

2024-25 CONSTITUTIONAL WORK PROGRAMME

Head of Service:	Jackie King, Chief Executive
Report Author	Piero Ionta
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	N/A
Appendices (attached):	

Summary

The following report proposes a number of constitutional updates that flow from discussions held at the Council's Constitutional Member Working Group, recommendations from the Chair of this Committee and recommendations from the Council's Monitoring Officer.

Recommendation (s)

The Committee is asked to recommend to Full Council:

- (1) To adopt the updates to the Council's Constitution, as set out within:**
- (2) Appendices 1, 2 and 3 to this report, and**
- (3) Sections 3 (para 3.1.3 and 3.14) and 4 (para 4.18, 4.19, 4.22, 4.23, 4.24, 4.257, 4.258, 4.26 and 4.27) of this report.**

1 Reason for Recommendation

- 1.1 Following work carried out further to this Committee's agreed Work Programme, this report seek to update members as to the outcome of that work and the recommended changes to be proposed to full council at its meeting rescheduled for 6 May 2025.

2 Background

- 2.1 This Committee met at the start of the current municipal year (4 June 2024) and resolved to:

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- 2.1.1 Establish a Constitutional Working Group (CWG) for this municipal year as set out in paragraph 2.4 of the report to take forward the work of the Standards and Constitution Committee.
 - 2.1.2 Approve the draft work programme for CWG to progress in this new municipal year as set out in paragraph 2.4.1 of the report, subject to the amendment detailed in the Minutes, and
 - 2.1.3 Agree to reschedule the next meeting of the Standards and Constitution Committee from 5 November 2024 to 30 January 2025.
- 2.2 CWG met on 19 September 2024 and discussed the following issues within its work programme as agreed for this municipal year:
 - 2.2.1 Explore whether to create a Constitutional Panel to take on the work of CWG from 2025-26 onward rather than needing to reconstitute a working group each new municipal year
 - 2.2.2 Explore updates to the current qualifications permitting motions to be brought to full Council
 - 2.2.3 Update Annex 4-2 to include delegating authority to the Head of Paid Service and Monitoring Officer in consultation with the Chair and Vice Chair of each Committee or the Mayor and Deputy Mayor (where it concerns full Council), the power to triage public questions
- 2.3 A further meeting of CWG was scheduled to take place on 17 December 2024 but was cancelled following the publication of the White Paper regarding Local Government Reorganisation (LGR) on 16 December 2024 and the time needed to reflect upon the detailed content of the White Paper and its impact upon this Council..
- 2.4 Members of CWG were provided a briefing prior to the cancelled December meeting on the remaining issues contained within its annual work programme:
 - 2.4.1 Introduction of new Standing Orders setting out the disciplinary process against statutory officers
 - 2.4.2 To explore changes to the Protocol for Managing Councillor / Officer Relations Annex 2-4 of the Operating Framework
- 2.5 A number of other issues contained within the work programme were paused in order to consider the impact of LGR upon this Council:
 - 2.5.1 Establishing a 'proper officer's' list
 - 2.5.2 Exploring changes to Audit and Scrutiny Committee as a result of the recommendations from the recent LGA Corporate Peer Challenge (CPC)

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2.6 In addition to those items with the Work Programme that were paused in order to consider the impact of LGR upon this Council, a number of items that were considered by CWG are also proposed to be paused in order to free up the capacity of the council's Monitoring Officer and his Team to focus their limited time and resource on those matters pertinent to the Council's response to LGR and matters that flow from that; these include:

2.6.1 An options paper as to the proposed creation of a Constitutional Panel from 2025-26 onward (see 3.1.1 below);

2.6.2 An options paper to reconsider proposed changes to the criteria from bringing Motions to Full Council (see 3.1.2 below)

3 Issues considered by CWG along with their recommendations

3.1 The following matters were considered by CWG on 19 September with the following recommendations to this Committee; the actions noted that follow were discussed by the Chair of this Committee and the Council's Monitoring Officer, in advance of this meeting:

3.1.1 Constitutional Panel from 2025-26 onward – Officers to write up a proposal of options for S&C Committee meetings in and around the CWG work programme and meetings. This is to be shared with CWG members with the papers for the next meeting. **Action** – To be paused – see 2.6 above

3.1.2 Changes to the criteria from bringing Motions to Full Council - CWG Members agreed to review this again in 6 months – i.e. first meeting of CWG in the new municipal year (25/26) **Action** – To be paused - see 2.6 above

3.1.3 Annex 4-2 – CWG unanimously agreed to recommend:

- (i) Increasing the deadline for receipt of questions from 3 working days to 5 working days; the additional 2 working days will afford a Chair and Officers supporting the Chair to prepare an answer additional time to do so when time and resources are limited, which in turn may aid a great proportion of questions being answered in advance of the meeting and not requiring written answers to follow the meeting change from 3 to 5 days for question deadlines.
- (ii) Including a right that the Monitoring & Deputy Monitoring Officers may, having consulted the local resident, reword any question or statement received to bring it into proper form and to secure reasonable clarity and/or brevity.
- (iii) Include an optional provision that any first and second question may be read out by either the Chair or Vice Chair of a Committee along with the answer provided to the questioner – thus removing the need to invite the questioner to the front of the Council chamber to read out their question; a questioner would retain the right to step forward and ask a supplementary

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question themselves as set out in Annex 4-2, para 2.9 to either of their questions if so required.

