

<b>DECISION-MAKER:</b>	GOVERNANCE COMMITTEE		
<b>SUBJECT:</b>	REVISIONS TO CONSTITUTIONAL ARRANGEMENTS		
<b>DATE OF DECISION:</b>	16 DECEMBER 2013		
<b>REPORT OF:</b>	HEAD OF LEGAL AND DEMOCRATIC SERVICES		
<b><u>CONTACT DETAILS</u></b>			
<b>AUTHOR:</b>	<b>Name:</b>	Richard Ivory	<b>Tel:</b> 023 8083 2794
	<b>E-mail:</b>	Richard.ivory@southampton.gov.uk	
<b>Director</b>	<b>Name:</b>	Mark Heath, Director of Corporate Services	<b>Tel:</b> 023 8083 2371
	<b>E-mail:</b>	Mark.heath@southampton.gov.uk	

#### STATEMENT OF CONFIDENTIALITY

N/A

#### BRIEF SUMMARY

This report has been submitted to the Governance Committee for three reasons. Firstly, at the request of Full Council following its meeting of 25<sup>th</sup> April 2013 when it considered a report into the allegations surrounding a press release issued by the Council in May 2012 following the resignation of Councillor Morrell from the Executive. Council requested that the Governance Committee review the relevant constitutional arrangements and make any recommendations to Full Council as appropriate.

Further, following on from the annual constitutional changes considered by Annual Council in May it requested that it revisit the arrangements for call in and cabinet reconsideration post elections.

Additionally, revisions to the Member and Officers Protocol flowing from recommendations of a recent Employment and Appeals Panel are tabled for consideration.

#### RECOMMENDATIONS:

- (i) to note the work undertaken by officers since the Council meeting on 25<sup>th</sup> April 2013 in relation to revisions to the Media Protocol (Appendix 1) and to Member training;
- (ii) To note the progress made on revised member training arrangements and recommends Council accepts the revisions to the Member and Officer Protocol as attached at Appendix 2;
- (iii) That the proposals regarding call ins post elections be recommended to Council.

#### REASONS FOR REPORT RECOMMENDATIONS

1. The Governance Committee on 23<sup>rd</sup> September 2013, in its role as custodian of constitutional arrangements considered reports from the Head of Legal, HR

and Democratic Services in relation to the first year of the new Members' Code of Conduct under the Localism Act 2011 and a revised Member Training and Development Programme. In this report a revised Media Protocol is submitted for information. It is believed that the actions taken by officers and agreed by Governance Committee fully accord with the issues raised by Full Council at its meeting on 25<sup>th</sup> April 2013 and have subsequently be addressed and implemented.

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. All options have been considered in the paper as detailed in the narrative below.

## **DETAIL (Including consultation carried out)**

### Matters arising from the Extraordinary Council meeting

3. As indicated broadly in the summary above, on 25<sup>th</sup> April 2013 Full Council considered a report of the Council's Director of Corporate Services and Monitoring Officer together with the report of the independent investigator, Richard Lingard concerning an independent investigation into allegations surrounding a press release issued by the Council in May 2012 following the resignation of Councillor Keith Morrell from the Executive.
4. After lengthy consideration, the Council resolved as follows:
  - i. That the report of the Monitoring Officer be noted;
  - ii. That the report of the Monitoring Officer be referred to the Governance Committee to consider:
    - a. Whether or not the current constitutional arrangements, protocols and/or guidance are robust and adequate;
    - b. Making any recommendations for changes for such arrangements to Full Council as appropriate; and
    - c. Whether the current training and development arrangements for officers and members should be revised.
5. Members will be aware that the matter referred to in the item before Full Council on 25<sup>th</sup> April 2013 specifically related to behaviours and circumstances that were undertaken under the old Code of Members' Conduct which was revoked on 30<sup>th</sup> June 2012 when the Localism Act 2011 came into force. Accordingly, a new Members' Code of Conduct was adopted by Full Council in July 2012 and, therefore, the Council has in place a new and different Code which continues to follow the Nolan Principles but accords with the parameters of the Localism Act 2011 which is far more constrained than the previous Code which was implemented pursuant to the Local Government Act 2000.
6. The Council has adopted a Code which it feels is suitable to its circumstances within the parameters of the new legislation which includes removal by law of many of the sanctions available to the authority should there be significant breaches.
7. The Head of Legal, HR & Democratic Services submitted a full report to Governance Committee on 23<sup>rd</sup> September 2013 detailing the first year of

