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**Report to:** Council **Date of Meeting:** 5 September 2013

**Subject:** Update of the Constitution

**Report of:** Director of Corporate Services **Wards Affected:** All

**Is this a Key Decision?** No **Is it included in the Forward Plan?** No

**Exempt/Confidential** No

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### **Purpose/Summary**

To provide members with an update on items of the constitution that were considered for revision at the last Audit and Governance Committee in June 2013 and the cross party working group in August 2013 and to make recommendations to Council accordingly.

It was acknowledged and agreed by the Audit and Governance Committee at its meeting held on 26 June 2013 that any recommendations made by the Working Group arising from the review of the Constitution would be considered at Full Council in September without further reference to the Committee

### **Recommendations**

- 1) To receive the recommendations arising from the Cross Party Working Group of the Audit and Governance Committee as set out in the report.
- 2) To approve the following amendments to the Constitution:
  - a. that both the Financial Procedure Rules and the Contract Procedure Rules be changed from schemes of operational detail to ones of principles and responsible delegation, as set out in Appendix 1 of the report
  - b. the powers of the Statutory Officers as set out in Section 4 of the report
  - c. the formal appointment of the Chief Executive as the Qualified Person for the purposes of the Freedom of Information Act 2003, as set out in Section 5 of the report
- 3) to note the proposed timetable with regard to the future adoption of an amended Code of Conduct for Members and Officers for dealing with Planning Matters, as referred to in Section 3 of the report
- 4) To agree to the temporary arrangements with respect to the appointment of the Monitoring Officer as set out in Section 6 of the report.

**How does the decision contribute to the Council's Corporate Objectives?**

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability		✓	
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

**Reasons for the Recommendation:**

To ensure that the constitution remains up to date, transparent and an integral framework for the Council's decision making process; and to ensure that the professional standards of good governance are met.

**What will it cost and how will it be financed?**

**(A) Revenue Costs - Nil**

**(B) Capital Costs - Nil**

**Implications:**

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<b>Legal</b> - Legal implications are contained in the contents of the report where appropriate	
<b>Human Resources</b> – Nil	
<b>Equality</b>	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

**Impact on Service Delivery:**

To improve good governance of the Council's business by updating the constitution to incorporate developments in legislation, good governance and to improve current working practices.

**What consultations have taken place on the proposals and when?**

The Head of Corporate Finance and ICT (FD 2509) has been consulted and notes there are no direct financial implications arising from the report.

**Are there any other options available for consideration?**

To not review the constitution as outlined in the report.

**Implementation Date for the Decision**

Immediately following the Council meeting

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**Background Papers:**

None

## **1. Introduction/Background**

- 1.1 Members will be aware that as part of good governance the Council's Constitution is now being reviewed twice a year. It is an obligation contained in the Constitution for the Monitoring Officer to ensure that the Council's Constitution is kept up to date and in good order (Chapter 10, Section E paragraph 29 refers). It is recognised that this is important to keep the Constitution up to date, meaningful and integral to the workings of the Council.
- 1.2 The Head of Corporate Legal Services in conjunction with the Head of Governance and Civic Services have worked to review sections of the Constitution that have become outdated, repetitive or do not reconcile with current or proposed working arrangements. This resulted in the revised format for the constitution as published in September 2012.
- 1.3 At the last meeting of the Audit and Governance Committee in June 2013, it was proposed that reviews would be undertaken on the following key areas of the Constitution
- Financial Procedure Rules (carried forward for the review identified in September 2012) (Chapter 11)
  - Code of Conduct for Councillors and Officers for dealing with Planning Matters –
  - Any other miscellaneous issues arising as a result of operation of the Constitution.
- 1.4 Unfortunately due to the timing of the September Council meeting (5 September 2013) and the next Audit and Governance Committee meeting (25 September 2013), it has not been possible for the Audit and Governance Committee to make recommendations to Council in time for the September update of the Constitution. In these circumstances, officers continue to work with the existing cross party Working Group of members to formulate recommendations. Those draft recommendations have been shared with the Chair of the Audit and Governance Committee prior to publication of the report prepared for the Council meeting on 5 September 2013.

## **2. Financial and Contract Procedure Rules**

- 2.1 Members will note that in the main the content of the Financial Procedure Rules sets out the responsibilities of the Head of Finance and ICT and a significant number of operational issues which direct the manner in which staff deal with financial transactions.
- 2.2 Members will recall that in September 2012, the scheme of delegation to officers was radically overhauled from a scheme of detail to a scheme of principles of delegation and a clear cascade system. This step was taken to prevent rafts of legislation being quoted in the Constitution which required regular review and updating. Further it allowed Directors and Heads of Service the flexibility to

ensure that key officers were appropriately authorised within their service area without the need to bring a report to full Council for consideration.

