



Full Council	Tuesday, 24 April 2018	Matter for Information and Decision
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Title: **Review and Amendment of the Council's Constitution**

Author(s): **David Gill (Head of Law & Governance / Monitoring Officer)**

1. Introduction

- 1.1. This report is the first of a series of reports which will bring forward proposals to revise and update the Council's Constitution.

The current Constitution has been updated on a piecemeal basis since it was first adopted in April 2002 but has not been comprehensively reviewed since that time.

The proposed changes are designed to reflect current structures and legislative provisions, as well as ensuring good governance arrangements and mitigating the risk of decisions being successfully challenged on procedural grounds.

- 1.2. This report specifically proposes revisions to the Articles of the Constitution (Part 2) and Responsibility for Functions and the Scheme of Delegation (Part 3).

2. Recommendation(s)

- 2.1.** That Council consider the options and approve the adoption of the proposed revisions to the Articles in Part 2 of the Constitution (as attached at Appendix 1a) subject to any amendments proposed and agreed by Council.
- 2.2.** That Council consider the options and approve the adoption of the proposed revisions to the Responsibility for Functions in Part 3 of the Constitution (as attached at Appendix 2a) subject to any amendments proposed and agreed by Council.

3. Information

- 3.1. At its meeting on 17 January 2018, the Change Management Committee approved the appointment of a five-Member cross-party Working Group to provide input, advice and support to the Council's Constitutional review process.
- 3.2. The Constitutional Working Group met on three occasions between January to March 2018 and discussed in detail a number of revisions and updates to the Constitution as proposed by the Head of Law & Governance. The Working Group were broadly supportive of the majority of these proposals, although in some areas expressed a strong desire for the retention of existing arrangements. Officers are grateful to the Members of the Working Group for their valued contributions to this process.
- 3.3. At the first meeting of the Constitutional Working Group, Officers advised Members of the following matters which needed to be addressed during the review:
- A number of Committees and Working Groups referred to in the Constitution no longer exist and therefore should be removed;
 - A number of job titles and internal departments referred to in the Constitution no longer exist and therefore should be removed/amended;

- The existing Constitution contains substantial amounts of text regarding bodies which are not formally constituted Committees of the Council and have no decision-making authority, for example Residents Forums. These bodies should therefore be considered as Public Engagement Forums, and procedurally aligned with Outside Bodies which the Council appoints to; and
 - The existing Constitution contains some historic provisions which prohibit effective modern day working, for example the historic requirement for the Mayor to attest the affixing of the Common Seal of the Council to legal documents.
- 3.4. The ordering and numbering of the existing Constitution has been retained as far as possible for ease of comparison, but the text style and format have been updated to make it easier to navigate and access relevant information.
- 3.5. The substantive changes to Parts 2 and 3 of the Constitution are explained in more detail in the subsequent paragraphs of this report.

As far as possible, efforts have been made to illustrate within **Appendices 1a** and **1b** where substantive changes have occurred in respect of the existing Constitution by highlighting the relevant text. **Appendices 2a** and **2b** attaching the existing Parts 2 and 3 of the Constitution in their entirety have also been provided for full reference.

Members are asked to appreciate the fact that the approach has been to produce a newly formatted document which reflects a more business-like style, and as such the format of the revised documents is not compatible with the existing Constitution in terms of producing a straightforward 'track-changes' document for comparison.

4. Articles of the Constitution (Part 2)

- 4.1. For all intents and purposes, the Articles of the Constitution remain unchanged. The substantive changes are summarised in the subsequent paragraphs.
- 4.2. The existing Article 7 (Residents Forums and Working Groups) has been re-styled 'Outside Bodies' in order to reflect the correct legal status of bodies which are comprised of elected Members along with members of the public, and representatives of other organisations which provide a forum for the exchange of views and ideas that may influence the Council's policies and its decision-making processes.