operation of the new Code and after consideration of the report the Governance Committee resolved that no further changes at this point were needed to the Code of Conduct. It is not suggested that any changes at this stage are warranted arising from the matters specifically discussed at Full Council on 25<sup>th</sup> April 2013. However, members may wish to discuss this at the Governance Committee.

#### Media Protocol

8. Moreover, one of the more specific issues that Full Council previously considered was in relation to the Members' understanding and compliance with the adopted Media Protocol and Officer / Member Protocol.
9. As a result of those issues the Communications Manager, together with LGA peer support, has revised the Media Protocol and to ensure that it meets current Council needs. This is attached at Appendix 1. This is broadly a guidance and operational document and does not require adoption by Full Council as part of the Constitution as this would make it difficult to change at short notice should it be necessary to adapt to local circumstances, but it is placed before Governance Committee for its consideration to ensure that it meets the Council's practical needs.
10. The Media Protocol describes the collective responsibility for speed of response and sign off on all media enquiries. It clarifies roles and responsibilities, highlights the need for information sharing, and establishes a clear sign off process for both print/web based requests and interview requests for broadcast media. It emphasises the need to respond to media enquiries in a timely manner, the need for named deputies and highlights the requirement to understand preferred contact methods and access to smart phones for reading releases and statements on the go. It categorises media enquiries into categories A, B, C and D, recognising that not all enquiries are the same. It also clarifies the routing of all media enquiries within the organisation which should always be directed to [communications@southampton.gov.uk](mailto:communications@southampton.gov.uk), 023 8083 2000, or 07901 008786.

#### Member and Officer Protocol

11. In summary, it is considered by the Head of Legal and Democratic Services that all matters referred to in the concerns of Full Council in April 2013 have been addressed as much as they can be by virtue of revising the appropriate Protocols and bringing these to the attention of officers and Members. However, what is not in the gift of officers is to ensure compliance. Whilst the protocols, procedures and codes adopted by the Council are robust, sensible, proportionate and should be relatively easily understood, officers cannot legislate for anyone, officer or member, breaching those protocols. Should that happen there are sanctions in place, such as the law permits.
12. It is, therefore, believed, that everything that reasonably could be done has been done and that at this point in time, no further action or revisions to protocols is required save for the revised Media Protocol as indicated.

#### Matters arising from the Employment and Appeals Panel

13. On 2<sup>nd</sup> October 2013, the Employment and Appeals Panel heard a grievance from two employees relating to the unauthorised release to the media of

personal (salary) information held by the Council. As a result certain recommendations are proposed as requested by the Panel.

14. The management investigation into the grievance established this personal information had been shared with a Member following a legitimate request by that Member for information. The information was then disseminated by the Member to another group of Members without the knowledge or consent of the author. While the investigation concluded that no breach of the Council's Constitution or rules relating to sharing information with Members had taken place, nor was there any breach of the Data Protection Act arising from sharing that information, it is clear that the subsequent release of that information by persons unknown to the media was unlawful and a clear breach of confidence. As the Council could not identify the person who released the information to the media no formal action could be taken in this regard. The employees appealed the findings of the initial investigation report and, at the stage 1 hearing, management determined there was some uncertainty over the level of personal information that was requested or that needed to be provided to comply with the initial Member request. This led to management suggesting recommendations to Governance Committee regarding strengthening the existing text within the Protocol on Officer / Member Relations.
15. The employees appealed further to the Employment and Appeals Panel. The decision of the Employment and Appeals Panel upheld the initial investigation and stage 1 findings, including the recommendations to Governance Committee.
16. The recommendation is to amend the Protocol on Officer / Member Relations to include a requirement that:
  - a. Any Member request for personal information or personal data about an individual employee (rather than a general group of employees as a whole) should only be supplied where there is a demonstrable need for that Member to have the information at that level of detail in order to carry out their duties as a Member of the Council. Any such requests should be referred to and considered by the Head of Strategic HR who may if necessary refer the request to the Monitoring Officer.
  - b. In cases where such information is to be released the Head of Strategic HR will specifically remind the Member that the information is confidential, subject to the protection of the Data Protection Act 1998 and confirm the necessary measures for handling that data in order to keep it confidential and ensure that it is not further disclosed to any other person or body either within or external to the Council.
17. It should be noted that in parallel to the grievance process, the Information Commissioner's Office (ICO) investigated the matter and decided that the Council's data protection security measures were adequate and that the Council had complied with the requirements of the Data Protection Act 1998.
18. While the Council's procedures and processes have been upheld as lawful and adequate to meet the requirements of the Data Protection Act and its own Constitution, in light of this particular case it is felt that the opportunity to

