

CONSTITUTION WORKING PARTY		
Report Title	Constitutional Review	
Key Decision		Item No.
Ward		
Contributors	Head of Law	
Class	Part 1	Date: 15 November 2018

1 Summary

This report proposes certain updates to the Council's constitution to reflect current law.

2 Purpose

The purpose of the report is to ensure that the Council's Constitution remains fit for purpose, reflects existing legislation and best practice.

3 Recommendations

The Council is asked to approve the draft Constitution appearing at Appendix 1 with immediate effect.

4 Background

- 4.1 The Council has operated a directly elected Mayor and Cabinet model of political governance since 2002. It is a statutory requirement under the Local Government Act 2000 as amended that the Council have and maintain a Constitution which must be publicly available. It contains the Council's rules of procedure and must contain provisions which are set out by Direction.
- 4.2 There have been a number of reviews of the Council's Constitution since its inception, dealing with such issues as the Health and Wellbeing Board, changes to access to information requirements, amendments to the Scheme of Members' allowances and requirements relating to new Council functions, such as public health to name but a few.
- 4.3 The Council's Constitution states that it should be kept under regular review. The Constitution Working Party was established to offer advice to the Council about any proposed changes to the Constitution, and its comments on the proposed amendments, if any, will be reported to the full Council meeting which will consider this report.

- 4.4 The draft appearing at Appendix 1 contains amendments which are either required to reflect current law and/or to improve the drafting. Such amendments are not specified in detail in the summary below where they do not have an impact on the substance of the wording. The key amendments are summarised below. The headings relate to the section of the Constitution to which the proposed amendment refers. If the relevant section of the Constitution is not listed below, there are no significant changes proposed.

I SUMMARY

- (1) Paragraph 15. The Data Protection Officer has been added to the list of statutory officers. This is a requirement of the General Data Protection Regulations and this amendment was made to the main body of the Constitution following a previous report to Council. However, the wording in the summary was not previously amended.

II ARTICLES

- (2) Article 4.2.a - The list of plans and strategies which together make up the statutory policy framework has been amended to reflect current regulation. For example, there is no longer a requirement for the Council to adopt a Sustainable Community Strategy, and it is no longer a legal requirement for the Council's Housing Strategy to be referred to full Council. The proposed amendment does not prevent the Mayor and Cabinet referring the Housing Strategy to Council for endorsement.
- (3) Article 4.2 – Decisions which would ensue as a result of a community governance review (for example as to whether a parish council ought to be established) are added to the list of decisions for full Council.
- (4) Article 4.2.aa – It is not a requirement to have full Council approve any submission to the Secretary of State in respect of a substantial variation to health provision. This was consulted on by central government but never put into law. This has therefore been removed. Decisions relating to these referrals are made by the Healthier Communities Select Committee.
- (5) Article 7.3 – It is a statutory requirement that there must be a lead member for Children's Services. The Constitution currently states that this is the Mayor. It is proposed that it be amended to provide that it shall be the Mayor unless he delegates that responsibility elsewhere. At this year's AGM the Mayor delegated this statutory lead to Councillor Barnham.
- (6) Article 7.6 c – This provided for the Deputy Mayor to act if the Mayor had been suspended as a result of a breach of the Member Code of Conduct. The Standards Committee no longer has a power of suspension so an amendment has been suggested accordingly.

- (7) Article 9 sets out the terms of reference of committees. An amendment is proposed to the terms of reference of the Elections Committee so that if matters can only be decided by full Council, the Committee will have advisory powers only. This is the statutory situation and applies in any event. The amendment is proposed for the sake of clarity
- (8) Articles 19 and 20 have been added to provide for the SACRE and the Schools Forum, about which there was previously no provision in the Constitution

III LOCAL CHOICE FUNCTIONS

- (9) No significant changes are proposed save to remove the references to outside bodies which do not exist any longer.

IV C. COUNCIL PROCEDURE RULES

- (10) Paragraph 15.5 – There is a proposal that if the Council passes a motion which commits the Council to action in respect of which only the Mayor has legal authority to make a decision, then the matter must be referred to the Mayor and Cabinet for a decision. For example, the Council recently passed a motion to adopt the Ethical Care Charter, but such a decision which is an executive decision, and therefore could only be made by Mayor and Cabinet, had significant implications, both legally and financially for the Council. It involved consideration of the Council's contractual position and the additional costs which such a decision would entail. The motion therefore could have no force unless a decision in accordance with the Local Government Act 2000 as amended, was made by the person(s) legally entitled to make it on a full consideration of all relevant matters.
- (11) Paragraphs 22 (5) and (6) are proposed for amendment to update the way in which a roll call vote is taken. The Council no longer uses voting buttons.

F. BUDGET AND POLICY FRAMEWORK

- (12) Paragraphs 3 a and b – Amendments are proposed to make the timetabling consistent and realistic – with the normal limit for responses at least 10 days.

G. ACCESS TO INFORMATION

- (13) Paragraph 13 – An amendment is proposed as the legal provisions allowing the Executive to meet in private have been changed. When it meets to make a decision, if exempt or confidential information would be likely to be disclosed, the Executive may meet in private. It may also meet in private if the presence of the public would breach a legal obligation to third parties to keep information confidential, or a lawful power is used to exclude the public in order to maintain orderly

conduct. This reflects the different wording contained in the access to information provisions in SI 2014/2095 but does not have any impact on the Council's current practice.

H. EMPLOYMENT PROCEDURE

- (14) No changes proposed.

