

Standards and Constitution Committee

5 December 2023

UPDATE TO THE COUNCIL'S CONSTITUTION

Head of Service:	Piero Ionta, Head of Legal and Monitoring Officer
Wards affected:	(All Wards);
Appendices (attached):	Appendix 1 – Modular Constitution (2000) (Institute for Local Government Studies) (see agenda supplement) Appendix 2 – Updated Scheme of Delegation and Live Delegations List (Appendix 2 to the Constitution) Appendix 3 – Updated Terms of Reference for Full Council and Committees (Appendix 3 to the Constitution) Appendix 4 – Updated Standing Orders Full Council (Appendix 4 to the Constitution) Appendix 5 – Updated Annex 2-4 - Protocol for Managing Councillor - Officer Relations Appendix 6 – Updated Annex 3-3 – Monitoring Officer Protocol Appendix 7 – Updated Annex 4-2 - Protocol Members of Public Speaking Appendix 8 – Updated Annex 4-7 - Code of Conduct and Procedure in Licensing Matters Appendix 9 – Updated Annex 5-1 - Financial Regulations Appendix 10 – Updated Annex 5-2 - Contract Standing Orders Appendix 11 – Updated Annex 5-3 – Sealing documents Appendix 12 – Updated Annex 6-2 - Complaints Process Exempt Appendix 13 – Advice note from Counsel

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Summary

This report seeks to report back on the work that has taken place since August by the Monitoring Officer with the support of external Counsel in consultation with the Chair and Vice Chair of this Committee and CWG on updates to the Council's Constitutional required to give effect to the changes adopted back in May 2023.

Recommendation (s)

The Committee is asked to recommend that full Council:

- (1) **Approve the updated Appendices (2, 3 and 4) and Annexes (2-4, 3-3, 4-2, 4-7, 5-1, 5-2, 5-3 and 6-2) so that they be adopted.**

The Committee is asked to:

- (2) **Agree that the Standard and Constitution Working Group review its Work Plan for this municipal year and bring a revised work programme to the next meeting of this Committee.**

1 Reason for Recommendation

- 1.1 To provide the council with a constitution that is updated to provide effect to changes approved by full Council in May 2023.

2 Background

- 2.1 Members will recall that this Council's Constitution was reviewed during 2022-23 by the Council's Standards and Constitution Committee Member Working Group with the recommended changes being adopted by full Council at its Annual General Meeting held on 23 May 2023.

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- 2.2 In January 2022, Strategy and Resources Committee agreed that a cross-party working group be set up to take forward a full review of the council's constitution. This group was called the Constitution Working Group ("CWG"). In the July 2022 report to Full Council, it was proposed to move away from the traditional format of a Council's Constitution toward a "centre and spoke" model. That work was carried out over the remainder of 2022 with a report back to Full Council on 14 February 2023 with recommendations to adopt a new Constitution as of the new municipal year that began in May 2023. At its Annual General Meeting in May 2023, the current Constitution in its new format was formally adopted and has been in operation ever since.
- 2.3 It was noted in the report to Full Council in February 2023 that:
- 2.3.1 *"A complete re-structuring of a document of this kind will naturally carry risks around potential inconsistency and what is included and excluded..."* (Para 4.42)
- 2.4 The Head of Legal and Monitoring Officer ('Monitoring Officer') is charged with reviewing the Constitution on an annual basis and as part of that process, it became clear that the intended purpose of the Scheme of Delegation as set out in Appendix 2 to the Constitution required amendment to operate as intended. A number of immediate updates required the approval of Full Council and were adopted in July 2023 with some further changes adopted on 9 August 2023 by way of an urgent decision in accordance with the urgency provisions provided by the changes introduced in July 2023.
- 2.5 This report seeks to report back on the work that has taken place since August by the Monitoring Officer with the support of external Counsel in consultation with the Chair and Vice Chair of this Committee and CWG.