further improve council processes should be taken by introducing appropriate checks and balances such as those in the recommendations above. There will also be a need for further data protection training for Members and officers following any amendment to the Protocol on Officer and Member Relations.

#### Call In arrangements post elections but before the next Council meeting

19. At Annual Council the proposals as below were considered:

*“The Leader has requested that if following either annual or a by election the political control of the authority changes as a direct result that the Constitution is revised so that no significant decisions can be taken by Council, the Executive, or by Executive Members through delegated powers during the period between annual elections and the AGM. The concern is that the Council’s arrangements need to ensure that there is no “democratic deficit” which to the public would appear to show political bias and limited legitimacy in the circumstances when one political party (whichever party that is) may have lost control of the Council. The revisions are attached on Appendix 2.*

*Such changes will not affect the Council’s ability to react to any time limited or emergency matters, in the rare event that they should they arise as there are existing adequate powers under the Officer Scheme of Delegation to permit the Chief Executive, Director of Corporate Services or Head of Legal, HR and Democratic Services to act.*

*The desire to do so has come as a result of the circumstances relating to the Rom TV outsourcing review which was due to be considered by Overview and Scrutiny Management Committee on 11th April 2013 but was deferred until after the AGM. The Governance Committee has considered the specific issue and recommended revisions as detailed below:*

#### **PERIODS BETWEEN ELECTIONS**

*“If, following either annual elections or a by election, the political control of the authority changes, as a direct result no meetings of Council can be called, or the Urgent Business Sub Committee convened to enable significant decisions to be taken until the next meeting of Council.*

*Such changes will not affect the Council’s ability to react to any time limited or emergency matters, in the rare event that they should they arise as there are existing powers under the Officer Scheme of Delegation to permit the Chief Executive, Director of Corporate Services or Head of Legal, HR and Democratic Services to act.”*

20. It was resolved that the matter be revisited by Governance Committee as part of the next round of annual revisions. Officers have revisited what can

practically be done to ensure that the “democratic deficit” referred to in the original report to Council is addressed. The difficulty is devising a revised solution is that by law call ins are permitted after any Executive decision is made. It is, therefore, the timing of the original decision, the call in and then the timing of the subsequent Cabinet meeting to reconsider (should this be needed) that causes the potential issue. Whilst the last scheduled meeting before an election could take place well before the election there is no guarantee, for a variety of reasons, that the matter would be ultimately disposed of before the election. The only guarantee that the matter will not be decided upon after call in is by putting in place a local arrangement so no Cabinet meeting can take place during this interregnum. That remains the only option which at law will work and in practice meets the “democratic deficit” concern and therefore remains the recommendation.

**RESOURCE IMPLICATIONS**

**Capital/Revenue**

21. None.

**Property/Other**

22. None.

**LEGAL IMPLICATIONS**

**Statutory power to undertake proposals in the report:**

23. Localism Act 2011, S101 Local Government Act 1972

**Other Legal Implications:**

24. None.

**POLICY FRAMEWORK IMPLICATIONS**

25. None.

**KEY DECISION?** No

<b>WARDS/COMMUNITIES AFFECTED:</b>	None
------------------------------------	------

**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Media Protocol
2.	Member and Officer Protocol – draft revisions

**Documents In Members’ Rooms**

1.	None
----	------

**Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
--	----

**Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
----	------	--