I. CONTRACT PROCEDURE RULES

- (15) Changes to these procedure rules do not affect the substance of the rules. They are designed to be clearer and to shift provisions about the limits of delegation into the Mayoral Scheme of Delegation. The proposed changes to the Contract Procedure Rules do not change the powers available to the Mayor currently.

PART V ETHICS - Member Code of conduct with protocols

- (16) Paragraph 2.2.7 of the Member Code of Conduct as currently drafted contains an error. It states that members must take account of the views of others including their political groups, but must reach their own conclusions. However this does not accurately reflect the law. It is not mandatory for councillors to take account of the views of their political groups, and any instance where this were to override the duty to exercise independent judgement would be challengeable in law, and may lead to a Council decision being struck down by the courts. There is long established case law to this effect, see for example the Westminster decision in Porter v Magill and the successful challenge brought by Rupert Murdoch v Derbyshire County Council. The suggested wording of this paragraph is nuanced more closely to reflect the legal position and if agreed, would now read:-

“Members may take account of the views of others, including their political groups, and will be obliged to consider the outcome of any consultation, but they must reach their own conclusions and act in accordance with those conclusions.”

PART V Ethics – Protocol on the acceptable use of ICT equipment

- (17) A new paragraph 2 has been added to this protocol, which if accepted would require members to comply with any Member Social Media Policy in place from time to time. At the time of drafting this report, such a policy is not yet in place, but is in preparation, and will be referred to members for approval. It is suggested that such a policy should be considered by the Standards Committee at the earliest opportunity.

PART VI MEMBERS' ALLOWANCES

- (18) The Scheme agreed at the September 2018 Council meeting will replace the Scheme currently appearing in the Constitution.

PART VII STRUCTURE CHART

- (19) A current structure chart will be inserted

SCHEMES OF DELEGATION

- (20) The Council's Scheme of Delegation is in two parts. The first relates to delegation of non-executive matters, such as development control and licensing. There are no proposals for change in this element of the Scheme of Delegation. The second part is the Mayoral Scheme of Delegation. The delegations here are entirely at the Mayor's discretion. Some changes to the Mayoral Scheme of Delegation would be necessary as a result of the changes proposed in this report. It is intended that the Mayor will review his delegations prior to the Council meeting at which this report is to be considered, and subject to agreement of the amended draft at Appendix 1, will present an amended Scheme of Delegation to that meeting. For example, the Directorate Schemes of Delegation are not currently consistent with one another. It is proposed that these be standardised and that the Schemes offer officers more guidance than is currently the case. For the avoidance of doubt, the proposed changes do not alter the powers of officers, save to allow the Head of Law to settle administrative proceedings (such as Inquiries and arbitrations), which do not currently fall within the definition of legal proceedings which the Head of Law can already settle under delegated authority. All proposed changes will in any event be subject to Mayoral agreement.

5. The Future

- 5.1 This report deals only with proposed amendments to update the Constitution to the present requirements. As members will be aware, the Council has embarked on a Local Democracy Review and is consulting widely about how to be more open and transparent and how to make its decision making more effective. When this review is complete, it may be that further constitutional change will be needed to reflect the Council's decisions made as a result of the review.
- 5.2 The Council will also need to consider an appropriate decision making structure for the allocation of the community infrastructure levy. A further report will be brought forward as soon as possible.

6. Legal implications

- 6.1 The legal position set out in the body of the report is accurate.

- 6.2 Section 9P Local Government Act 2000 requires the Council to prepare and keep up to date a constitution which contains the Council's standing orders, code of conduct, information required by the Secretary of State and such other information as the Council considers appropriate. The provisions in the current and proposed amended constitution comply with this requirement. Once agreed the Constitution must be publicly available.
- 6.3 Decisions relating to amendment to the Constitution are for full Council to make.
- 6.4 The Council is under a general duty in Section 3 Local Government Act 1999 to secure continuous improvement in the way in which its functions are exercised. The proposals in this report are designed to comply with that duty.
- 6.5 In March 2018, the Government Response to the Communities and Local Government First Report of Session 2017-19 on the Effectiveness of Local Authority Overview and Scrutiny Committees was published. It has stated that it intends to issue revised guidance, but none has been forthcoming. If and when it is forthcoming, the Council will have regard to it. The Response states that guidance is likely to provide that:-
- (a) the involvement of the executive in scrutiny meetings should be limited to acting as a witness;
 - (b) Councils should ensure that officers advising scrutiny should be able to offer impartial advice, but that it is for each Council to decide how it resources scrutiny committees;
 - (c) scrutiny committees should encourage public participation;
 - (d) scrutiny committees should report to full Council.
- 6.6 The Constitution as drafted currently and as proposed is not inconsistent with current guidance or that proposed at 6.5 (a) (b) and (c). There is also provision in the Constitution as currently, and as proposed, which would reflect (d) above as referrals can be made by scrutiny to full Council, for example where a decision of the Executive would not be consistent with the Council's budget.
- 6.7 Officers recommend that the implications of any further guidance that is issued should be taken into account in any future review of the Constitution.
- 6.8 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

6.10 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.

6.11 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

6.12 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

6.13 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

- 6.14 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

7. Equalities implications

There are no specific implications.

8. Crime and Disorder implications

The Constitution as currently drafted, and as proposed, contains provisions for the scrutiny of the police by the Council and reflects statutory requirements.

9. Financial implications

There are no specific financial implications arising from this report.