

**Manchester City Council
Report for Resolution**

Report to: Constitutional and Nomination Committee – 2 February 2021
Council – 3 February 2021

Subject 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. Adopt, subject to recommendation 5 below, the attached revised Sections of the Constitution of the Council, namely:
 - a) Part 2
 - b) Part 3: Sections, C and F
 - c) Part 4: Sections A, B, C and F
 - d) Part 5: Sections C, D and E
 - e) Part 6: Sections B, C and E
 - f) Part 8
 2. Make consequential and ancillary changes to other Parts of the Constitution to align with the changes set out in this report.
 3. Amend Part 4: Section E as detailed at Paragraph 4.5. below.
 4. Readopt the remainder of the Constitution
 5. 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

Financial Consequences – Revenue

None

Financial Consequences - Capital

None

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Background Documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Constitution of the Council – as amended in October 2019

Background

- 1.1 Section 9P of the Local Government Act 2000, requires the Council to prepare and keep up-to-date a Constitution. 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. The City Solicitor is, under Article 15 of the Constitution, also authorised to make minor changes to the Constitution provided that they do not materially affect the Constitution.
- 1.2 Our Transformation is the Council's transformation programme which aims to more closely align internally focused ways of working with the Our Manchester approach and behaviours. The annual review of the constitution this year has where possible been informed and influenced by the Our Transformation aspirations and a number of changes are proposed that would both more closely align how we work with Our Manchester behaviours and simplify and clarify respective roles and responsibilities.
- 1.3 The proposed changes fall primarily into the following categories – changes to substantive content and changes to format and style to aide accessibility and to increase clarity.
- 1.4 The Director of HR and OD has identified that there are opportunities to enable Personnel Committee in particular to align its focus and capacity with strategic and significant workforce issues that relate to the council's statutory duties or that impact across the organisation. Equally the Director of HR and OD is of the view that there are opportunities to delegate more operational staff-related decision making to senior officers with the right level of accountability and appropriate checks and balances. These proposals are highlighted in more detail at paragraph 3.4 below
- 1.5 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 2 October 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.
- 1.6 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). 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 A minor change is proposed to insert additional wording to Article 12(5), to reflect the duty of the Council under Section 4(1) (b) of the Local Government and Housing Act 1989 to provide the Head of Paid Service with sufficient staff, accommodation and other resources to align this Article with the wording of the relevant statutory provision more closely. The Restriction of Public Sector Exit Payments Regulations 2020 introduce a general cap of £95,000 on exit payments made to staff in the public sector. In limited circumstances the Council will be able to relax this cap, but such a decision must be made at a meeting of Full Council and is subject to the consent of the Treasury or acting in compliance with directions given by the Treasury. As a result, an amendment is proposed to the list contained in Article 4.2 of the Constitution of functions reserved to Full Council.

Part 3 of the Constitution – Responsibility for Functions

- 3.1 A number of changes are proposed to:

- Section C (“Council (Non-Executive) Functions”); and
- Section F (“Scheme of Delegation to Officers”)

of Part 3 (“Responsibility for Functions”) of the Constitution

- 3.2 A new delegation (18) has been added to the Licensing and Appeals Committee and the Director of Planning, Building Control and Licensing, in Part 3 Section C, in relation to pavement licences functions to reflect the new streamlined procedure under the Business and Planning Act 2020 enabling businesses serving food or drink to apply for a temporary pavement licence.
- 3.3 In Part 3 Section C Delegation number 4, to the Constitutional and Nomination Committee and to the Chief Executive, in relation to European Parliamentary elections has been deleted.
- 3.4 In Part 3 Section C the following amendments are proposed to the Personnel Committee delegations. A copy of the currently worded delegations and the proposed delegations are attached at Appendices A and B for ease of reference. References to numbered delegations relate to existing delegations. The majority of the substantive changes are proposed by the Director of HR and OD for the reasons indicated at paragraph 1.4 above:
- a) Delegations 1 & 3 - To correct an anomaly in appointment requirements for Deputy Chief Officers it is proposed that the reference to “designated” Deputy Chief Officers is removed here and where it appears elsewhere in the Constitution (for example references in the Officer Employment Procedure Rules (OEPR) in Part 4, Section F). The effect of a particular Deputy Chief Officer post being “designated” is that certain procedural appointment requirements that usually only apply to the appointment of Statutory Chief Officers are engaged, instead of the

