



Purpose: For Decision

# Committee report

Committee	<b>CABINET</b>
Date	<b>12 NOVEMBER 2020</b>
Title	<b>REVIEW OF THE COUNCIL'S CONSTITUTION</b>
Report of	<b>GEOFF WILD, CONSULTANT – LAW AND GOVERNANCE</b>

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## EXECUTIVE SUMMARY

1. To seek members' approval of the work that has been carried out to review and revise the constitution, to consider the views of Cabinet, Corporate Scrutiny Committee and elected members, and to recommend the formal adoption of the revised constitution by Full Council.

## RECOMMENDATIONS

2. Members are asked to:
  - (a) approve the work that has been carried out to review and revise the constitution,
  - (b) consider the outcome of the member consultation process, including the comments made by Corporate Scrutiny Committee at its informal meeting on 13 October 2020,
  - (c) recommend the formal adoption of the revised constitution by Full Council on 18 November 2020.

## INTRODUCTION

3. The constitution sets out how the council operates, how decisions are made and the procedures that are followed to ensure that it is efficient, transparent and accountable to local people.
4. Under sections 9P and 37 of the Local Government Act 2000, the council is under a legal duty to prepare and keep its constitution up to date to ensure that it complies with legislative provisions and best practice.
5. The constitution must by law contain:

- (a) the council's standing orders/procedure rules
  - (b) the members' code of conduct
  - (c) such other information as the authority considers appropriate
  - (d) such information as the Secretary of State may direct
6. A constitution Direction was issued by the Secretary of State in December 2000, which required around 80 matters to be included within council constitutions, including members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities, a description of the rights of inhabitants of the area, etc. This Direction has been followed in preparing the revised constitution.

## SCOPE

7. The council's current constitution comprises 243 pages divided into a number of disparate sections. It has been compiled and supplemented in a piecemeal fashion over several years. Consequently, the document has become difficult to navigate and unwieldy. A member of the public who did not already know which part to look in would find it difficult to locate a specific section of the constitution as there is a limited search facility. Most importantly, the constitution does not contain all the necessary elements and components required by law, nor does it conform to current standards of best practice.
8. When the interim Monitoring Officer was appointed in September 2019, his main priority was to review the constitution. This was emphasised by members of the Appointment Committee and reinforced at Full Council on 18 September. During the [debate](#) at that meeting (item 27(b)), Cllr Whitehouse sought assurances from the Leader that the Monitoring Officer's priority would be to "take the constitution by the scruff of the neck" and make it lawfully compliant, stating that for several years fundamental areas of it had been "inaccurate, incomplete and not fit for purpose". The Leader assured members that it would indeed be the Monitoring Officer's priority to review the constitution's "anomalies".
9. The constitution has consequently been dissected and reviewed in detail, and revised where necessary to ensure it accurately and comprehensively meets the council's legal obligations and current standards of good practice. In the process, its compliance with legislative provisions and best practice has been reviewed, with a view to developing a clearer, more succinct constitution that better reflects the present values of the council, is accessible, up-to-date and incorporates changes to modernise the document and make it easier to use.
10. In undertaking the review, account was taken of the model constitution for councils in England created in 2014 for the Lawyers in Local Government Group by the law firm, Womble Bond Dickinson. A wide range of constitutions from the new unitary group of councils in England were also considered, together with more established constitutions adopted by well-regarded London borough councils and county councils nationwide.
11. The revised constitution is designed to allow members, officers and the public to have a better understanding and clarity around decision-making, including who takes decisions and how. The revisions indicate where the line is drawn between councillors and officers in decision-making and how better to facilitate decisions and council business. There is also recognition of the role of local members to ensure they are involved at the appropriate level.
12. The revision has concentrated on the form and structure of the constitution, accuracy,

updating to comply with legal requirements and future-proofing. Much of the original content has been retained, but certain elements have been re-ordered to avoid duplication and for ease of reference. As a result, it has reduced in size to just over 200 pages. The revised constitution is set out at **Appendix A**.

