

COUNCIL CONSTITUTION

Head of Service:	Olwen Brown, Monitoring Officer
Wards affected:	(All Wards);
Urgent Decision? (yes/no)	No
If yes, reason urgent decision required:	N/A
Appendices (attached):	Appendix 1 – Updated Council Constitution Appendix 2 – Council Operating Framework Appendix 3 – proposed Committee member numbers (to follow)

Summary

The Constitution Working Group has been working on reviewing the entire constitution during the course of the past year to update and simplify it as set out in point 2.2 below. As part of the principles for its work, the Group has looked to streamline the constitution so that the council has a shorter document which contains the main, essential elements of what should be in a modern updated core constitution. Other documents which are important, but which do not have to be in the core constitution, have been moved into a collection of documents we are referring to as the Council Operating Framework.

The Group presented its recommendations to the Standards and Constitution Committee last month. The committee agreed the recommendations below be brought to Full Council: namely, that the revised constitution as set out in Appendix 1, along with the Council Operating Framework which contains documents that have been reviewed and moved out of the core constitution (set out in Appendix 2), be adopted.

Recommendation (s)

The Committee is asked to:

- (1) Approve that Appendix 1, an updated core constitution for the council, be adopted.
- (2) Approve moving the “Officers’ Code of Conduct” from the constitution into officer employment policies.
- (3) Approve moving the “Whistleblowing Policy” from the constitution into officer employment policies.
- (4) Approve the removal of the “Recording, Photography and Use of Social Media Protocol and Guidance (Part 5, Section 10)” from the constitution.

- (5) Approve that Appendix 2, being the remaining documents from the constitution reviewed and updated and moved from the constitution, and not covered off by recommendations 2, 3 and 4 above, be adopted as the Council's Operating Framework.**
- (6) Approve the replacement of the "Crime and Disorder Sub-Committee" with a new "Crime and Disorder Policy Committee".**
- (7) Agree that the Standards and Constitution Committee review items shown in 3.9 below as part of its work programme.**
- (8) Agree to retain the existing officer and councillor indemnity scheme, for the present time.**
- (9) Agree the proposed committee member numbers shown on Appendix 3.**

1 Reason for Recommendations

- 1.1 Recommendation 1: To provide the council with a constitution that is up-to-date and easier for stakeholders to read and interpret.
- 1.2 Recommendation 2: It is recommended that this section of the constitution is removed as it is better placed within officers (staff) employment policies. Therefore, it is unnecessary to include it in the core constitution or Council Operating Framework.
- 1.3 Recommendation 3: It is recommended that this section of the constitution is moved as it is better placed within officers (staff) employment policies. Therefore, it is unnecessary to include it in the core constitution or Council Operating Framework.
- 1.4 Recommendation 4: It is recommended that this section of the constitution is removed as it can be replaced by including standard statements on this subject on all committee agenda front sheets. Therefore, it is unnecessary to include it in the constitution or Council Operating Framework.
- 1.5 Recommendation 5: This reflects the remaining documents, not referred to specifically under recommendations 2,3 and 4 above which have been moved from the core constitution into the Council Operating Framework. These are still important documents but do not have to be part of the core constitution.
- 1.6 Recommendation 6: It is recommended to provide a greater degree of strategic oversight over crime and disorder matters and setting policy for the council, and the recognition that this is a growth area of business for the council. The scrutiny of the Borough Community Safety Partnership, which is a statutory duty, will remain with Audit and Scrutiny Committee.

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- 1.7 Recommendation 7: There are a number of items that have been discussed but not concluded as part of the CWG and it has been decided that to do the topics proper justice, more time was required for the review. Therefore the proposal is that the Standards and Constitution Committee pick up on these in its work programme during the coming year.
- 1.8 Recommendation 8: In the papers that were presented to Standards and Constitution Committee on the 25th January, changes had been made to the officer and councillor indemnity scheme. It is not appropriate at this time to progress with those changes as they raise legal issues and would be subject to wider consultation. As a result, it is proposed to retain the existing wording.
- 1.9 Recommendation 9: The numbers of members of each committee has been reviewed to allow for more flexibility in being able to resource committee membership, as well as reflecting the slight reduction in overall councillor numbers following the boundary review.

2 Background

- 2.1 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").¹ Since the CWG's formation, progress updates have been taken to Strategy and Resources,² and Full Council.³
- 2.2 In the July 2022 report to Full Council,⁴ it was stated that: "The CWG have considered the general principles which should be applied when rewriting the Constitution and feel that it should be made accessible, streamlined and enable the business of the council to be dealt with in as efficient and effective way as possible to enable the Council's objectives to be achieved. It favours a "centre and spoke" model, with the core constitutional principles set out and the parts such as the Council's Standing Orders, Code of Conduct, Scheme of Delegation and others to be linked across accordingly, whether in electronic or print versions."