usual appointment requirements for Deputy Chief Officer posts. No Deputy Chief Officer post has been “designated” for many years and the Director of HR and OD has indicated it is unclear in what circumstances this would ever happen.

b) Delegations 4 & 5 –The proposal is to clarify the Committee’s role in determining major changes to workforce strategy or major changes to terms and conditions and major organisational reviews. The amendment is proposed by the Director of HR and OD to support the Committee to focus attention and capacity on major changes and to enable minor changes to be made at the appropriate level by officers.

c) Delegations 7 to 9 - The Director of HR and OD proposes that these items:

- market rate supplements above Grade 12;
- assignment and regrading of posts above Grade 12 and less than 100K;
- honoraria exceeding 12 months above Grade 12,

are delegated to Chief Officers (and other Officers listed in the Scheme as having General HR delegations) provided they can be accommodated within existing budgets. This would mean that members would no longer have involvement in such decisions

The Director of HR and OD proposes checks and balances would ensure probity and fairness, for example such decisions would be in line with existing job evaluation and other policies, and the exercise by officers of these delegated functions would be subject to consultation with the Director of HR and OD. The Personnel Committee would continue to be involved in the establishment and regrading of posts at £100k or more given the requirement to go to full Council. The Director of HR and OD’s reasons for these proposals are to empower Chief Officers to make decisions about capacity required to deliver priorities.

d) Delegation 10 – The proposal is to remove this delegation (concerning scheme of allowance payments above £10K to employees injured at work) as, in the view of the Director of HR and OD this is normally a Chief Officer function. It is proposed as a consequential measure to remove the £10K ceiling from the City Solicitor’s delegation for the making of such payments accordingly

e) Delegation 12 – It is proposed to amend this delegation to clarify the Committee’s role of providing input in the case of a major dispute. The proposed amendment will reflect current practice that the employer’s side of any local joint committee will consist of officers.

- f) Delegation 13 – It is proposed the wording is expanded slightly to cover making recommendations on all statutory statements relating to staffing (not just the pay policy statement).
- g) Delegation 14 – A slight amendment is proposed so that only newly established or upwardly regraded posts whose salary would be £100K and over would need to go before full Council. There would be no need to take a post to Personnel Committee or full Council if the salary for an existing post exceeded £100K simply because of the annual pay award or where a post was regraded downwards (but the salary remained above £100K) because it would be within previously agreed arrangements.
- i) Delegation 15 – 17 – relate to coroner recruitment. The delegations have been slightly amended to reflect the current position that the Personnel Committee makes recommendations to Council (or to the City Solicitor acting under delegated powers). The proposed amendment also clarifies that recommendations are subject to any order made by Lord Chancellor regarding the number of assistant coroners.
- j) Delegation 18 – This delegation relates to agreements for placing staff at the disposal of other Councils. It is proposed to delete this delegation as it duplicates an existing delegation to the Chief Executive.

3.5 A review of the Scheme of Delegations to Officers (Part 3, Section F of the Constitution) has been undertaken to consider whether:

- a) there are any Council functions (new or pre-existing), that it would be appropriate to delegate to officers via the Scheme;
- b) there are any currently delegated functions that need to be transferred from one officer to another (e.g. because of a service redesign);
- c) there are any currently listed delegated functions that should be deleted (e.g. because the function is no longer a function of the Council);
- d) the scheme should otherwise be reworded (e.g. to improve clarity).