These Outside Bodies directly facilitated by the Council include:

- Residents' Forums;
- The Health & Wellbeing Board;
- Community Engagement Forum;
- Community Safety Partnership;
- Children & Young People's Forum; and
- Senior Citizens Forum.

Members should also note that the Terms of Reference for the Residents' Forums have recently been consulted upon and are subject to approval by Council elsewhere on the agenda for this meeting.

- 4.3. The revised Article 9 sets out the Regulatory and Other Committee Structure, and Article 10 contains a new section on Member Conduct. Article 9 of the existing Constitution (Officers) now appears at Article 11 in the revised document.
- 4.4. Article 13.05 of the existing Constitution states that "The affixing of the Common Seal

will be attested by the Mayor (or some other member authorised by him/her) and by the Chief Executive or the Head of Corporate Resources or some other person authorised by either of them”.

Officers are of the opinion that the inclusion of the Mayor is an historical arrangement and it is unclear what purpose it serves, given the complex nature of these documents and the governance processes that are undertaken before such documents are sealed. The inclusion of Mayor as signatory has previously led to delays in completion of contractual agreements. Many contracting third parties find this process overly bureaucratic and frustrating, particularly where tight deadlines are in place. It is difficult to justify this approach or identify the risk which this process is designed to control. Officers have therefore proposed that the Constitution be amended to remove the requirement for the Mayor to attest the affixing of the Common Seal of the Council, and instead to delegate this function to the Head of Law & Governance.

However, some Members of the Constitutional Working Group expressed a strong desire for the Mayor’s attestation to remain as a constitutional requirement, citing the importance of its tradition in the Borough and a desire to prevent a perceived dilution of the Mayor’s role. A compromise option was therefore proposed by the Working Group whereby authority could be delegated to the Head of Law & Governance to affix the Common Seal without the attestation of the Mayor in “exceptional circumstances”.

It is for Council to decide whether it wishes to approve the Working Group’s suggested compromise, however Officers remain concerned about the ambiguity of what would constitute exceptional circumstances, and do not consider this option reduces the bureaucratic nature of the process or mitigates the risk of delays in completion of contractual agreements. On that basis, it is recommended that Council resolves to delegate this function to the Head of Law & Governance, to facilitate a more effective and efficient way of the administering the Council’s legal affairs.

5. Responsibility for Functions (Part 3)

- 5.1. The proposed Responsibility for Functions section is drawn on the basis of the functions delegated to Committees being prescribed; the Chief Executive, Statutory Officers and Directors are then able to exercise all other functions not so prescribed, including delegation to operational Officers where appropriate.

This approach has at least two key benefits:

- Greater clarity as to what the Functions of Members actually are; and
- A clearer and more flexible scheme of Officer Delegation because Officers will simply exercise those Functions not allocated elsewhere and there will not be detailed line-by-line delegations which would quickly become out of date or require constant updating.

- 5.2. A new section entitled ‘Current Functions’ has been included at the front of this part of the Constitution as a reference guide. Where a Committee no longer exists and has been removed, its functions have been absorbed into other bodies (e.g. the former Constitutional Task Group has been absorbed into Change Management Committee).
- 5.3. Members of the Constitutional Working Group generally supported the Committee structure and Delegation Scheme proposed by Officers, with two notable exceptions.

The Committees (and Sub-Committees where indicated*) which the Working Group

agreed with Officers should be retained/established were:

- Full Council [*Appointments Sub-Committee with specified membership];
- Policy, Finance and Development Committee [*Assessment Sub-Committee, Review Sub-Committee and Determinations Sub-Committee];
- Service Delivery Committee;
- Development Control Committee;
- Licensing & Regulatory Committee [*Licensing Sub-Committee and Taxi & Private Hire Sub-Committee];
- Independent Remuneration Panel; and
- Change Management Committee [*Investigatory Sub-Committee].

