

WEST NORTHAMPTONSHIRE COUNCIL

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Report Title **Updates to the Constitution**

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List of Appendices

Appendix A – Draft revised Member Complaints Procedure

1. Purpose of Report

1.1 The purpose of this report is to enable the Council to consider proposed recommendations of the Democracy and Standards Committee in relation to updates to the Constitution and the revised member complaints procedure.

2. Executive Summary

2.1 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose. The Council must operate in accordance with its Constitution and the rules set out in it. The Constitution is divided into different parts which set out the basic rules governing the Council's business as well as some of the detailed rules.

2.2 At their meeting on 15 November 2023, the Democracy and Standards Committee considered a report about proposed changes to the Council's Constitution as set out in Section 5 below. The Committee also considered revised arrangements for dealing with complaints against members, in line with the resolution the committee made in June 2023.

3. Recommendations

3.1 It is recommended that Council:

- a) Approves the recommendations relating to updates to the Constitution as set out in Section 5;
- b) Approves the revised Member Complaints Procedure at Appendix 2; and
- c) Delegates to the Monitoring Officer the power to make these amendments and any consequential amendments that may be necessary.

4. Reason for Recommendations

4.1 Keeping the Constitution under regular review will help ensure that it is legally compliant, complete, reflects the character and culture of the authority and supports effective and efficient decision making.

4.2 The revised member complaints procedure enables the Council and Monitoring Officer to consider complaints against Members consistently, and in a way that supports sound decision making.

5. Report Background

Section 8: Councillors

Member Complaints Procedure

5.1 The Member Complaints Procedure has not been reviewed in detail since the Constitution was first adopted. The procedure had not been applied fully in practice until a complaint against a Member was investigated and progressed to a Hearing before the Hearings Sub-Committee of the Democracy and Standards Committee in May 2023. That highlighted a number of shortcomings with the procedure which suggest it should be reviewed and amended. A summary of the proposed changes to the Procedure is set out below. The complete document is attached as Appendix A.

5.2 Initial assessment criteria

Greater detail has been written in section 4 of the revised Procedure to assist the Monitoring Officer (in consultation with the Independent Person) with the criteria they must consider when reaching a decision for an initial assessment.

5.3 Initial contact with the parties – (paragraphs 4.8, 4.9 and 4.10)

The Complainant will receive an acknowledgement letter shortly after the complaint has been received, and the Subject Member will be notified a complaint has been submitted within 10 working days. Within this letter the Member will be advised how to contact an Independent Person (to seek their views if they wish to and who shall not be the same independent person as that consulted by the Monitoring Officer), the details of a named contact within the Council's Democratic Services department, and details of wellbeing support available whilst the complaint is being dealt with. Standard letters will be revised to incorporate the details above. The

outcome of the initial assessment will be completed and communicated to all parties as soon as reasonably practicable or within 30 working days.

5.4 Complainants who ask for their name to be withheld – (paragraph 3.5)

At present the Procedure states that if a complainant wants to keep their name and address confidential, the Council will not disclose it to the Member against whom they have made a complaint, without their prior consent. It is proposed that the Procedure is amended to state that requests from complainants for the Monitoring Officer to withhold their identity so that they remain anonymous to the Member complained about will only be granted in exceptional circumstances. This is so the Monitoring Officer can balance the right of the Member to properly understand the complaint against them and respond to it, with the rights of the complainant. If a complainant does want to request that their identity is withheld, they must specify the reason for this, and the Monitoring Officer will then contact the complainant in writing to advise whether their request has been granted.

5.5 Roles of individuals involved in the Member Complaint Procedure

The roles of the Monitoring Officer, Deputy Monitoring Officer, Independent Person and Investigating Officer have been documented within an Appendix to the revised Procedure. As stated in the Procedure, if it becomes apparent any of these positions have a conflict of interest in relation to the complaint, they will not play any further role in the assessment and alternative arrangements would be made.

5.6 Initial enquires at the initial assessment stage – (paragraph 4.11)

The Procedure has been amended to make it clear that while the Monitoring Officer can make some initial enquiries at the initial assessment stage, it is not for the Monitoring Officer to gather or analyse information at this stage. Some examples are now given in the Procedure of the type of initial enquiries the Monitoring Officer might make.

It will be clearly documented in the letter to the Subject Member that the initial assessment is not an investigatory stage, but their comments will be welcomed to assist with the initial assessment. It is stated in the Arrangements that it is the responsibility of the complainant to provide sufficient information to the Monitoring Officer to illustrate how they consider the Code of Conduct has been breached

5.7 Confidentiality – (paragraph 8.3)

Complaints will be handled in strict confidence, until they reach the pre-hearing stage.