3.6 In addition to the above, in this year's review there has been focus on streamlining, rationalising and simplifying the Scheme of Delegation to Officers, where appropriate, and reducing the level of granularity as part of the Our Transformation Agenda. The approach adopted has been to remove repetition and the granular listing of specific items where an existing broad delegation is considered adequate and to merge items where appropriate. Granular listings for non-Executive functions have in the main been retained as these align with wording in regulations and their retention assists in relation to enforcement and regulatory matters and maintains clarity on which functions are non-executive given publication and other requirements flow from this distinction.

3.7 Consequential changes have been made to the Scheme of Delegation to reflect changes proposed to the delegations of the Personnel Committee.

Part 4 – Rules of Procedure

- 4.1 Minor changes are proposed to the Council Procedure Rules (Part 4 Section A) to change the reference to 'Town Hall' to 'Council Offices' and to reflect the recent practice that the review of the Council's Constitution is not automatically considered at the Council's Annual meeting.
- 4.2 Rule 31.4 of the Council Procedure Rules is amended to clarify that, when granted under the category of Outstanding Contribution to Manchester, The City of Manchester Award may be made to individuals or organisations that have previously lived, worked or studied in the city, as well as to individuals or organisations that at the time of the award live, work or study in the city.
- 4.3 It is proposed that an additional Rule 25A be added to the Access to Information Procedure Rules (Part 4 Section B) to align the wording more closely with the relevant legislation.
- 4.4 It is proposed to amend the Budget and Policy Framework Procedure Rules (Part 4 Section C) to reflect the changes to virement thresholds and approval for use of reserves requested by the Deputy Chief Executive and City Treasurer and set out in Part 5 below.
- 4.5 It is proposed that the reference to "The Chief Executive of the Skills Funding Agency" is deleted from Rule 8A.1 of the Scrutiny Procedure Rules (Part 4 Section E). This is to reflect a change in the list of relevant partner authorities contained in section 104 of the Local Government and Public Involvement in Health Act 2007.
- 4.6 The Director of HR and OD proposes that the Officer Employment Procedure Rules (Part 4 Section F) should be amended so that In relation to Deputy Chief Officer posts the relevant Chief Officer will determine whether appointments to such posts should be made by an officer in consultation with an all officer panel or an officer in consultation with a mixed panel of officers and members. It is considered this streamlining would support the intention of supporting the committee to focus at an appropriate level.

Part 5 – Financial Procedures

- 5.1 The Deputy Chief Executive and City Treasurer has proposed that Section C (Policies, Risk Management and External Arrangements) of the Council's Financial Procedures in Part 5 of the Constitution be amended by deleting reference to trading operations because the Deputy because it appeared to relate to old direct labour / service organisations. Profit targets are no longer set for these organisations.
- 5.2 The Deputy Chief Executive and City Treasurer recommends some specific changes to thresholds in Part 5 of the Constitution including for the use of reserves and virements:

- At present unless the planned use of a reserve is specifically included in the Council's Medium Term Financial Plan (MTFP), any change over an aggregate of £2m requires full Council approval. Given that reserves are held to support capital projects where the spend profile is often uncertain, to smooth investment over a number of financial years or are required where external funding is used over more than one financial year, this is resulting in a significant number of recommendations to Council. With the use of reserves likely to increase to mitigate the impact of covid-19 has to be mitigated then some changes to this process are required.
- Recommends a removal of some of the double decision making around capital spend. For example, if a programme of funding is approved for special school provision this is approved by Council. Once the funding requirements for individual schools within that programme are identified Council approval is required again to vire the funding.
- Proposes a review of virement limits so that only virements over £500k which are between Directorates or are in support of a policy change which is different to when the MTFP and Business Plan were agreed or for capital changes of £1m or above would go to full Council. Virements will continue to be reported to Executive as now. In reality budgets should be updated to ensure they best reflect the agreed council priorities being delivered and budget holders should have the responsibility to ensure that this is carried out.

