

23 October 2019		ITEM: 11
Full Council		
Amendments to the Constitution		
Wards and communities affected: All	Key Decision: Non-Key	
Report of: Cllr Robert Gledhill – Leader of Thurrock Council		
Accountable Assistant Director: Tim Hallam – Assistant Director of Legal Services & Monitoring Officer		
Accountable Director: Sean Clark – Director of Finance, Governance & Property		
This report is public		

Executive Summary

Following a report to the General Services Committee on 17 October 2019, it was agreed that the constitution is amended to reflect some changes to processes at Full Council and in the recruitment and appointment of certain officers.

1. Recommendation(s)

- 1.1 The appointment of all Directors and Assistant Directors on a permanent, interim or acting up basis, be carried out by the General Services Committee.**
- 1.2 The appointment of all permanent Directors and Assistant Directors then be ratified at a meeting of the Full Council.**
- 1.3 All formal non-minor (1) restructure, permanent or temporary, that impacts on the line management or breadth of responsibility of any Director or Assistant Director, and (2) any role title change to Director or Assistant Director, be notified to members of the General Services Committee for early engagement.**
- 1.4 Formal recognition of the Shadow Cabinet from the largest opposition group – including the right to ask the first three questions of the Portfolio Holders on their annual reports.**

1.5 Amend the time allocated for the presentation of the Portfolio Holders' annual reports to Council to twenty minutes with a limit of seven minutes in total to cover both the introduction and summing up by the Portfolio Holder.

1.6 Amend the Constitution regarding the delegation to the Leader in approving acquisitions and disposals up to a value of £500,000 to a limit of £200,000 with all other approvals to be considered by the Cabinet.

1.7 Delegate authority to the Monitoring Officer and Director of HR respectively to make the relevant amendments in the Constitution and to the Pay Policy created by recommendations 1.1 to 1.6.

2. Introduction and Background

2.1 The Leader brought forward a report to the General Services Committee on 17 October 2019 outlining the desire for increased Democratic oversight of the areas included in the recommendations.

2.2 The General Services Committee agreed to the proposals at the meeting.

3. Issues, Options and Analysis of Options

3.1 If recommendations 1.1 to 1.6 are agreed the relevant sections of the constitution will be amended to reflect the new processes. These changes will be included in the reissue of the Constitution at the end of October 2019 and will come into effect from publication.

3.2 Recommendations 1.1 and 1.2 if agreed will require the Pay Policy to be amended. At present Full Council only need ratify statutory appointments and in the pay policy they approve recruitment to new senior posts. The amended process would require Full council to ratify all permanent senior appointments.

3.3 The Chief Executive, as Head of Paid Service, has a number of responsibilities towards employees and management arrangements outlined in the constitution at Chapter 6.

4. Reasons for Recommendation

4.1 The Recommendations have been made to increase democratic oversight of areas included within the report.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 The General Services Committee reflect the leadership of all three parties in Thurrock plus the independent Member and therefore all key groups have had the opportunity to engage in discussion on the report. The Full Council meeting allows any Member to comment on the proposals.

6. Impact on corporate policies, priorities, performance and community impact

6.1 As set out more fully in section 7.4, the recommendations within this report will increase the time taken to make some permanent appointments, especially for non-Statutory roles and Assistant Directors, and impact on officers' abilities to make urgent arrangements where cover or additional resource is required. This may impact on the delivery of services though to what degree will depend on the role and time period. However, the Leader can call a meeting with five working days' notice.

7. Implications

7.1 Financial

Implications verified by: **Sean Clark**
Director of Finance, Governance and Property

Whilst the recommendations in this report will increase the number of meetings, the related costs will be met from within existing budgets.

7.2 Legal

Implications verified by: **Tim Hallam**
Interim Assistant Director Legal and Monitoring Officer

Recommendations 1.1 and 1.2 The power to appoint staff/their terms and conditions can't be dealt with by the Executive/Leader. These are matters reserved for the Council/delegated by Council. Similarly, the power to appoint officers for particular purposes is a matter reserved to the Council. There are statutory requirements (in Schedule 1 Part II of the Local Authorities (Standing Orders) (England) Regulations 2001 (the Standing Orders Regs.)) i.e. the need to ensure that at least one member of the executive is on the relevant Committee and about giving notice to the Executive before appointments are made.

Under the Constitution the Council can in general arrange for any of its functions to be delegated to a Committee, although certain functions are reserved to full Council. The General Services Committee (GSC) exercises certain functions delegated to it by full Council including some appointment functions.