13. Where possible, flow charts and diagrams have been introduced into the constitution, outlining decision-making processes and structures. There is also a hyperlinked contents page, index and glossary of terms to enable easy navigation at the beginning.
14. The revised constitution will be made available on the council's website as a complete document. This will make searching for key terms within the document easier.

## TIMETABLE

15. As requested by the Leader and the Chief Executive, this work was largely completed by the New Year, following an initial consultation process involving all members of the council and with a view to it being presented for approval, firstly to Cabinet and finally to Full Council at the Annual Meeting in May.
16. Since then, COVID-19 has overtaken events and a degree of consequential slippage has occurred. It had been hoped to submit this to the re-scheduled Annual Council meeting in September, but unfortunately this proved not to be possible.
17. On 15 July 2020, the council appointed Chris Potter as its new permanent Monitoring Officer, and it was right that he should be given the opportunity to comment on and endorse the revised constitution before taking up his position. It was also right that the wider membership of the council and the Corporate Leadership Team should be given the opportunity to comment and be consulted on the proposed revisions to the constitution. The following timetable therefore fulfilled these objectives in time for the Full Council meeting in November:
  - 30 July – Chief Executive's briefing of Group Leaders
  - 1 August - Forward Plan updated, draft constitution circulated to CMT, CLT and Chris Potter
  - 1 September – draft constitution and report considered by CMT and CLT for input and initial sign-off
  - 2-30 September – draft constitution circulated to all members for consultation and group briefings, as required
  - 6 October – results of consultation considered by CMT, CLT and Corporate Scrutiny Committee
  - 8 October – Cabinet requested final consideration by Corporate Scrutiny Committee
  - 13 October – consideration by informal Corporate Scrutiny Committee
  - 12 November – Cabinet for final consideration and sign-off
  - 18 November - Full Council for adoption

## CONSULTATION

### **All-Member Survey - November 2019**

18. A survey comprising eight questions was sent to all 40 councillors on 21 November 2019 to alert them to the review of the constitution and to seek their ideas for improvement by 12 December 2019.

19. In addition, the consultation exercise sought members' views on the wider three-way process for approving changes to the constitution:
- (a) An initial whole membership consultation and involvement process by way of a survey
  - (b) Discussions with political groups
  - (c) A report with proposed amendments to the constitution to be tabled at the council Annual General Meeting in May 2020
20. Responses received from members are shown in **Appendix B**. Responses were received from four councillors, representing 10 per cent of the membership. Overall, the responses were non-committal on the effectiveness of the current constitution. The issues raised by members were limited in number and scope, and consisted of:
- (a) Reduce the numbers and sizes of committees
  - (b) Reduce duplication, clean up and slim down the constitution (“too wordy, too woolly”)
21. In addition, the review incorporated the following comments made by members and officers outside the formal consultation:
- (a) A document that has grown over years and is not internally consistent (a ‘patchwork quilt’)
  - (b) Desire to have a more easily understandable document that meets the needs of officers and members
  - (c) A structure that requires significant maintenance and is not future proof
  - (d) Opportunities to reduce bureaucracy, which also help members and officers take decisions more robustly and with more clarity over who takes which decisions
  - (e) Greater clarity of the role for overview and scrutiny
  - (f) Desire to have a more living, working document
  - (g) Concern at legal compliance
  - (h) Desire to meet standards of good practice nationally
  - (i) Recognition that the constitution is not best serving the interests of the council to deliver consistent, efficient and effective decision making
  - (j) Reduction of duplication, ‘clean up’, simplify and ‘slim down’ an unwieldy document

### **All-member consultation – September 2020**

22. The revised draft constitution was sent to all councillors on 2 September, in order to give them the opportunity to comment and be consulted on the proposed revisions. Also supplied was an explanatory report, outlining the process and methodology used to review the constitution, highlighting the main areas of change.

23. Members were invited to seek further information or to request individual or group briefings before the close of the consultation period on 30 September. No such requests or responses were received.