5.3 In addition, some minor changes are proposed to Parts C and D for the purposes of clarity.

5.4 The Contract Procurement Rules in Part 5, Section E have been updated to replace references to "EU Procedure" with "Statutory Procedure" to reflect the UK's departure from EU.

Part 6 – Codes and Protocols

6.1 Minor changes are proposed to the Planning Protocol for Members and Officers in Part 6, Section B for the purposes of clarity.

6.2 The Use of Council Resources Guidance for Members (Part 6 Section C) is proposed to be updated to reflect the current position that in addition to a mobile phone members will be provided with such IT equipment as the Director of ICT considers appropriate to enable them to undertake their Council duties. In addition, it is proposed to amend reference to the "Transport for Greater Manchester Committee" to read "The Greater Manchester Transport Committee" to accurately reflect the name of this joint committee

6.3 The proposed refreshed Code of Conduct for Officers as considered and reviewed by the Personnel Committee at its last meeting is attached as this forms Part 6 Section E of the Council's constitution.

Part 8 of the Constitution – Management Structure

- 7.1 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. The role title of the Head of Commissioning & Delivery has been amended to read 'Director of Commercial and Operations' to reflect a change made in-year. Similarly references to the 'Director of HROD' are changed to 'Director of HR and OD' throughout to reflect the role remit and for consistency. Any references to these roles elsewhere in the Constitution will be amended accordingly.

Recommendations

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

Appendix A – Personnel Committee, Current Delegations

PERSONNEL COMMITTEE

1. To establish at the appropriate time panels of members as a sub-committee to act as appointment panels for the appointment of the Chief Executive, Chief Officers (except where the Chief Executive exercises his delegation to appoint Non-Statutory Chief Officers (as defined in the Officer Employment Procedure Rules)) and designated Deputy Chief Officers.
2. To establish at the appropriate time two sub-committees to act as an investigating and disciplinary committee and an appeals committee in relation to disciplinary proceedings against the Chief Executive, the Monitoring Officer and the Deputy Chief Executive and City Treasurer.
3. To determine which Deputy Chief Officer posts should be designated to be appointed by a panel of members.
4. To determine collective and corporate terms and conditions of staff.
5. To consider major Staffing and Organisational Reviews.
6. To provide the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer with such staff as are in their opinion sufficient to allow their statutory duties to be performed.
7. To determine "market rates" supplements for posts above SCP 51.
8. To determine the assignment and re-grading of posts:
 - above SCP51 (Grade 12) and below £100,000 p.a.; or
 - up to and including SCP51 (Grade 12) where there is disagreement between the Chief Executive and the relevant Chief Officer, or where the Chief Executive considers that the matter has corporate significance.
9. To determine the payment of honoraria exceeding 12 months duration in respect of posts above Grade 12.
10. To determine claims arising under the Scheme of Allowances for employees injured in the course of their employment above £10,000.
11. To determine policies relating to local government pensions and discretionary compensation for early termination of employment.
12. To constitute the Employers' side of any Local Joint Committee with the relevant trade unions.
13. To make recommendations to Council in relation to the annual Pay Policy Statement and any amendments to such statement.

14. To make recommendations to Council in relation to decisions affecting the remuneration of any post whose remuneration is or is proposed to be or would become £100,000 p.a. or more and in relation to proposed severance packages with a value of £100,000 or more.
15. To make recommendations to Council in relation to the appointment of the senior coroner for the coroner area of Manchester (City) and to make recommendations to Council in accordance with the provisions of paragraph 15 of Schedule 3 to the Coroners and Justice Act 2009 in relation to agreeing the salary to be paid to the senior coroner where the salary is or is proposed to be or would become £100,000 p.a. or more.
16. To determine whether the Council should appoint an area coroner for the coroner area of Manchester (City), and to determine the number assistant coroners to be appointed for the coroner area of Manchester (City);
17. To agree in accordance with the provisions of paragraphs 16 and 17 of Schedule 3 to the Coroners and Justice Act 2009:
 - the salary to be paid to any area coroner; and
 - the amount of the fees to be paid to any assistant coroners.
18. The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.