3 Updates to be recommended to Full Council for adoption

3.1 Appendix 2 – Scheme of Delegation

- 3.1.1 The Council is required to operate a lawfully adopted Constitution further to provisions under the Local Government Act 2000 and Localism Act 2011.
- 3.1.2 Section 101 of the Local Government Act 1972 details the arrangements for the discharge of functions. Subsection (1) provides that a local authority may arrange for the discharge of any of their functions by a committee or an officer of the authority.

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- 3.1.3 With the number of decisions required to be taken on a daily basis of an operational manner, a Scheme of Delegation setting out what decisions and actions officers may take on behalf of the council is an important document within any Council's Constitution.
- 3.1.4 Delegation in this sense means conferring authority on an officer to make decisions within the parameters of the delegation arrangements; so the officer cannot pass on the decision-making authority to another officer (respecting the maxim of '*delegatus non potest delegare*').
- 3.1.5 Section 100G (2) of the Local Government Act 1972 states:
- A principal council shall maintain a list—*
- (a) specifying those powers of the council which, for the time being, are exercisable from time to time by officers of the council in pursuance of arrangements made under this Act or any other enactment for their discharge by those officers; and*
- (b) stating the title of the officer by whom each of the powers so specified is for the time being so exercisable;*
- 3.1.6 Further to the changes brought about by the Local Government Act 2000, the Institute for Local Government Studies (INLOGOV) were commissioned by the then Department of Environment, Transport and the Regions (DETR) to produce a Modular Constitution. As the 2000 Act introduced a new governance model for local authorities (cabinet rather than committee), the modular Constitution address both models of governance. This document has been used in local government to produce their constitutions over the last 23 years and remains a starting point for any review of a Council's constitution.
- 3.1.7 By way of Appendix 2 to the Council's Constitution, the Council has sought to comply with the section 100G(2) requirement.
- 3.1.7 The updates to Appendix 2 before this Committee for its recommendation to Full Council on 12 December 2023 seeks to adopt the following best practice with reference to the Model Constitution (see Appendix 1):
- 3.1.7.1 To recognise that Senior Officers (Chief Executive, Directors and Heads of Service) are delegated authority to take decisions within their respective services areas unless full council or a Committee has reserved that authority to itself;

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3.1.7.2 To clarify that those same Senior Officers who receive delegated authority can then “nominate” or “authorise” another officer to exercise that power provided that officer is in the service area of the authorising senior officer.

3.1.7.3 To replace Appendix 2a and adopt a Live Register of Delegations (‘Register’) which details any officers other than senior officers to whom the Council delegates authority or appoints them to fulfil a statutory role; with authority for the Monitoring Officer to update the Register as and when required to do so upon requests received from Senior Officers.

3.1.7.4 To add a footnote to record that this update was made with reference to the judgement of *Pemberton International Limited v London Borough of Lambeth v Mr Shahrokh Parvin* [2014] EWHC 1998 (Admin), to demonstrate that the Council has considered the lawfulness of its scheme of delegation, and the basis for it.

3.1.7.5 To clarify that where an Officer is empowered by this Scheme of Delegation, the Financial Regulations, and the Contract Standing Orders to make procurement decisions within their budget, that they shall have all the necessary authority and powers to make such procurement decisions; and where an Officer requires Council or Committee approval to make procurement decisions which are not within their budget, that their authority and powers to make such procurement decisions shall only be valid upon receipt of approval from Full Council or Committee.

3.1.7.6 To clarify that Contract Standing Orders and Financial Regulations contained within the Operating Framework to the Constitution must be operated in accordance with this Scheme of Delegation.

3.1.7.7 To transfer across the Planning Scheme of Delegation into the Register.

3.1.7.8 To clarify that the appointment of Directors is delegated to a Panel in accordance with the provision of Annex 3-2 (section 3) as approved by Council previously.