- 2.3 After consultation with the Head of Finance and ICT, the Chief Internal Auditor and the cross party Working Group it is recommended that both the Financial Procedure Rules and the Contract Procedure Rules be amended to change from schemes of operational detail to ones of principles and responsible delegation. This change in format was agreed by the cross party working group.
- 2.4 It is intended that in future both these sets of Procedure Rules will be treated in the same manner, as for example the Treasury Management Policy whereby they are approved by full Council but do not sit within the body of the Constitution. This means that these Procedure Rules will remain available in the public domain.
- 2.5 To support this transition with officers and to generally raise awareness of the importance and new content of the Financial and Contract Procedure Rules, a series of training sessions is envisaged during the Autumn/Winter months.
- 2.6 The revised documents re principles and consequences are set out in **Appendix 1** to the report and will be published as part of the revised constitution.

### **3. Planning Code of Conduct**

- 3.1 The Local Government Association (LGA) promulgated a Code for Members with respect to Planning Matters in April/May 2013 for consideration and to update the existing Code. This has been reported to members/planning committee and supplemented by some training events. The Lawyers in Local Government Group is proposing to circulate a further Code in this regard in November/December 2013.
- 3.2 In these circumstances it is proposed to delay further consideration of this Code to await the Lawyers in Local Government Code. It is then proposed any revised Code for Sefton be considered by both Planning Committee and Audit and Governance Committee next year, with a view to a new Code being adopted by full Council in April 2014. This approach was agreed by the cross party Working Group.
- 3.3 This will ensure that a new Code is in place for the forthcoming municipal year, and that Members appointed to the Planning Committee can be trained prior to undertaking their duties. Such steps will ensure that the integrity of the Council's decision making is promoted and preserved as far as possible.

### **4. Powers of the Statutory Officers**

- 4.1 On a recent review of the Constitution, it has come to light that powers that were previously in the Constitution (pre September 2012) have not been replicated in later versions of the Constitution. Those powers are necessary for the statutory officers to exercise their duties effectively from time to time.
- 4.2 The powers relate to access to meetings and document as they see fit. It was therefore agreed by the cross party Working Group that Chapter 10 of the

Constitution be amended so that for each of the statutory officers the following is added:

“A key role for the statutory officers is to make recommendations for the way in which the Council and the Constitution could be amended and/or improved to better achieve the overarching purposes of the Council. In undertaking this task, the statutory officers may:

- Observe meetings of different parts of the Member and officer structure
- Undertake an audit trail of a sample of decisions
- Record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders; and
- Compare practices in this Council with those in comparable authorities, or national examples of best practice”

## **5. Freedom of Information**

5.1 Further for the purposes of the Freedom of Information Act 2000 an officer needs to be formally identified within the Constitution as holding certain responsibilities. It was agreed by the cross party Working Group that the Chief Executive will be Qualified Person for these purposes (for example Section 36) and for this to be delegated to the Monitoring Officer as necessary and that this be reflected in Chapter 10 Sections C and F of the Constitution.

## **6. Monitoring Officer**

6.1 This matter was not considered by the cross party Working Group but a temporary change to the appointment of the Monitoring Officer is required. The Council is required by law to have certain statutory officers, one of which is the Monitoring Officer. Jill Coule, Head of Corporate Legal Services and David McCullough, Principal Lawyer and Andrea Watts, Head of Governance and Civic Services are currently the Deputy Monitoring Officers.

6.2 The Council is requested to agree to the temporary appointment of Principal Lawyer, David McCullough to be the Council’s Monitoring Officer with effect from November 2013 until the return of the Head of Corporate Legal Services in 2014.

6.3 To support this role, it is further recommended that Peter Cowley, Principal Lawyer be appointed as a Deputy Monitoring Officer during this period and that Andrea Watts continue as a Deputy Monitoring Officer.

6.4 Section 5(1)(a) of the Local Government and Housing Act 1989 lays down a duty for local authorities to designate one of their officers as the ‘monitoring officer’. This officer may be the head of paid service but may not be the chief financial officer. The authority must provide that officer with such staff, accommodation and other resources as are in his/her opinion, sufficient to allow those duties to be performed.

6.5 It is the Monitoring Officer’s duty to prepare a report for the authority if, at any time, it appears to them that a proposal, decision or omission by the authority, or of a committee, sub-committee or officer or by any joint committee on which the council is represented has given rise to, or is likely to:

(a) a contravention or any enactment or rule of law or of any code of practice made; or

(b) any maladministration or injustice under Part III of the Local Government Act 1974.

- 6.6 In preparing the report the Monitoring Officer is required to consult as far as practicable with the head of paid service and chief financial officer and ensure that a copy of the report is sent to each member of the authority.
- 6.7 The legislation states that the duties of the Monitoring Officer are to be performed by them personally or where they are unable to act owing to absence of illness personally by such member of their staff as they have for the time being nominated as their deputy. No additional payments are made to the post holders.