No agreement was reached however on the proposed revisions by Officers to the following Committees:

- Appeals Panel (Officers proposed to remove this Panel)
- Audit and Governance Committee (Officers proposed to establish this Committee consolidating the Change Management Committee)

- 5.4. In terms of the Appeals Panel, the majority of its functions have now been absorbed by the Tribunals Service i.e. Housing Benefit/Council Tax appeals and all that remains is the possibility of appeals by staff. Members of the Working Group expressed a strong desire to see the Panel retained, because it had historically provided an important safeguard for employees. Officers are of the view however that as Members are not entitled by law to be involved with the appointment of staff below the level of Chief Officers (this is a function of the Head of Paid Service), it appears incongruous that Members should be involved with disciplinary/grievance procedures concerning Officers at that level. The Council's grievance and disciplinary policy reflects ACAS good practice guidance by having a two stage process and therefore it is suggested that the Panel has merely adds an unnecessary additional stage in the process.
- 5.5. In terms of the proposed Audit and Governance Committee, Officers (the Monitoring Officer and Section 151 Officer) concur with the view of the Council's internal and external auditors that the organisation would benefit from having a dedicated Committee responsible for the Audit function of the Council.

It is suggested that this would promote transparency and ensure greater scrutiny of the Council's financial transactions. A copy of the proposed functions for an Audit and Governance Committee has been incorporated as part of **Appendix 2a**.

Officers are somewhat concerned that the remit of the Policy, Finance and Development Committee has expanded in recent times and the workload of the Committee is now over-subscribed. As Members will see in Appendix 2a, this lists some 57 different remit areas. Should the newly created Assessment, Review and Determinations Sub-Committees also be reserved as Policy, Finance and Development (PFD) Committee functions, this is likely to stretch its remit further.

The proposed Audit and Governance Committee would therefore be able rebalance the workload of the PFD Committee by absorbing some of its functions. Officers also hold the view that the statutory, transformation and other governance functions of the Change Management Committee (i.e. the Standing Order Regulations) lend themselves to consolidation into an Audit and Governance Committee. Overall, this provides for a much more cohesively-themed and structured Committee.

Additionally, there is a requirement under the Localism Act 2011 and the Code of

Conduct for a Committee to promote and maintain high standards of conduct by Members. Currently, the PFD Committee does not have a formal structure for addressing Member conduct issues. Hence the suggestion from Officers that the newly created Assessment, Review and Determinations Sub-Committees would sit more appropriately as functions of an Audit and Governance Committee.

In spite of the above considerations, the Constitutional Working Group expressed a general preference for the Policy, Finance and Development Committee to retain its current remit with the addition of the newly created Assessment, Review and Determinations Sub-Committees, and on that basis did not see the creation of an Audit and Governance Committee as necessary.

Background Documents:

The Constitution of the Council
Report to Change Management Committee 17 January 2018

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Implications Review and Amendment of the Council's Constitution	
Finance	There are no implications directly arising from this report.
Stephen Hinds (Director of Finance & Transformation / Section 151 Officer)	
Legal	The implications are as set out in the report. As the author, the report is satisfactory.
David Gill (Head of Law & Governance / Monitoring Officer)	
Corporate Risk(s) (CR)	<input checked="" type="checkbox"/> Political Dynamics (CR3)
David Gill (Head of Law & Governance / Monitoring Officer)	<input checked="" type="checkbox"/> Regulatory Governance (CR6)
	<input checked="" type="checkbox"/> Organisational/Transformational Change (CR8)
Corporate Priorities (CP)	<input checked="" type="checkbox"/> Not Applicable
David Gill (Head of Law & Governance / Monitoring Officer)	
Vision & Values (V)	<input checked="" type="checkbox"/> Not Applicable
David Gill (Head of Law & Governance / Monitoring Officer)	
Equalities & Equality Assessment(s) (EA)	There are no implications directly arising from this report.
David Gill (Head of Law & Governance / Monitoring Officer)	<input checked="" type="checkbox"/> Not Applicable (EA)