3.2 Appendix 3 – Terms of Reference for Full Council and Committees

3.2.1 Further to the updates to the Scheme of Delegation, a number of updates were identified within Appendix 3 to reflect those updates:

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3.2.1.1 To clarify the role of Strategy and Resources which is to intercede in matters that is not clearly in the purview of any of the Committee's Terms of Reference and to empower the Chair of the Strategy and Resources Committee, in consultation with the Monitoring Officer, to determine who shall make the decision, and/or if any amendments to the Terms of Reference are needed to rectify a gap.

3.2.1.2 To clarify the role of Strategy and Resources Committee to intercede where a decision or action needs to be taken that falls within the purview of two or more Terms of Reference, empowering the Chair of the Strategy and Resources Committee, in consultation with the Monitoring Officer, to resolve any such conflict and determine who shall make the decision, and/or if any amendments to the Terms of Reference are needed to rectify an overlap.

3.2.1.3 To add any necessary cross reference to the updated Scheme of Delegation.

3.2.1.4 To clarify the role of Full Council in appointing the Independent Remuneration Panel and remove reference to the appointment of Directors (see 3.1.7.8 above)

3.2.1.5 To clarify that all Policy committees must refer decisions to Strategy and Resources Committee for approval where a new or changed policy will have a budget impact outside the budget approved by the Full Council.

3.2.1.6 To clarify that all Policy Committees are not obliged to make recommendations to Full Council in order to adopt a new policy or changes to previously adopted policies.

3.2.1.7 To update the Area of Responsibility of Crime and Disorder Committee so that it may:

a. Make recommendations to Strategy and Resources Committee for any items of expenditure outside the budget approved by the Full Council, and

b. Empower the Chair of Crime and Disorder Committee to have oversight of the Community Safety budget (held and overseen by Strategy and Resources Committee) along with the Community Safety Reserves.

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3.2.1.8 To update the Terms of Reference for Planning Committee and ensure that it reflects the updates made to the Scheme of Delegation.

3.3 Appendix 4 – Standing Orders Full Council

3.3.1 Further to recommendations received from CWG, updates have been made to FCR 11 - Chairs' statements to Full Council – so as to increase the time allowed from 15 minutes to 30 minutes and to also clarify the way questions may be asked and the Mayor's role in overseeing this part of the meeting.

3.4 Annex 2-4 - Protocol for Managing Councillor - Officer Relations

3.4.1 A number of minor amendments that could have been made under the Monitoring Officer's authority to make minor changes; clarifying the role of the Monitoring Officer to be informed of any relationships that need declaration, removal of gendered references and updating references to reflect the updated Scheme of Delegation.

3.5 Annex 3-3 – Monitoring Officer Protocol

3.5.1 The role of 'proper officer' regarding access to information is reassigned to the Chief Executive in line with the existing wording of Annex 2-4 (section 4).

3.6 Annex 4-2 - Protocol Members of Public Speaking

3.6.1 In light of recent repeated advice that the Monitoring Officer has provided to Members regarding this Annex, this has been updated to clarify the position regarding questions and statements.

3.7 Annex 4-7 - Code of Conduct and Procedure in Licensing Matters

3.7.1 In light of recommendations received by the Monitoring Officer from the Council's Senior Licensing Officer, this has been updated to provide greater clarity as to the procedure of sub-committee hearings.

3.8 Annex 5-1 - Financial Regulations

3.8.1 Updates have been made to reflect the updated Scheme of Delegation and changes in technology (removing reference to "fax" and replacing with "email")

3.9 Annex 5-2 - Contract Standing Orders

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3.9.1 This was reviewed by the former Procurement Manager for the Council in September 2023; changes have been made to reflect legislative changes (in particular CSO 11.3, 26 and 30) and subsequent updates to reflect the updated Scheme of Delegation. Officers across the Council were provided training on these updates prior to the recent departure of the former Procurement Manager.

3.10 Annex 5-3 – Sealing documents

3.10.1 No substantive change has been made save to clarify that the Council's seal may also be applied electronically; a minor amendment that could have been made under the Monitoring Officer's authority to make minor changes.

