Purpose of report

This report proposes two areas of amendments to the Constitution. These are changes to Part 2 (Article) to allow named substitutes to be nominated for the North Northamptonshire Joint Committee and Part 9 to clarify the factors that will be considered in relation to the determination a complaint against a councillor who subsequently leaves office.

Appendix 1 – Proposed changes to Annex 1 of Part 9.

1.0 Background

1.1 The Monitoring Officer has a responsibility to regularly review the Constitution in the light of the changing context in which the council operates, including changes in legislation. A full review of the Constitution was undertaken in 2015 by Internal Audit and the council’s legal advisors, LGSS, and a significant number of changes were implemented as a result. A smaller number of changes have been approved since: some via recommendation from the Governance and Audit Committee where there is a potentially more significant impact on the governance framework; some by direct report to (full) Council; and some minor administrative changes via the Monitoring Officer under delegated powers. The most up to date version of the Constitution can always be found on the council’s website.

2.0 Proposed changes to Part 2 (Articles)

2.1 As councillors will be aware, the (full) Council recently agreed to establish a North Northamptonshire Joint Committee to undertake preparatory activity ready for the first meeting of the Shadow North Northamptonshire Unitary Authority in preparation for the Secretary of State’s decision.

2.2 The Terms of Reference for the Committee include three representatives from this Council. Delegated authority was given to the Chief Executive to make changes to the appointments to committees in accordance with the wishes of the political groups once the changes to the statutory allocation of seats to political groups resulting from the decisions above have been calculated.

2.2 It is also proposed that the North Northamptonshire Joint Committee will allow named substitutes to attend in the absence of the nominated councillors. The use of named substitutes is not currently provided for in the Constitution for this council. It is therefore proposed that Part 2, Article 10 be modified to allow named substitutes for any Joint Committee where the Terms of that Joint Committee permit these.

2.3 The proposed change to Article 10 is as follows:

10.02 Joint arrangements
(a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions in any of the participating authorities, or advise the Council.
(b) Such arrangements may involve the appointment of a joint committee with these other local authorities. Appointment of East Northamptonshire Council representatives to Joint Committees shall be made by (full) Council. Where the Terms of References of Joint Committees allow named substitutes these may also be appointed by (full) Council on the basis of the same political proportionality as the representatives.
Details of any joint arrangements, including any delegations to joint Committees, will be found in the council’s scheme of delegation in Part 3 of this constitution.

3.0 Proposed Changes to Part 9 (Procedure for the Assessment, Investigation, Determination and Appeal of Complaints against Councillors and Dispensations)

3.1 One of the more complex scenarios that Part 9 has to cover is balancing the fairness to the councillor, the complainant and the public in determining a complaint, with the value to the public purse and wider public ethical interest, in the situation where the councillor resigns from office before a complaint is formally made or during the complaints process. Resignation from office significantly limits the range of sanctions that can be effectively applied at that time and also potentially limits the likelihood of the ex-councillor being willing to involve themselves in the process. However, there are some complaints whose potential seriousness is such that regardless of the potential cost should be pursued to a point of determination.

3.2 In November when the Joint Standards Complaints Committee discussed the above balance, members of that Committee were mindful of that balance between wider public interest against the cost to the public purse of pursuing formal complaints. They also recognised the difficulties of pursuing and investigation or determination after a significant time delay. However, they considered that, where a councillor had resigned from office, there were likely to be some cases whereby suspending determination beyond a period of one year could be justified, where there is the possibility of the relevant former councillor subsequently returning to office.

3.3 Therefore on balance, they resolved to recommend to this Committee the additional wording to Annex 1 of Part 9 which provides local guidelines for the assessment of complaints to cover situations where an investigation is (or has been) recommended at initial assessment; see Appendix 1.

4.0 Privacy Implications

4.1 There are no additional implications as a result of this report.

5.0 Equality and Diversity Implications

5.1 There are no equality or diversity implications arising from this report.

6.0 Legal Implications

6.1 There are no known legal implications arising from the changes proposed in this report.

7.0 Risk Management

7.1 The changes proposed in this report in relation to Part 2 of the Constitution are designed to mitigate the risk that East Northamptonshire Council is not represented at North Northamptonshire Joint Committee Meetings.

7.2 The changes proposed to Part 9 are designed to enable the council to comply with its duty to promote high ethical standards.

8.0 Constitutional Implications

8.1 If agreed by (full) Council, the proposed change to the Constitution will take effect immediately after the (full) Council decision and will be included in the version published on the website as soon as possible.
9.0 **Resource and Financial Implications**

9.1 There are no additional financial or resources implications arising from this report.

10.0 **Customer Services Implications**

10.1 The changes to Part 9 of the Constitution will help provide reassurance that the council will seek to uphold the highest ethical standards.

11.0 **Corporate Outcomes**

11.1 The proposed amendments to the Constitution will contribute to the corporate outcomes of Effective Management by ensuring robustness and transparency in decision making for the North Northamptonshire Joint Committee and upholding the highest ethical standards in assessing complaints against councillors.