3 Review progress

- 3.1 To operationalise the centre and spoke model, the CWG has reformatted the existing constitution from a seven 'Part' and 'Sections' document to a single 'core document' with several appendices and a separate Council Operating Framework. Hence the structure of the proposed constitution at Appendix 1 has a clearly different look to the current version. This process has enabled duplication across the current format to be minimised, and enabled a greater degree of modulation. In other words, as elements of the constitution require updating in the future, the relevant appendix can be updated without having to amend the same text in other appendices. It is also made clear that minor changes, and those reflecting decisions made by Full Council, can be updated by the Monitoring Officer in conjunction with the Chair of Standards and Constitution Committee. Significant changes that alter the meaning of a passage or a process will still require approval by Full Council.
- 3.2 Since its inception, the CWG has reviewed every 'Part' and 'Section' in the current constitution, including their transfer into the new format.
- 3.3 Some documents, following review, are recommended to be removed from the constitution by the CWG, see recommendations 2-5. These documents are important but do not need to be in the core constitution. Instead, they will be either grouped under Council Operating Framework which gives further clarification about the way we work and the operation of the Council, the Officer Employment Policies, or incorporated into agendas as a standard policy.
- 3.4 In addition, the CWG have considered and produced new sections for the Council Operating Framework to add further clarity where it was felt needed. These sections are:
- Annex 4.6 - Protocol for Non-Committee Members Speaking at Committees
 - Annex 4.12 - Guidance on the Role of the Chair and Vice Chair
 - Annex 6.2 - Complaints Process
- 3.5 Gendered references have also been removed, where possible, from the proposed constitution at Appendices 1 and 2.
- 3.6 The "Councillors' Allowances Scheme" has not been reviewed by the CWG, as a separate panel is required to make changes to this scheme. Therefore, the version of this scheme in the current constitution will be moved verbatim into the updated Council Operating Framework, should it be approved by Full Council.

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- 3.7 The “Financial Regulations” (Part 4, Section 5) and “Contract Standing Orders” (Part 4, Section 6) have not been reviewed by the CWG, as they were recently updated,⁵ and consequently would not benefit from review by the CWG. Therefore, the versions of these documents in the current constitution will be moved, verbatim, into the updated Council Operating Framework (Appendix 2), should it be approved by Full Council.
- 3.8 The majority of Appendix 1 and 2 was shared with all councillors prior to this meeting, and multiple drop-in sessions held, for feedback beyond the membership of the CWG to be considered. The contents of Appendices 1 and 2 were also published for the Standards and Constitution Committee on the 25th January 2023. The Committee agreed to bring forth the recommendations from the January report to this meeting of Full Council.
- 3.9 The Standards and Constitution Work plan for the following year will include the following items:
- 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.
 - Review the timings related to people speaking to ensure they are appropriate and consistent, as well as procedures relating to motions.
 - Review the Annex 2.6 – Indemnities to Councillors and Officers in more detail to ensure it is appropriate and up to date.
 - 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.
 - Consideration of any complaints that have been made against councillors.
- 3.10 Next steps: with a project of this size and the deadline to complete the core work in time for this Full Council meeting, it was expected that some follow-up work would be required. The following items have been identified:
- Cross-referencing: the cross-referencing and linking between the documents in Appendix 1 and 2 needs to be amended and checked. This work will include amending the Annex numbers in the Operating Framework, to ensure they run in numerical order. Please note that no documents are missing in the Appendix 2, it may appear so due to the need to amend the Annex numbering. These actions will be completed as soon as practicable following this meeting, if the recommendations are approved.
 - Upload of the documents to the council’s website.

- The constitution will continue to be kept under review by the Monitoring Officer.

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.

4.2 Crime & Disorder

4.2.1 Appendix 1 includes the proposed new terms of reference for the Crime and Disorder Committee. However there are no significant risks posed by the amendments.

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.

4.4.2 A complete re-structuring of a document of this kind will naturally carry risks around potential inconsistency and what is included and excluded. However key mitigations are the fact the existing constitution has inconsistency in its structure (hence the need for this project); that the new format proposed in Appendix 1 and 2 can be easily updated due to its modular format; that ultimately the Mayor is responsible for interpreting the constitution when questions of meaning arise, and that the constitution is also overseen by the Monitoring Officer; and meetings of Full Council can be called to respond to urgent matters. In other words, suitable options exist to rectify any significant issues with the proposed constitution as it becomes used in practice.

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4.5 Other

4.5.1 None.

5 Financial Implications

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

6 Legal Implications

- 6.1 **Legal Officer's comments:** the constitution has been reviewed by the monitoring officer and changes have been made to ensure it is legally compliant

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:** No significant impacts. However the proposed constitution, and the current version of the constitution, do include references to the council working with partners and terms of reference / details for its committees, advisory panels, and joint working arrangements.

8 Background papers

- 8.1 The documents referred to in compiling this report are as follows:
- 8.1.1 'Constitution of Epsom and Ewell Borough Council', 17 June 2022. Online available: <https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=205&MId=1404&Ver=4&Info=1> [last accessed 14/12/2022].
- 8.1.2 'Council Constitution', 25 January 2023, Standards and Constitution Committee. Online available: <https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=151&MId=1431> [see S4, last accessed 03/02/2023].

Previous reports:

¹ Strategy and Resources Committee (2022) *Committee Terms of Reference Review*, 27 January. Online available: [https://democracy.epsom-](https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=151&MId=1431)

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[ewell.gov.uk/documents/s22635/Committee%20Terms%20of%20Reference.pdf](https://democracy.epsom-ewell.gov.uk/documents/s22635/Committee%20Terms%20of%20Reference.pdf) [last accessed 09/12/2022].

² Strategy and Resources Committee (2022) *Constitution Working Group*, 29 March. Online available: <https://democracy.epsom-ewell.gov.uk/documents/s23296/Constitution%20Working%20Group.pdf> [last accessed 09/12/2022].

³ Full Council (2022) *Constitution Working Group Paper*, 19 April. Online available: <https://democracy.epsom-ewell.gov.uk/documents/s23386/Constitution%20Working%20Group%20paper.pdf> [last accessed 09/12/2022]; *Constitution Working Group*, 28 July. Online available: <https://democracy.epsom-ewell.gov.uk/documents/s24347/Constitution%20Working%20Group.pdf> [last accessed].

⁴ Ibid. endnote 3.

⁵ Epsom and Ewell Borough Council (2022) *Constitution: Part 4 – Rules of Procedure*. Online available: <https://democracy.epsom-ewell.gov.uk/documents/s23991/Part%204%20-%20Rules%20of%20Procedure.pdf> [11/01/2023].