3.11 Annex 6-2 - Complaints Process

3.11.1 No substantive change has been made save to clarify some wording used; a minor amendment that could have been made under the Monitoring Officer's authority to make minor changes.

3.12 Noting advice provided to Members in reports concerning the Constitution in 2022 and 2023, it is restated that that minor changes, and those reflecting decisions made by Full Council, can be updated by the Monitoring Officer at any time. Significant changes that alter the meaning of a passage or a process will require approval by Full Council. Of those documents noted above, any gendered references have also been removed, where possible, from the proposed updated documents.

3.13 Mindful of the number of elements of the Constitution that have been updated, advice has been sought from external counsel who have supported this work over the past few months which is provided as a Part II Appendix to this report (Exempt Appendix 13).

Work Plan of CWG

3.14 Full Council at its meeting held on 14 February 2023 set a Work Plan of this Committee for this municipal year to include the following items:

3.14.1 Review of the current Members' Code of Conduct and the Local Government Association's Model Councillor Code of Conduct, with a view to proposing whether to adopt the latter.

3.14.2 Review the timings related to people speaking to ensure they are appropriate and consistent, as well as procedures relating to motions.

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- 3.14.3 Review the Annex 2.6 – Indemnities to Councillors and Officers in more detail to ensure it is appropriate and up to date.
- 3.14.4 Consider reviewing specific elements of the constitution from an equalities perspective, to enable further time to be dedicated to this aspect of the constitution and operating framework.
- 3.14.5 Consideration of any complaints that have been made against councillors
- 3.15 As noted within the report to Full council in February 2023, the “Financial Regulations” and “Contract Standing Orders” were not reviewed by the CWG, as they had been at that time recently updated.
- 3.16 It is noted that in addition to this report, this Committee has three separate reports addressing
 - 3.16.1 the Code of Conduct for Members
 - 3.16.2 complaints made against Councillors, and
 - 3.16.3 Indemnities to Councillors and Officers
- 3.17 It is therefore recommended that CWG review what is left on their work plan and consider what priorities remain to be considered in the remainder of this municipal year and to then focus on the work plan for the next municipal year (i.e. May 2024 – April 2025).

4 Risk Assessment

Legal or other duties

4.1 Equality Impact Assessment

- 4.1.1 The CWG are of the view that the proposed constitution and council operating framework will have positive equality impacts, namely by: being easier to read, the removal of gendered language, and being easier to keep up to date.
- 4.1.2 An equality impact assessment has been completed and reviewed by the CWG. While no significant impacts were identified within the scope of this project, a few suggestions were made as pieces of work to follow the project, such as: induction training to councillors to ensure they have a good understanding of their role in this area, and conducting a more in-depth review of specific appendices from an equalities perspective. Where appropriate these suggestions have been included in proposed service plans for next year.

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4.2 Crime & Disorder

4.2.1 None for the purposes of this report.

4.3 Safeguarding

4.3.1 None for the purposes of this report.

4.4 Dependencies

4.4.1 The council's constitution is its primary governance document. Therefore, much of the council's business and operations depends on its contents.

4.5 Other

4.5.1 None for the purposes of this report.

5 Financial Implications

5.1 None for the purposes of this report.

5.2 **Section 151 Officer's comments:** None arising from the contents of this report.

6 Legal Implications

6.1 **Legal Officer's comments:** All relevant comments are contained in within the body of the report above.

7 Policies, Plans & Partnerships

7.1 **Council's Key Priorities:** The following Key Priorities are engaged:

- Effective Council.

7.2 **Service Plans:** The matter is included within the current Service Delivery Plan.

7.3 **Climate & Environmental Impact of recommendations:** Not applicable.

7.4 **Sustainability Policy & Community Safety Implications:** Not applicable

7.5 **Partnerships:** Not applicable.

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8 Background papers

8.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- None