



AUDIT AND GOVERNANCE COMMITTEE

Monday, 15 March 2021

PROPOSED CHANGES TO THE EAST SUFFOLK COUNCIL CONSTITUTION

EXECUTIVE SUMMARY

1. All Councils must have a written Constitution which includes its standing orders, code of conduct, and such other documents as the Council considers to be appropriate. The East Suffolk Council's (ESC) Constitution was approved by the Shadow Council for East Suffolk on Monday, 28 January 2019 – Report REP 29(SH).
2. The Constitution sets out the Council's governance arrangements. Any changes to the Constitution must be approved by this Committee and Full Council, as required by the Constitution.
3. This report proposes some changes to the Constitution and asks that they be recommended to Full Council for approval.

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| Is the report Open or Exempt? | Open |
| Wards Affected: | All |
| Cabinet Member: | Councillor Steve Gallant Leader of the Council |
| Supporting Officers: | Hilary Slater Head of Legal and Democratic Services 01394 444336 Hilary.slater@eastsoffolk.gov.uk |

1 INTRODUCTION

- 1.1 The ESC must have a written Constitution which has to include its standing orders, code of conduct and such other documents as the ESC considers to be appropriate. (S37 of the Local Government Act 2000).
- 1.2 The Council drafted a new Constitution when the ESC was created, on 1 April 2018. The Constitution was approved by the Shadow Council for East Suffolk on Monday, 28 January 2019 – report reference REP 29(SH) refers.
- 1.3 It was recognised by the Shadow Authority that the Constitution would need to be reviewed, to fit the working practices of the newly formed ESC. This report proposes some changes to the Constitution.
- 1.4 Part 2 of the ESC Constitution outlines the Council’s functions and responsibilities. Paragraph 2.1 of Section B of this part of the Constitution details specific functions that are reserved for Council and states that one of these functions is changing the Constitution. In addition, Paragraph 10.3 of Part 1 of the Constitution states that the Audit and Governance Committee (AGC) has responsibility to advise the Council on substantive changes to the Constitution. Any substantive changes to the Council’s decision-making arrangements and committee structure have to be considered by the AGC which will recommend changes to the Full Council. The Monitoring Officer has authority to make minor amendments and corrections to the Constitution. The Leader may change Cabinet Portfolios and delegations.
- 1.5 This report proposes changes to the Constitution which the Monitoring Officer does not consider to be “minor amendments” and which, therefore, need to be considered by the AGC and, if accepted, be recommended to Council for approval.

2 FIRST PROPOSED CHANGE TO THE CONSTITUTION

- 2.1 The Council has an Appointments Committee (AC) whose terms of reference are set out in Section C5 of Part 2 of the Constitution which is about “Functions and Responsibilities”.
- 2.2 The AC is responsible for the appointment/dismissal of Strategic Management Team and Heads of Service. It recommends to Council that a formal offer of appointment be made for the Head of Paid Service and appoints other members of Strategic Management Team and Heads of Service. The AC must include at least one Member of the Cabinet.
- 2.3 At the moment, the AC has six Members, and must be politically balanced. Its membership would normally comprise:
 - Leader or Deputy Leader of the Council in their absence.
 - Cabinet Member for the Service Area concerned or another Cabinet Member in their absence.
 - One Member of the Opposition (or nominated substitute in their absence).
- 2.4 Each of the six Members of the AC has one vote and the Chairman will be the Leader/Deputy Leader of the Council.
- 2.5 Members appointed to the AC are asked to undertake refresher training regarding the interview process, prior to sitting on the AC, in accordance with good practice and to ensure that the recruitment process is fair and robust. Where External Stakeholder Panels form part of the recruitment process, the Leader may invite other Members to participate in the informal part of the process.

- 2.6 The membership of 6 reflected how appointments were handled before the Council was formed, in 2019. When the former district Councils of Suffolk Coastal and Waveney were working in partnership together, appointments to the shared officer structure were made by an AC of six, being three Members from each Council.
- 2.7 Having six Members, plus senior Officers and an HR representative on the interview panel means that candidates are facing at least 8 people asking them questions. This can be daunting, if not a little oppressive, for the candidate, especially if the meeting is held remotely. Only six faces can be seen in gallery view at one time, on Teams, so, it is difficult for the candidate to be aware of the whole panel, and to know who is going to pose a question next.
- 2.8 Instead, it is suggested that the AC be reduced from six to three, comprising the Leader or Deputy Leader in their absence, the relevant Portfolio Holder, or another Cabinet Member in their absence, and one Member of the Opposition.
- 2.9 It would not be usual to have a committee with an even number of Members, because deadlock can occur in the voting, in which case, the Chairman would have to exercise their casting vote. On that basis, having four members of the AC would not be appropriate. If the number of the AC was reduced to five, there would be at least seven panel members asking the candidates questions. Seven or more is still considered to be too large and inappropriate for an interview panel. A reduction from six to three is more realistic, manageable and fairer to the candidates.
- 2.10 Therefore, it is suggested that the amendments shown in Appendix A to this report be made to paragraph 5 of Section C of Part 2 of the Constitution.