3.1.4 Annex 4-2 – CWG agreed to discuss with their Groups and report back on the following proposed changes to Annex 4-2:

1. Including additional wording within Annex 4-2, para 1.3 to exclude the topic of a question or statement that relates to:
2. An ongoing or historic complaint against the Council or one that amounts to a complaint that ought to be dealt with via the Council's Complaints Process or an Ombudsmen rather than as a public question or statement;
3. Any ongoing, historic or proposed legal action against the Council;
4. Any matter of detail that is not a question or statement regarding any general Council Policy

3.2 In the absence of any submission by any of the Political Groups in response to the proposed changes set out in 3.1.4 above, this update is proposed to be proceed with and recommended to full council for adoption in addition to the other recommendations contained within the section of this report.

4 Issues to be considered by this Committee beyond those considered by CWG:

Introduction of new Standing Orders to establish the legal requirements when conducting disciplinary action against the Council's Statutory Officers:

4.1 The Council is required by law to have three Statutory Officers, each of whom has personal responsibility for reporting matters to the attention of Full Council in certain circumstances.

4.2 These Statutory Officers are:

- the Head of Paid Service – Chief Executive
- the Section 151 Officer – the role is currently discharged by the Director or Corporate Services, and
- the Monitoring Officer – Head of Legal Services

4.3 As a result of their personal duties, the Statutory Officers have a degree of statutory protection pursuant to the Local Authority (Standing Orders) (England) Regulations 2001 (amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015). The 2001 Regulations (as amended) require the Council to make standing orders to reflect the dismissal process applicable to its statutory Officers as specifically outlined in the 2001 Regulations.

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- 4.4 Further to the 2001 Regulations, every local authority was required to take a report to its first Council meeting after its Annual Meeting in May 2015, to amend its Standing Orders to make changes to the procedure for disciplining and dismissing senior officers.
- 4.5 In short, the final decision to dismiss a Statutory Officer must be by resolution of full Council, having first considered amongst other matters, the advice, views or recommendations of an 'independent panel'.
- 4.6 The Council can choose the size of its 'independent' panel, but as an advisory body appointed under the Local Government Act 1972, the membership of the 'independent' panel is required, by the Local Government and Housing Act 1989, to be politically balanced. When dealing with matters which may result in dismissal, the advisory panel must include at least two Independent Persons.
- 4.7 The Council has current HR Policies adopted since 2019 that set out how it will address disciplinary action against statutory Officers; its current disciplinary policy (in force from 2019 (updated in 2020)) states:

Para 14.1 - Disciplinary – Statutory Officer

The Council seeks to ensure that lawful, fair and effective arrangements exist for dealing with Statutory Officer conduct and disciplinary issues.

14.1.1 Where an allegation is made regarding the conduct of the Head of Paid Service, Monitoring Officer or Section 151 Officer, – HR in consultation with the Chair of the Council's HR Panel and with the Monitoring Officer (or Deputy Monitoring Officer where applicable) will decide whether the issue falls within the definition of staff discipline.

14.1.2 Records will be kept by the Monitoring Officer (or Deputy Monitoring Officer where applicable) of any allegations against the Head of Paid Service, Monitoring Officer or Section 151 Officer and any decision reached.

14.1.3. The records will reflect whether or not the decision was to invoke the Disciplinary Procedure and if not, whether any other action was recommended.

14.1.4. Suspension process will be applicable if required.

14.1.5. The decision to suspend or to proceed to a disciplinary hearing will be on the recommendation of an Independent Person as outlined in the Council's constitution.

14.1.6. The Council's Disciplinary procedure will apply to Statutory Officers.

14.1.7. However, regard must be had to a report prepared by the Independent Person and only full Council may dismiss a Statutory Officer.

