officer meets regularly with political group leaders or group whips to discuss standards which reflects current good practice; and to bring certain information governance references up to date.
- 6.5 The revised Code of Corporate Governance approved by Council at its meeting held on 30 January 2019 has been inserted in Part 6 Section G.

Part 8 of the Constitution – Management Structure

- 7 It is proposed that amendments are made to the management structure set out in Part 8 of the constitution to reflect changes to the senior management structure and the realignment of senior management portfolios.

Recommendations

8. The recommendations appear at the beginning of this report.