### **Corporate Scrutiny Committee informal meeting – October 2020**

24. At the meeting of the Corporate Scrutiny Committee on 6 October 2020, it was agreed that an informal briefing should be arranged for members of the committee (together with the chairmen of the other Policy and Scrutiny Committees) to comment on the draft constitution prior to its formal consideration by Cabinet on 12 November and Full Council on 18 November 2020. The informal meeting took place on 13 October and the conclusions reached are shown in **Appendix C**.

25. As part of this, the Corporate Scrutiny Committee made the following recommendations for consideration by Cabinet:

- (a) That the Audit Committee's membership (Page 29) be amended to specify that Committee members should ideally also not be members of the Scrutiny Committee.
- (b) That steps be taken to seek nominations for the two independent non-voting co-opted members on the Audit Committee (Page 29) or these positions be removed.
- (c) That the Audit Committee's terms of reference (Pages 28/29) should acknowledge its current responsibility for procurement with particular regard to the procurement strategy and waivers.
- (d) That Full Council should decide upon the future of the current co-opted voting position held by IWALC on the Corporate Scrutiny Committee (Page 50) and whether this should remain a voting position. If it is to be continued, consideration should be given as to whether a similar appointment should be sought from those town and parish councils who are members of HALC and also those who are not members of any related association. The consultation protocol with town and parish councils should also be reviewed, which would enable any changes to be taken into account.
- (e) That the council should take the earliest opportunity of refreshing the member code of conduct (Page 147) in light of the national review being undertaken by the Local Government Association.
- (f) That consideration be given to increasing the time allocated for public speaking at the Planning Committee (Page 191) from three minutes to five minutes.
- (g) That the rules applying to site visits (Page 193) should contain dispensation for states of national emergency (e.g. Covid-19), and outline who makes this decision and why the council may be required to suspend this activity.

26. The committee also sent a reminder to all members advising them that it was not too late to provide any further thoughts or comments before the item goes before Cabinet and Full Council in November 2020. Only one response was received (from Cllr Brodie) as follows:

*"As scrutiny on this council is broken I will take any amendments I have direct to Full Council. Where, no doubt they will be consigned to the same dustbin."*

## KEY FEATURES OF THE CONSTITUTION

### **Contents, Glossary and Introduction**

27. The revised constitution is divided into clear sections. There are detailed contents, index and glossary pages and the introduction explains clearly how the council takes decisions lawfully in respect of its various functions.

28. The current introduction and Articles have been simplified into a new easier to read introduction, setting out the purpose of the constitution. The Articles are not a legal requirement and repeat many of the points made elsewhere in the constitution and so have been removed to avoid duplication.

### **Responsibility for Functions**

29. This section of the constitution makes clear the distinction between executive and non-

executive functions and sets out the delegations from Cabinet to Cabinet committees, Cabinet members and officers; and also the delegations from Full Council to its committees, sub-committees and to officers. There are now comprehensive and consolidated schemes of officer delegation for both executive and non-executive functions, so that it is clear who is responsible for which function.

30. There is included a diagram showing the council's committees and sub-committees, and each committee's membership and terms of reference are described in detail, including a number of boards that were not previously included in the constitution.
31. It also sets out those matters included in the Budget and Policy Framework that are reserved for Full Council to decide. By law, the council must have a Policy Framework. This has been updated to include a list of all those plans and strategies that are required by law to be decided by Full Council, usually on the recommendation of the Cabinet.
32. Review of scrutiny included clearly stating the role of overview and scrutiny committees to make the decision-making process more transparent, accountable and inclusive. In order for scrutiny to be effective, the process must be open, fair, constructive and positive. This section sets out the structure and procedures of the overview and scrutiny committees, including call-in arrangements.
33. There are also a number of local choice functions that the council can decide to exercise itself or to delegate to a committee or a named officer. The council has discretion as to how best to organise these matters and they now form part of a table in the constitution.
34. The current constitution lacks a consolidated scheme of officer delegations. There is a new list of those officers who have statutory or Proper Officer functions delegated to them under various pieces of legislation.
35. The council's joint arrangements are set out in full for the first time.