11.0 **Recommendation**

11.1 That this Committee **resolves to recommend** to (full) Council approval of changes to the Constitution set out in paragraphs 2.3 and Appendix 1 of this report

[Reason: to ensure that the Constitution continues to provide appropriate guidance on Council decision making]

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<td>Person Originating Report:</td>
<td>Sharn Matthews, Monitoring Officer</td>
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APPENDIX 1

Proposed Change to Annexe 1 of Part 9 of the Constitution

Local Guidelines for the Assessment of Complaints about councillor Conduct

1. Preliminary steps: The Monitoring Officer will ensure that that:-

(a) the complaint is against one or more named East Northamptonshire councillor, or Parish or Town councillors in East Northamptonshire (b) the named councillor was in office at the time of the alleged conduct and a code of conduct was in force at the time (c) the complaint submitted sufficient information and specified how the code of conduct is considered to have been breached. (d) the complainant's contact details have been provided or, if the complaint is anonymous, that it raises such significant concerns that further consideration is warranted.

The complaint will not be pursued if it fails one or more of these tests.

2. Summary from the Monitoring Officer: To assist the Independent Person and Chairman/Vice Chairman of the Joint Standards Complaints Committee (JSCC), the Monitoring Officer will provide a short written report setting out:

- The paragraphs of the code of conduct which are alleged to have been breached
- Key aspects of the complaint (for lengthy or complex complaints)
- Any relevant further information, including, where relevant:
  o The code of conduct in force at the time of the activity which has given rise to the complaint
  o declaration of acceptance of any documents which contain the code of conduct e.g. Constitution/standing orders
  o minutes of meetings relevant to the complaint
  o copy of the relevant entry in councillor’s Register of Interests
  o details from Companies House or the Land Registry that maybe appropriate
  o whether any members of the JSCC or relevant officers are likely to be conflicted out
  o any written representation(s) received from the complained against councillor(s)
  o if the complaint has already been the subject of an investigation or other action relating to the code of conduct, or investigated by other regulatory authorities
  o any relevant matters about the health or circumstances of the relevant parties – to note any relevant points such as resignation, death or serious illness (which could influence a decision to proceed with an investigation)

3 Criteria to be followed: Complaints about councillor conduct will be:–

- taken seriously
- dealt with in a way that seeks to ensure fairness for both the complainant and the councillor(s) complained about
- treated on their merits, and
• considered with regard to proportionality, and the cost and time of an investigation and possible hearing.

The Monitoring Officer, Independent Person and Chairman/Vice Chairman of the JSCC will consider the following issues in deciding what action should be taken:-

(a) How long ago did the alleged conduct take place? If there is a lengthy delay in making the complaint, the Monitoring Officer may, having regard to the nature of the complaint, take the view that no further action is required. The Monitoring Officer will not entertain a complaint that is more than a year old unless the evidence of the breach has only become available within the past year.

(b) Is the complaint too trivial to warrant further action? If the answer is Yes, the Monitoring Officer is likely to decide that no further action will be taken.

(c) Does the complaint appear to be simply malicious, politically motivated, vexatious, or tit-for-tat? If the answer is Yes, the Monitoring Officer is likely to decide that further action is not warranted.

(d) Where complaints are received from one councillor who is of the same party as the councillor(s) complained about and on the same Council, the complaint may be passed to the relevant Group Leader or party branch for resolution. The Monitoring Officer will ask for a report on the outcome of the referral.

(e) Where the councillor(s) complained about resign(s) from office before or during the complaints process, consideration will be given to the public interest in the complaint process continuing or not. This wider public interest will include the potential impact and seriousness of the offence and the effectiveness of any sanctions that might be appropriate if breach were to subsequently be found.

This wider public interest will be weighed against the potential value for money for the public purse in taking any further action. In particular, where an investigation is (or has been) recommended, it may be decided that either:

i) the investigation may be completed to the stage where either a case to answer is or is not found, regardless of the co-operation or participation of the councillor(s) complained about;

or

ii) the start of the investigation may be delayed up to a maximum of a year, in case the councillor(s) return(s) to office in that time; or in exceptional circumstances, be delayed for a longer period if considered appropriate by the Monitoring Officer, following consultation with the Chairman, Vice-Chairman and Independent Member of the Committee.

(f)) Are there other factors which could influence the decision such as –

• Incorrect advice given to the councillor

• Exceptional circumstances
4. **Complaints which do not raise serious issues:** Wherever possible the Monitoring Officer will seek informal resolution for complaints considered to be less serious, rather than refer them for investigation. Examples of other action are conciliation, training, and improved procedures/protocols. Consistent with their duty to uphold standards of conduct, the Monitoring Officer will seek:
(a) the simplest and most cost-effective way of resolving the issue
(b) to help the Council (or the Town or Parish Council) to work more Effectively
(c) to avoid similar complaints in the future.