The scope of the current delegation to the GSC could be changed subject to making any necessary changes to the Constitution. Subject to this, and complying with any procedural requirements, the nature of the GSCs involvement would be a matter for the GSC. Any process would need to be fair and comply with the Standing Orders Regs.

Legally, the same considerations would generally apply for Assistant Directors (AD) as for Directors. Whilst an AD isn't defined, legally or under the Constitution, 'Deputy Chief Officer' is defined (under Section 2(8) of the Local Government and Housing Act 1989) and an AD post would fall within that definition.

Members are allowed to be involved in the appointment of Deputy Chief Officers, under the Standing Orders Regs, but they don't have to be. The GSC terms of reference don't currently include any functions relating to the appointment of ADs save for the Monitoring Officer. Whilst legally Members can be involved, in practical terms having Members involved in appointments at this level may involve needing to call meetings more often.

Under the Constitution, the Head of Paid Service (HoPS) has the power to appoint Officers to such posts. The Protocol for Member/Officer relations provides that Members 'will not get involved in day to day management of staff or services'. All Officers, apart from political assistants, have to be appointed on merit (s.7 Local Government and Housing Act 1989 (the 1989 Act)).

Legally, the same considerations would generally apply for interim as for permanent appointments, including the requirement to comply with the Standing Orders Regs.

Recommendation 1.3; Under the Constitution this is not one of the functions reserved to Council. The Chief Executive/HoPS has the power to allocate roles to Directors, other than those statutorily prescribed, under delegation (Chapter 6, part 1, para. 7.1 (h)). Since it's an Executive function, in practice the HoPS reports as necessary to the Executive.

Under the Constitution, there is a general requirement – not specific to staffing matters – that Members should be informed/consulted depending on the nature and sensitivity of a decision. Legally it isn't necessary in all cases for Officers to consult Members. Whether it is necessary to consult is, for example, likely to depend on the nature and extent of the proposed restructure.

Notifying the GSC, as necessary, for the purposes of early engagement on proposed restructures would in principle be consistent with the above. The Constitution would need to be amended to reflect what is proposed.

Recommendation 1.4. There is nothing in legislation about the role of the opposition and so nothing required by statute. The Constitution could be amended to provide for the 'Shadow Cabinet' to be defined and procedurally to allow Members of that to ask first questions of PFHs at meetings of Full Council. It would be advisable to clarify what is meant by the "Shadow Cabinet". Possibly, rather than that term being defined, the Constitution could for example instead refer to "the leader of the second largest group". However this is defined, the Standing Orders would need to be amended in relation to this.

Recommendation 1.5. The Constitution could be amended to procedurally allow for presentation time limits to be changed.

Recommendation 1.6. There is nothing legally which expressly reserves disposals of property to 'the Council'. Hence, as an executive function, this could potentially be dealt with by Cabinet, subject to making any necessary changes to the Constitution/the relevant scheme(s) of delegation. In any event, the Council has to comply with the requirements of s123 Local Government Act 1972 in respect of getting the best price available for land.

7.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**
Strategic Lead: Community Development and Equalities

If approved, recommendations 1.1 – 1.3 would be subject to the Council's Equality and Diversity Policy.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder, or Impact on Looked After Children)

The changes to the appointments process will increase the timescales for appointing Assistant Directors and non-statutory Directors considerably. This will impact on the ability of the council to meet statutory requirements and to hold senior managers to account as this will be outside of the control of senior officers. This will especially be the case for unforeseen circumstances where temporary cover is needed - for instance, long term sickness.

By law, officers have to have regard to the statutory duties of the council and the responsibilities that they hold personally. The ED2 process will need to be used for urgent decisions to ensure that the Council and the public are protected.

There may also be other legal requirements that replace the process set out in this report, for example, redeployment obligations into a senior management role.

The Pay Policy would need to be amended and approved by Council in year if the recommendation is agreed and takes effect before 1 April 2020.

Regarding restructures, there will need to be consideration to the formal consultation process, timings and outcomes where appropriate. Member engagement should not delay or impact on outcomes or policy. Similar to comments in relation to recruitment – the council needs to act quickly on occasions and this could reduce our ability to act quickly to cover functions.

There are also a number of restructures that have a minor impact on senior management – as written, a GSC would have to be called for these and would be difficult to identify a measure that could differentiate between what members would like to see and what they would consider immaterial. This is a matter that would be given to the Leader of the Council to exercise judgement.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None

9. Appendices to the report

- None

Report Author:

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Legal Services