

**Open Report on behalf of Richard Wills, Monitoring Officer**

Report to:	<b>County Council</b>
Date:	<b>15 December 2017</b>
Subject:	<b>Amendments to the Constitution</b>

**Summary:**

The Report proposes a number of amendments to the Council's Constitution relating to:

1. Part 3 of the Constitution relating to the receipt and consideration of Ombudsman's Reports issued under section 31 of the Local Government Act 1974.
2. Part 3 of the Constitution relating to responsibility for functions.
3. Part 5 of the Constitution relating to the Council's petitions scheme.

**Recommendation(s):**

That the Council approves the proposed amendments to the Constitution attached at Appendix A, B and C.

## **1. Background**

### **Local Government Ombudsman reports**

The Local Government Ombudsman carries out investigations as to whether local authorities have been guilty of maladministration or a service failure. When the Ombudsman has completed an investigation the Ombudsman has two choices.

Where the Ombudsman is satisfied with the action the authority has made or proposes to make and that it is not appropriate to send a full report, the Ombudsman may prepare a statement of reasons for the decision. This is sent to the Council but the Council is not formally required to consider the statement of reasons.

Where the Ombudsman is not satisfied as set out in paragraph 2 above, the Ombudsman must prepare a report and send it to the Council. Where the Council receives such a report it is a requirement of section 31 of the Local Government Act 1974 that:-

- The report is laid before the authority;
- The authority considers the report; and
- The authority, within 3 months of receipt of the report writes to the Ombudsman to notify the Ombudsman of the action that the authority have taken or propose to take.

As a matter of principle, this suggests that reports from the Ombudsman are best considered by the Council body with responsibility for the function since it is that body which has the necessary authority to determine what action to take in response. This would mean full Council for matters which are reserved to the Council such as planning and regulatory matters. For other functions it would mean the Executive. For those reports which are laid before the Executive it would be possible for them to be considered by Scrutiny prior to Executive consideration.

This approach would also allow for streamlining of the responsibilities of the Council under the Local Government Act 1974 with the role of the Monitoring Officer in drawing to the attention of the Executive findings of maladministration in the performance of Executive functions. Both responsibilities can be fulfilled by one Report to the Executive.

In order to allow for the potential that some findings relevant to Executive functions should nonetheless be reported to the full Council it would also be advisable to allow for the full Council to consider reports referred to them by the Monitoring Officer.

The Ombudsman does not have any requirement about how the Report is considered within the authority leaving it to the Council to determine the most appropriate approach.

Under Part 3 of the Council's Constitution, consideration of a report from the Local Government Ombudsman is currently a matter reserved for full Council. Therefore in order to move to a position where a report is considered by that part of the Council best placed to consider and respond to it an amendment to the Constitution is required.

The necessary amendments are shown marked in Appendix A.

### **Responsibilities of Chief Officers**

Following changes to the senior management team on the Council it has been necessary to include additional delegations contained in Part 3 of the Constitution.

The changes are shown marked in Appendix B.

### **Petitions Scheme**

In July 2016, the Democratic Services and Community Engagement teams were tasked with reviewing the Council's Petition Scheme as part of its approach to engaging with the public in the democratic process. A revised petition scheme has

been produced, which aims to provide a more fulfilling experience for members of the public who choose to engage with the Council in this way.

Under the proposals the revised scheme will no longer take the 'one-size-fits-all' approach where all petitions are referred to a meeting of the County Council. Instead, consideration will be given to the individual merits of each petition before a decision is made on the most appropriate way for the petition to be dealt with.

It is recommended that Democratic Services, in consultation with the Chief Whip, Executive Councillor(s) and service area, determine the appropriate route for the petition to travel through the democratic process. This will then be discussed and agreed with the petitioner.

It is set out in the proposed Scheme that petitions will follow one of the below routes:

- Referred straight to the executive councillor and service area for a response (within 15 working days)
- Referred to the relevant scrutiny committee (where the petitioner will be able to present their petition and the committee will discuss and decide on an appropriate course of action)
- Referred to Full Council. (usually petitions with a high number of signatures or far reaching impact).

The proposed scheme removes the automatic referral of all petitions to the Full Council, but adds the new route of submission to scrutiny committees for larger petitions, where time can be allowed for the petition to be presented and properly debated. It is felt that this would be a more fulfilling experience for the petitioner with a more satisfactory conclusion.

Petitions forwarded directly to Executive Councillors would, under the new proposals, receive a quicker response as they would not be dependent upon the dates of Council meetings.

The revised Scheme will be supported by a document which enables officers to track progress of petitions through the process, as well as a dedicated area on the Lincolnshire County Council website containing information about submitting petitions as well as links to the Council's e-petition portal.

A cross-party working group set up by group leaders met on Friday, 24 November 2017 to examine the proposed scheme, which is attached at Appendix C to this report.

## 2. Legal Issues:

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- \* Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- \* Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- \* Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

As formal changes to the Council's governance arrangements the proposals are not considered to have an adverse impact on people who share a protected characteristic compared with those who do not. In particular anyone will be entitled to invoke the Petitions Scheme without regard to whether or not they have a protected characteristic.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

As formal changes to the Council's governance arrangements there are not considered to be any implications of the proposals for the JSNA or the JHWS

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

As formal changes to the Council's governance arrangements there are not considered to be any implications of the proposals for crime and disorder

**3. Conclusion**

The Report proposes a number of amendments to the Council's current Constitutional arrangements in relation to the consideration of reports from the Ombudsman, Chief Officer delegations and Petitions. It is considered that the proposals enable the Council to respond more effectively to Ombudsman findings, bring delegations into line with Chief Officer responsibilities and enable more effective engagement with the public.

**4. Legal Comments:**

The proposals are lawful.

As amendments to the Constitution are required the decision is reserved to full Council and the decision is accordingly within the remit of full Council.

**5. Resource Comments:**

There are no material financial implications arising from acceptance of the recommendations in this report.

## 6. Consultation

### a) Has Local Member Been Consulted?

n/a

### b) Has Executive Councillor Been Consulted?

Yes

### c) Scrutiny Comments

This decision has not been considered by the Scrutiny Committees

### d) Have Risks and Impact Analysis been carried out?

Yes

### e) Risks and Impact Analysis

See the body of the Report

## 7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Changes to Part 3 of the Constitution
Appendix B	Changes to delegations of Chief Officers (Part 3)
Appendix C	Proposed Petitions Scheme (Part 5)

## 8. Background Papers

Document title	Where the document can be viewed
Council's Constitution	Democratic Services

This report was written by David Coleman, Chief Legal Officer who can be contacted on 01522 552134 or [david.coleman@lincolnshire.gov.uk](mailto:david.coleman@lincolnshire.gov.uk) and Nigel West, Head of Democratic Services who can be contacted on 01522 552840 or [nigel.west@lincolnshire.gov.uk](mailto:nigel.west@lincolnshire.gov.uk).