### **Procedure Rules**

36. The council's Procedure Rules constitute an essential instrument for the smooth operation of the authority. The rules guide the conduct of both Cabinet and Full Council meetings and meetings of their committees and sub-committees. These rules have been updated in accordance with:

- (a) Schedule 12 of the Local Government Act 1972
- (b) Sections 8 and 20 of the Local Government and Housing Act 1989
- (c) Local Authorities (Standing Orders) Regulations 1993
- (d) Local Government Act 2000 Mandatory Standing Orders

37. The procedure rules relating to all council activities are grouped into the following parts:

- (a) Procedure Rules applicable only to Full Council
- (b) Procedure Rules applicable to all council bodies, including Full Council, Cabinet, committees, sub-committees and boards

### **Officer Employment Rules**

38. Under section 112 of the Local Government Act 1972, the council is empowered to appoint such officers as it thinks necessary for the proper discharge of its (or another

authority's) functions. This part sets out the rules relating to the recruitment, appointment and dismissal of senior staff. The Officer Employment Procedure Rules have been reviewed to ensure they meet the requirements of the 1993 and 2001 Standing Orders Regulations (as amended) and good employment practice.

## **Codes and Protocols**

39. This section of the constitution has been updated to include the following new additions:

- (a) Protocol for Councillors Rights to Information, setting out the rights and circumstances in which members of the council may access different types of information
- (b) Protocol for Recording and Publishing Officer Decisions, to ensure compliance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Openness of Local Government Bodies Regulations 2014
- (c) Member Code of Conduct Complaints Procedure, to provide a more ordered and timely process for the resolution of complaints
- (d) Dispensations Protocol – to govern the award of dispensations that would otherwise prevent a member with a Disclosable Pecuniary Interest from taking part in a debate

## **IMPLICATIONS**

### **(a) Policy**

40. Keeping the council's constitution up to date and in a user friendly format will support the council's Corporate Priorities, Vision and Values.

### **(b) Resources and Risk**

41. There are no immediate resource implications and no additional costs associated with the proposals contained in this report.

42. The recommendations accord with the resources available within the overall budget agreed by Full Council in February 2020.

### **(c) Legal**

43. Sections 9P and 37 of the Local Government Act 2000 set out the duty of the council to prepare and keep up to date its constitution.

44. Failure to have up to date codes and protocols could lead to inappropriate conduct which could in turn undermine council decision making with the potential for legal challenge and reputational damage.

### **(d) Equality and Diversity**

45. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It is not considered that the content of this report has any negative impact on any of the protected characteristics.

(e) Risk Management

46. The recommendations are to ensure that the council meets its corporate governance requirements and responds to changing requirements and demands. These should lessen the risks arising from any challenge to the decision making process by way of judicial review or other such legal action.

### EVALUATION

47. Good governance arrangements as set out in the constitution are essential to the delivery of the council's services and the decision making processes that supports this.

48. An effective governance system is essential to enable council business to be transacted openly and in a timely manner. The adoption of the revised constitution and the implementation of its supporting processes seeks to do this. Not to adopt the constitution could give rise to the council failing to meet its statutory obligations.

### OPTIONS

- (a) To recommend the revised constitution for adoption by Full Council on 18 November 2020
- (b) To suggest additional amendments or ask for further work to be done to the draft constitution
- (c) To reject the revised constitution

### RECOMMENDATIONS

49. Members are asked to:

- (a) Approve the work that has been carried out to review and revise the constitution.
- (b) Consider the outcome of the member consultation process, including the comments made by Corporate Scrutiny Committee at its informal meeting on 13 October 2020.
- (c) Recommend the formal adoption of the revised constitution by Full Council
- (d) on 18 November 2020.

### APPENDICES ATTACHED

Appendix A – Revised constitution

Appendix B – All-Member survey responses – November 2019

Appendix C - Corporate Scrutiny Committee informal meeting recommendations – October 2020

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