The Procedure has been amended to include a section explaining that there is a presumption that a meeting of the Hearings Sub-Committee will be held in public. The Procedure explains that the pre-hearing process will consider whether any parts of the hearing need to be held in private or if any parts of the investigation report (or associated documents) should not be published (due to containing confidential or exempt information (as defined in the Local Government Act 1972)). It is noted that the final decision will rest with the Hearings Sub-Committee on the day of the Hearing.

5.8 Alternative Resolution – (paragraph 5)

To assist the Monitoring Officer in considering alternative resolution as an option, the revised Procedure now provides examples of alternative resolution, and reference the guidance produced by the Local Government Association on informal resolution contained within its Guidance on Member Model Code of Conduct Complaints Handling.

5.9 Criminal Matters – (paragraph 4.13)

If the Monitoring Officer identifies any possible criminal conduct or a breach of other regulations by any person, they may refer the matter to the Police or any other relevant regulatory agency for consideration.

The Procedure has been amended to state that in such cases, the Monitoring Officer (in consultation with the other body) will consider pausing the assessment of the complaint pending conclusion of any criminal/regulatory investigation, proceedings or process of the other body. They have been further amended to include a summary of the provisions in the Localism Act 2011 which create criminal offences in relation to Disclosable Pecuniary Interests. The Arrangements now also reference the possibility having an agreed Protocol between the Police and the Council that deals with the referral of such matters to the Police.

5.10 Time frames for conduct of an Investigation – (paragraph 6.2)

Initially, the Monitoring Officer will consult with an Independent Person regarding the need for a formal investigation. If it is decided an investigation is required, an Investigating Officer will be appointed and the Monitoring Officer will agree an Investigation Plan with the Investigating Officer. The Procedure has been amended to state that the agreed Investigation Plan will include a timeframe in which the investigation and draft investigation report must be completed, and the timeframe will differ from case to case depending on matters such as the complexity and number of allegations, the number of Members involved or how quickly key evidence is provided by an outside body. It states that the complainant and the subject Member will be advised of the deadline for conclusion of the investigation. The revisions state that if the Investigating Officer finds that the deadline cannot be met as their investigation progresses, they must seek the written consent of the Monitoring Officer to amend the Investigation Plan to extend the deadline.

5.11 Decision of the Hearings Sub-Committee – (paragraph 10)

An addition to the Procedure has been made to state that at the conclusion of the Hearing (or as soon as reasonably practicable thereafter and subject to any adjournment), the Monitoring Officer shall prepare a formal decision notice in consultation with the members of the Hearings Sub-Committee. The decision notice will be agreed and signed by all Sub-Committee Members and a copy will be provided to the complainant, the Subject Member, the Investigating Officer, the Independent Person and the Town/Parish Council where the Subject Member is a Town/Parish Councillor. The decision notice will be made available for public inspection the next working day following the end of the Hearing (or as soon as reasonably practicable after the Monitoring Officer has prepared it). The decision will be reported to the next convenient meeting of the Democracy and Standards Committee and of the Council.

5.12 Detailed Procedure Documents – (paragraph 19)

These Arrangements deal with how complaints are handled, but various procedures will sit beneath these Arrangements to address the pre-hearing process, Hearing process, and review Panel process. They will also be accompanied by flowcharts for ease of understanding. It is

not proposed the detailed procedures and flowcharts form part of the Procedure requiring Council approval, but these will sit outside the Procedure and will be approved by the MO in consultation with the Chair of the Democracy and Standards Committee.

The Procedure was originally drafted addressed to the Complainant. The draft Procedures have been changed so that they are not addressed to any one particular party, because the information contained within them is equally relevant to Subject Members.

Gifts and Hospitality

- 5.13 At the request of a member of the Committee, consideration was given to the monetary threshold for the declaration of gifts and hospitality. It was suggested that the threshold of £10 is very low in comparison with other authorities, imposing an unnecessary burden on members and officers. The Committee resolved to recommend the value be increased to £25. The same threshold will apply to officers and, subject to the agreement of Council, Trade Unions will be notified of the change.

Section 9: Officers

- 5.14 As members will be aware, the Executive Director of Corporate Services has recently been seconded to our Children's trust to provide additional senior leadership capacity to help with the delivery of transformation plans. The structure chart and consequential changes need to be made to the Constitution to reflect this (temporary) arrangement:
- The Assistant Chief Executive now has responsibility for DTI, Customer and Corporate Services.
 - The Executive Director Finance now has responsibility for HR and Legal and Democratic Services.
- 5.15 It is also suggested that the glossary set out at the end of the constitution includes the definition of Chief Officer set out within the Officer Employment Procedure Rules. This will ensure consistency across the Constitution. The definition will be:

Chief Officer:

Statutory Chief Officer has the same meaning as set out in section 2(6) of the 1989 Act and for this council will be:

- (a) Chief Executive (Head of Paid Service)
- (b) Executive Director Finance (Chief Finance Officer)
- (c) Director of Legal and Democratic (Monitoring Officer)
- (d) Executive Director People and Deputy Chief Executive (Director of Adult Services)
- (e) Director of Children's Services
- (f) Director of Public Health;

Non-Statutory Chief Officer means a person who reports or who is directly accountable to the Head of Paid Service, to the Council, or any committee or sub-committee of the Council as set

out in section 2(7) of the 1989 Act (other than persons whose duties are solely secretarial or clerical or are otherwise in the nature of support services) and for this council will be any other Executive Director, Director or Assistant Chief Executive appointed by the Council who are not Statutory Chief Officers;

Deputy Chief Officers are people who report directly or are directly accountable to one or more of the Statutory or Non-Statutory Chief Officers (other than persons whose duties are solely secretarial or clerical or are otherwise in the nature of support services) as set out in section 2(8) of the 1989 Act, and for this council will be its Assistant Directors.

Financial Procedure Rules

- 5.16 The Council's Financial Procedure Rules contain a section dealing with organisations partly or wholly owned by the Council. These rules contain a number of provisions relating to the establishment and ongoing operation of bodies covered by various company structures such as limited liability partnerships, private companies limited by guarantee, community interest companies etc.
- 5.17 A review of these requirements has highlighted the need for changes to be made. For example, the rules require such organisations to comply with a number of requirements that are no longer considered to be achievable or realistic. These requirements include the appointment of a Finance Director reporting to the Council's Chief Finance Officer and compliance with the Council's Financial Procedure Rules. Some of these provisions are not appropriate for autonomous organisations such as NPH and would be better dealt with within the articles of association for each organisation.
- 5.18 Revised procedure rules for this section are set out below:

47. Establishing entities jointly or wholly owned by the Council

- 47.1 For the purposes of this regulation, the term 'company' is used to describe any of the following:
 - 47.1.1 Limited or unlimited company (including a community interest company).
 - 47.1.2 Limited partnership.
 - 47.1.3 Limited liability partnership.
 - 47.1.4 Community benefit society (under the Co-operative and Community Benefit Societies Act 2014).
 - 47.1.5 A similar entity with legal personality incorporated outside of the United Kingdom.
- 47.2 Where the Council is considering setting up a company in which it will have an ownership share (either as a shareholder or a member, according to the type of entity concerned) the following provisions will apply.
- 47.3 A business case must be prepared and approved by the Chief Financial Officer prior to final approval being given to making the company operational. The business plan must consider:

47.3.1 Short and medium term financial.

47.3.2 Taxation.

47.3.3 Risk management.

47.3.4 Value for money.

47.4 The relevant Chief Officer, Monitoring Officer and the Chief Financial Officer must certify that they are satisfied that the constitution and allied arrangements of the company are adequate to safeguard the interests of the Council before it becomes operational.

47.5 Insofar as the law permits, the Chief Finance Officer and Monitoring Officer shall have unfettered access to all information of the company as required to fulfil their statutory obligations.

6. Issues and Choices

6.1 The issues and choices insofar as they relate to the operation of the Constitution are set out in section 5 above.

7. Implications (including financial implications)

7.1 Resources and Financial

7.1.1 There are no financial implications arising directly because of the Constitution review process.

7.2 Legal

7.2.1 Every local authority is under a legal duty to prepare and keep up to date its Constitution (see Appendix B). In particular, section 9P of the Local Government Act 2000 requires the Constitution to contain:

- a) a copy of the authority's standing orders;
- b) a copy of the authority's code of conduct;
- c) such information as the Secretary of State may direct; and
- d) such other information (if any) as the authority considers appropriate.

Regular review of the Constitution helps to ensure these legal requirements are met. The amendment set out above will assist in ensuring the Council is able to operate in a lawful manner.

7.2.2 The Council is also required to have in place arrangements under which allegations that the Code of Conduct has been breached can be investigated and under which decisions on allegations can be made. The arrangements adopted by the Council also apply to allegations that Town/Parish Councillors have breached the relevant Town/Parish Council Code of Conduct. The Member Complaints Procedure (the Arrangements) is required to take into account common law and other statute, including the right to access to information and the provisions relating to a fair hearing in the Human Rights Act 1998.

7.3 **Risk**

7.3.1 There are no significant risks arising from this report. Reviewing the Constitution helps to reduce any risks that could arise as a result of the Constitution not properly supporting decision making and delivery of Council services.

7.4 **Consultation**

7.4.1 Consultation has been undertaken with the Democracy and Standards Committee and officers in relevant services prior to recommendations being submitted to Council.

7.5 **Consideration by Overview and Scrutiny**

7.5.1 Not applicable to this report.

7.6 **Climate Impact**

7.6.1 There is no climate impact to consider in relation to the recommendation.

7.7 **Community Impact**

7.7.1 None specific.

8. **Background Papers**

8.1 None