3 SECOND PROPOSED CHANGE TO THE CONSTITUTION

- 3.1 Also in Part 2 of the Constitution, Section A is about the “Principles of Decision Making”. Paragraph 11 of Section A is about “Types of decision”. In paragraph 11.3 of Section A, it states that “The Appointments Panel shall appoint Heads of Services and members of the Strategic Management Team without further reference to any of the decision-making bodies listed in paragraph 11.1 above, in accordance with the Officer Employment Procedure Rules in Part 3 of this Constitution”.
- 3.2 Paragraph 11.3 should refer to the Appointments Committee, rather than the Appointments Panel. Also, Paragraph 11.1 refers to Full Council and the Cabinet, amongst others. However, some appointments do need to be ratified by Council, such as the appointment of the Head of Paid Service, s151 Officer and the Monitoring Officer. Also, all of Cabinet are consulted about certain appointments, to ensure that they have no well-founded objections to what is proposed. Therefore, the wording in Paragraph 11.3 is not quite correct.
- 3.3 For clarify and consistency, it is suggested that paragraph 11.3 of Section A of Part 2 to the Constitution be amended as shown in Appendix B to this report.

4 HOW DOES THIS RELATE TO THE EAST SUFFOLK STRATEGIC PLAN?

- 4.1 The Council’s Constitution is a key governance document which sets out how the Council operates, and how it carries out its functions and responsibilities. The Constitution regulates how the Council makes its decisions. Sound decision making is key to how the Council carries out its business and delivers against all of the themes in the East Suffolk Strategic Plan. The Council’s Constitution needs to be up to date and accurate, to reflect its business practices and procedures.

5 FINANCIAL AND GOVERNANCE IMPLICATIONS

- 5.1 It is considered that the changes to the wording will make the Constitution more suitable for good recruitment processes. Therefore, it will assist good governance, whilst having no direct financial implications or costs.

6 OTHER KEY ISSUES

- 6.1 An equality impact assessment (EIA) has not been carried out, in relation to this report. The changes proposed relate to the internal workings of the Council and are not considered to impact on the services which the Council offers, directly, to the public. They are for clarification or correction, and an EIA was not considered to be necessary.

7 CONSULTATION

- 7.1 None.

8 OTHER OPTIONS CONSIDERED

- 8.1 Not to make the changes would not accurately reflect more modern recruitment practices which ought to be carried out by the Council and reflected in its constitution.

9 REASON FOR RECOMMENDATION

- 9.1 To ensure that the Council's Constitution is up to date, and reflects the Council's needs, working practices and procedures.

RECOMMENDATION

That the Committee approves the proposed changes to the Constitution, as set out in this report, and recommends them to Full Council for approval.

APPENDICES

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| Appendix A | suggested amendments to paragraph 5 of Section C of Part 2 of the Constitution. |
| Appendix B | suggested amendments to paragraph 11.3 of Section A of Part 2 to the Constitution. |

BACKGROUND PAPERS – None

Suggested amendments (underlined/bold) to paragraph 5 of Section C of Part 2 of the Constitution.

5. APPOINTMENTS COMMITTEE - Terms of Reference

Appointment/dismissal of Strategic Management Team and Heads of Service

- 5.1 The Appointments Committee will recommend to Council that a formal offer of appointment be made for the Head of Paid Service and will appoint other members of Strategic Management Team and Heads of Service. That committee or sub-committee must include at least one Member of the Cabinet.
- 5.2 For the consideration of and advice to Council regarding the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer, the Appointments Committee will co-opt two independent persons and then will constitute 'the Panel' for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2015 and will act accordingly.
- 5.3 The Committee will be comprised of **three** Members (politically balanced).
- 5.4 Membership would normally comprise:
 - Leader or Deputy Leader of the Council in their absence.
 - Cabinet Member for the Service Area concerned or another Cabinet Member in their absence.
 - One Member of the Opposition (or nominated substitute in their absence).
- 5.5 Each of the **three** Members of the Appointments Committee will have one vote and the Chairman will be the Leader/Deputy Leader of the Council.
- 5.6 Any Member appointed to the Appointments Committee will be asked to undertake refresher training regarding the interview process, prior to sitting on the Appointments Committee, in accordance with good practice and to ensure that the recruitment process is fair and robust.
- 5.7 Where External Stakeholder Panels form part of the recruitment process, the Leader may invite other Members to participate in the informal part of the process.

Suggested amendments (underlined/bold) to paragraph 11.3 of Section A of Part 2 to the Constitution

11 Types of decision

11.3 The Appointments **Committee** shall appoint Heads of Services and members of the Strategic Management Team **with reference to some** of the decision-making bodies listed in paragraph 11.1 above, as appropriate, and in accordance with the Officer Employment Procedure Rules in Part 3 of this Constitution.