Delegation

In exercising the above powers and responsibilities, the Committee shall have delegated power (subject to Council Procedure Rule 9 – Reference to Council of decisions taken under Delegated Powers) to make decisions on behalf of the Council, except in relation to delegations 12 - 14 or any matter where:

- (a) the Head of the Paid Service determines the matter should be considered by full Council, or
- (b) the Council has resolved to determine the matter.

Note: The Committee may itself determine not to exercise its delegated powers and instead make recommendations to Council.

Appendix B – Personnel Committee, Proposed Delegations

PERSONNEL COMMITTEE

1. To establish at the appropriate time panels of members as a sub-committee to act as appointment panels for the appointment of the Chief Executive **and** Chief Officers (except where the Chief Executive exercises **delegated powers** to appoint Non-Statutory Chief Officers (as defined in the Officer Employment Procedure Rules)).
2. To establish at the appropriate time two sub-committees to act as an investigating and disciplinary committee and an appeals committee in relation to disciplinary proceedings against the **Head of Paid Service**, the Monitoring Officer and the **Chief Finance Officer**.
3. To determine **major changes to workforce strategy and major changes to terms and conditions**.
4. To consider major Organisational Reviews.
5. To provide the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer with such staff as are in the opinion **of those officers** sufficient to allow their statutory duties to be performed, **where there is a specific statutory duty on the Council to make such provision**.
6. To determine policies relating to local government pensions and discretionary compensation for early termination of employment.
7. To **provide input, alongside the officers constituting** the Employers' side of any Local Joint Committee with the relevant trade unions, **in the event of a major dispute**.
8. To make recommendations to Council in relation to the annual Pay Policy Statement, **other statutory statements relating to staffing**, and any amendments to such statements.
9. To make recommendations to Council in relation to decisions affecting the remuneration of any **newly established or upwardly regraded** post whose remuneration is or is proposed to be or would become £100,000 p.a. or more and in relation to proposed severance packages with a value of £100,000 or more.
10. To make recommendations to Council (**or to the City Solicitor acting under delegated powers**) in relation to the appointment of the senior coroner for the coroner area of Manchester (City) and to make recommendations to Council in accordance with the provisions of paragraph 15 of Schedule 3 to the Coroners and Justice Act 2009 in relation to agreeing the salary to be paid to the senior coroner **or any area coroner** where the salary is or is proposed to be or would become £100,000 p.a. or more.

11. **Insofar as is compatible with any order made by the Lord Chancellor under Paragraph 2 of Schedule 3 to the Coroners and Justice Act 2009 to recommend whether the Council (or the City Solicitor acting under delegated powers) should appoint an area coroner for the coroner area of Manchester (City), and to recommend the number assistant coroners to be appointed by the Council (or the City Solicitor acting under delegated powers) for the coroner area of Manchester (City);**
12. **To make recommendations to the Council (or to the City Solicitor acting under delegated powers) in relation to:**
- **the salary to be paid to any area coroner (except in respect of where the salary is or is proposed to be or would become £100,000 p.a. or more, in which case any recommendation should instead be made to Council in accordance with delegation 9 above); and**
 - **the amount of the fees to be paid to any assistant coroners,**

in accordance with the provisions of paragraphs 16 and 17 of Schedule 3 to the Coroners and Justice Act 2009

Delegation

In exercising the above powers and responsibilities, the Committee shall have delegated power (subject to Council Procedure Rule 9 – Reference to Council of decisions taken under Delegated Powers) to make decisions on behalf of the Council, except in relation to delegations **8 - 12** or any matter where:

- (a) the Head of the Paid Service determines the matter should be considered by full Council, or
- (b) the Council has resolved to determine the matter.

Note: The Committee may itself determine not to exercise its delegated powers and instead make recommendations to Council.