

## UPDATES TO THE COUNCIL'S CONSTITUTION

<b>Head of Service:</b>	Piero Ionta, Head of Legal and Monitoring Officer
<b>Wards affected:</b>	(All Wards);
<b>Appendices (attached):</b>	<ul style="list-style-type: none"><li>• Appendix 1 – Updated Member Code of Conduct (Appendix 1 to the Constitution)</li><li>• Appendix 2 – Updated Scheme of Delegation and Live Delegations List (Appendix 2 to the Constitution)</li><li>• Appendix 3 – Updated Terms of Reference for Full Council and Committees (Appendix 3 to the Constitution)</li><li>• Appendix 4 – Updated Standing Orders Full Council (Appendix 4 to the Constitution)</li><li>• Appendix 5 – Updated Annex 2-4 - Protocol for Managing Councillor - Officer Relations</li><li>• Appendix 6 – Updated Annex 2-5 - Indemnity to Councillors and Officers</li><li>• Appendix 7 – Updated Annex 3-3 – Monitoring Officer Protocol</li><li>• Appendix 8 – Updated Annex 4-2 - Protocol Members of Public Speaking</li><li>• Appendix 9 – Updated Annex 4-7 - Code of Conduct and Procedure in Licensing Matters</li><li>• Appendix 10 – Updated Annex 5-1 - Financial Regulations</li><li>• Appendix 11 – Updated Annex 5-2 - Contract Standing Orders</li><li>• Appendix 12 – Updated Annex 5-3 – Sealing documents</li><li>• Appendix 13 – Updated Annex 6-2 - Complaints Process</li></ul>

### **Summary**

This report contains recommendations from this Council's Standards and Constitution Committee following its review of 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 Standards and Constitution Committee and its Constitutional Working Group

(‘CWG’) on updates to the Council’s Constitutional required to give effect to the changes adopted back in May 2023.

**Recommendation:**

**The Council is asked to:**

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

**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.
- 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 to 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)

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- 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 Updated recommended by Standards and Constitution Committee for Council to adopt:**

#### **3.1 Appendix 1 – LGA Model Code of Conduct**

- 3.1.1 This Council's current Members Code of Conduct was last updated in 2019.
- 3.1.2 In December 2020, the Local Government Association (LGA) developed and published a Model Councillor Code of Conduct in association with key partners and following extensive consultation with the sector, to which this Council's Standards Committee (as it then was) responded. This was in response to the recommendation of the Committee of Standards in Public Life (CSPL) Local Government Ethical Standards 2019. The Code was part of the LGA's work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance, and their Civility in Public Life programme.
- 3.1.3 The code is a template for Local Authorities to adopt in whole or with amendments to take into account local circumstances.
- 3.1.4 The LGA's aim was to make the code relatively short and easy to read rather than an overly-complex legal document as it needed to be accessible to Councillors, officers, and the public alike. The consultation response also asked for supporting guidance to help understand some of the key provisions in greater depth with examples and case illustrations.
- 3.1.5 During the review of the Council's Constitution in 2022, Standards and Constitution Committee asked CWG to consider whether the current Code was fit for purpose.
- 3.1.6 The CWG has debated whether to adopt the LGA version, retain our existing Code of Conduct for Members, or to create a local version of the code. They considered both of the codes and the LGA Code of Conduct Survey.

3.1.7 CWG decided that the LGA Code had been written by experts and had cross party support. It was also felt that as this was a scheme adopted by so many councils that it was tried and tested. Some councils had adopted the LGA Code with modifications or amendments. The CWG decided that there was little merit in making amendments as for a borough of our size it was prudent to adopt what was considered to be national best practice rather than creating our own unique content. Their recommendation is that the Council adopts the LGA code unaltered.

### 3.2 **Appendix 2 – Scheme of Delegation**

3.2.1 The Council is required to operate a lawfully adopted Constitution further to provisions under the Local Government Act 2000 and Localism Act 2011.

3.2.2 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.

3.2.3 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.

3.2.4 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;*

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- 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.
- 3.1.8 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:
- 3.1.8.1 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;
- 3.1.8.2 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;
- 3.1.8.3 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.
- 3.1.8.4 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.
- 3.1.8.5 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.

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3.1.8.6 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.

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

3.1.8.8 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.

### **3.3 Appendix 3 – Terms of Reference for Full Council and Committees**

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

3.3.1.1 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.

3.3.1.2 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.

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

3.3.1.4 To clarify the role of Full Council in appointing the Independent Remuneration Panel and remove reference to the appointment of Directors (see 3.1.8.8 above).

3.3.1.5 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.

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3.3.1.6 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.

3.3.1.7 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.

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.

### **3.4 Appendix 4 – Standing Orders Full Council**

3.4.1 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.

### **3.5 Annex 2-4 - Protocol for Managing Councillor - Officer Relations**

### **3.6 Annex 2-5 – Indemnity Scheme for Officers and Members**

3.6.1 When the new Constitution was adopted earlier this year the existing wording for the indemnity scheme was carried forward un-changed as part of the Council's operating framework (Annex 2-5).

3.6.2 The indemnity scheme wording, although it refers to Councillors and employees in the heading of the item, only refers to employees in the text of the document.

3.6.3 CWG asked for this to be looked into and to confirm with our insurance providers that both Councillors and officers are covered by the scheme.

3.6.4 The insurance company has confirmed as follows:

3.6.4.1 "If an officer or councillor is personally sued for actions taken whilst acting as a council representative, they will be covered under the Officials Indemnity policy (which our current insurer calls Casualty policy). The policy covers both legal costs and any potential settlement arising from the claim".

“This policy is designed to cover pure financial losses directly caused by a negligent and accidental act or omission committed or alleged to have been committed by employees or members in the normal execution of their statutory duties”.

3.6.5 As a result, the wording of the identity scheme has been amended, also in order to comply with the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004 (SI 2004/3082

### **3.7 Annex 3-3 – Monitoring Officer Protocol**

3.7.1 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).

### **3.8 Annex 4-2 - Protocol Members of Public Speaking**

3.8.1 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.

### **3.9 Annex 4-7 - Code of Conduct and Procedure in Licensing Matters**

3.9.1 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.

### **3.10 Annex 5-1 - Financial Regulations**

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

### **3.11 Annex 5-2 - Contract Standing Orders**

3.11.1 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.

### **3.12 Annex 5-3 – Sealing documents**

3.12.1 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.

### **3.13 Annex 6-2 - Complaints Process**



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3.13.1 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.

3.14 Noting advice provided to Members in reports concerning the Constitution in 2022 and 2023, it is restated 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.

## 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 and the removal of gendered language.

4.1.2 An equality impact assessment had been completed and reviewed by the CWG when the current Constitution was adopted earlier this year. As the updates provide no substantive changes, reliance is placed on this recent assessment and there was no need for a fresh assessment to be carried out.

#### 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

## 8 Background papers

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

**Previous reports:**

- None

**Other papers:**

- None