

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

2 November 2010

Report of the Monitoring Officer

Part 1- Public

Matters For Decision

1 REPORT ON CHANGES TO THE CONSTITUTION

1.1 Introduction

1.1.1 Article 15 in Part 2 of the Constitution sets out the procedure for review and revision of the constitution. Changes to the Constitution may only be approved by the full Council after consideration of a report on the proposal from the Council's Monitoring Officer. In preparing the report, I am required, amongst other things, to compare practices in this authority with those in other comparable authorities and national examples of best practice (where appropriate). I am also required to consult the Council's other statutory officers, the Head of Paid Service and the Chief Financial Officer, which has been done in respect of the proposals contained in this report.

1.1.2 Since the last meeting of Council the General Purposes Committee and Cabinet have recommended changes to the Constitution. In addition a consultation on the Council's governance arrangements has been carried out and, after discussion with the Council's Environmental Health and Housing Services I am recommending some minor changes in the way that health and safety matters are dealt with under the Constitution.

1.2 Legal Services

1.2.1 Further to the decision of the Council on 18 February 2010 to agree a proposal to share management of the legal services function with Sevenoaks District Council for an initial three year period, the General Purposes Committee at its last meeting received a report on progress on the arrangement and sought approval to create a joint legal services team between the two authorities. The report outlined the merits of joint working which would be to the advantage of both authorities. A business plan was presented for the formation of a joint legal service in which the existing teams would remain at their authorities but officers would deliver legal services to both Councils. It was agreed that the arrangement would be accepted and would run for five years with a review after one year.

- 1.2.2 As a consequence of this decision a recommendation was made to Council and minute GP10/020 refers as a change to the Constitution is required to delegate authority for Sevenoaks Legal Officers to act on behalf on this authority when necessary.

1.3 Incorporation of a Petition Scheme

- 1.3.1 At the last meeting of Cabinet the Central Services Director provided an update on the comparative information obtained from other Kent authorities on their petition schemes including the thresholds adopted. Details were also given of the process for dealing with petitions together with progress on selection of an e-petition facility. The Cabinet suggested that the operation of the scheme be subject to periodic report to the Customer Service Improvement Advisory Board to determine whether it required adjustment in the light of experience. It was emphasised that adoption of the new scheme would not restrain debate and the Council's practice of listening to the views of residents and dealing with them in an inclusive manner would continue.
- 1.3.2 Accordingly, the appropriate recommendations were made to Council (minute CB10/074 refers) and the consequential changes to the Constitution need to be authorised.

1.4 Review of the Council's Governance Arrangements

- 1.4.1 In May 2008 the Council amended its Leader and Cabinet model so that the Leader would be elected at the annual meeting of the Council following the four yearly elections and hold office for four years (Minute C 08/047 refers). The Council recently ran a consultation in accordance with Communities and Local Government guidance to consider alternative models. The absence of any counter views as a result of that consultation indicates that there is no need to review the current model.

1.5 Delegations in Respect of Certain Health and Safety Functions

- 1.5.1 When the Council originally adopted a Leader and Cabinet form of governance and reduced the number of committees the functions relating to health and safety which could not be the responsibility of the Executive were split. Parts were delegated to the Council's Licensing and Appeals Committee (the regulatory matters) and part to General Purposes (those relating to the Council's role as an employer). In reviewing the Constitution and considering the way this has worked in practice the Director of Health and Housing and I have concluded that it would be preferable to move the whole of this function to General Purposes Committee to avoid confusion and any duplication of reporting.
- 1.5.2 Additionally, there is no specific reference in the Constitution as to the responsibility for authorising new policy in respect of health and safety policy. Paragraph 5 in Part 3 of the Constitution contains a table listing policy matters which are shared responsibilities i.e. part Council and part Executive functions. I

would recommend that health and safety policy be added to the top part of that table allowing the draft of the policy to start with the relevant advisory board and be approved via Cabinet and Council rather than being solely a matter for Council.

1.6 Legal Implications

1.6.1 None other than those set out in this report.

1.7 Financial and Value for Money Considerations

1.7.1 None

1.8 Risk Assessment

1.8.1 The review of the Constitution in a timely fashion reduces the risk of the Council being challenged on the basis that its decision making processes may be flawed.

1.9 Recommendations

1.9.1 The Council is recommended to agree the following amendments to the Constitution:-

- a) the changes in the operation of Legal Services set out in paragraph 1.2,
- b) the addition of the Petition Scheme as outlined in paragraph 1.3; and
- c) the alterations in the delegations in respect of health and safety as described in paragraph 1.5.

1.9.2 The Council is further recommended to authorise the Monitoring Officer to make the necessary consequential changes to the Constitution.

Background papers:

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Nil

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