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- 4.8 It is therefore important that the council introduce the necessary Standing Orders at its earliest opportunity so as to comply with the 2001 Regulations (as amended). With this in mind, the following draft Standing Order is proposed for adoption – its wording is taken from a recommended example that applies with the Constitution of [Newark and Sherwood DC](#) – as set out within Appendix 1.
- 4.9 As the draft Standing Order is modelled upon the 2001 Regulations (as amended) the scope of this Committee is limited to agreeing and recommending to full Council that it best to establish a Statutory Officer Advisory Panel on an ‘ad hoc’ basis (as and when required – noting that the 2001 Regulations require the appointment of the Panel at least 20 working days before it convenes)

Explore proposed changes to Annex 2-4 - Managing relations between Officers and Members:

- 4.10 The Nolan Committee recommended that every local authority should have a written code or protocol that would govern the relationship between members and officers. This approach was repeated in the Local Government Act 2000: Guidance to English Local Authorities issued by the Secretary of State, which stated that local authorities should develop appropriate conventions setting out the roles, responsibilities and rights of officers and members and establishing the key principles governing officer/member relationships.
- 4.11 A model Protocol on Member/Officer relations issued by the Association of Council Secretaries and Solicitors (since rebranded Lawyers in Local Government – LLG) was adopted by a number of authorities in the early 2000’s and many authorities continue to base theirs upon this model Protocol.
- 4.12 The Protocol aims to provide guidance and principles that support effective working relations between Members and Officers and clarify that officers should be responsible for day-to-day managerial and operational decisions within the local authority mindful of political neutrality. In turn, the Protocol seeks to recognise the role of Members in setting the strategic aims and policies of the Council.
- 4.13 Following the debate at Standards and Constitution committee last year, a new paragraph 3.4 was proposed for adoption but was not adopted as proposed, Senior Leadership Team (SLT) were of the view that it is important to revisit this issue and look to clarify this further. It is still SLT’s view that this should be addressed at this meeting.
- 4.14 The proposed wording for paragraph 3.4 last year was:
A Councillor should not require an Officer to do something they are not authorised to do or which is against their professional judgement. A Councillor should also not require an Officer to do something which is

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outside their normal duties or working hours. Given that Officers are responsible to their line Managers and ultimately the Chief Executive, it follows that a Member cannot instruct an Officer in any matter (e.g. A Councillor should not approach officers directly to instruct that they work upon an issue that is not already included in an agreed workplan)

- 4.15 Following a debate at Committee, the following wording was recommended for adoption by full Council, which they did in December 2023:

A Councillor should not approach officers directly to instruct that they work upon an issue that is not already included in an agreed workplan.

- 4.16 Adopting the approach used at earlier CWG meetings, a review of our current paragraph 3.4 was made with reference to Surrey County Council (SCC) [Member/Officer Protocol](#). SCC's Protocol states:

Officers can expect Members to:

- *Fully consider professional advice as part of decision making*
- *Avoid becoming involved in routine management and staff issues (including recruitment below Deputy Chief Officer level)*
- *Carry out their role as the public face of the organisation and represent residents' best interests*
- *Not criticise individual officers in the public domain*
- *Show consideration by avoiding requests that include unreasonable deadlines or excessive demands*

- 4.17 This identifies that the current wording requires some additional consideration to better reflect the boundaries required to support an effective working relationship between members and officers that acknowledges the resourcing pressures faced by the Council's officers.

- 4.18 With this in mind, the following revisions (additional text in red) to paragraph 3.4 are suggested:

*A Councillor should not approach officers directly to instruct that they work upon an issue that is not already included in an agreed workplan. **Officers can expect that a Councillor shall:***

- (a) **Respect and consider any professional advice offered;***
- (b) **Avoid becoming involved in routine management and staff issues***
- (b) **Not criticise individual officers in the public domain;***
- (c) **Show consideration by avoiding requests that include unreasonable deadlines or excessive demands***

- 4.19 In addition to this, two other proposed changes to Annex 2-4 are submitted for consideration and discussion:

- 4.19.1 A new paragraph to be added to section 5 of the existing Protocol adopting some of the wording used in the SCC Protocol (Para 23 - 25):

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Members have an important role in contributing to the development of policies and strategies. However, this is distinctly different from developing operational plans and the management of service delivery, which is the domain of Officers. Members can foster positive relationships by remaining mindful of this role boundary.

When seeking to deal with constituent matters, on some occasions it may not be possible to satisfy a Member's request due to operational time, capacity and resource pressures. Having a conversation about mutually appropriate timescales is reasonable as is avoiding support requests based on personal preferences that create additional pressure, process or cost.

4.19.2 The existing paragraph 5.12 of the existing Protocol needs to be amended to avoid an operational issue – namely the inability of senior officers making the Council's statutory officers aware of issues that require their consideration.

4.19.3 The proposed changes are in red text below:

As a rule, councillors and officers must not 'copy to' or forward their correspondence to any other councillor, officers or external third parties. Nor should such correspondence be disclosed to any third parties be they members of the public, stakeholders, or partners.

This shall not apply to any of the Council's Statutory Officers or Directors as there may be service reasons where this may be necessary. **For all other officers and councillors,** ~~therefore~~ before doing so, either the original author must have specifically requested it, or has expressly consented to their correspondence being sent on to a named person. If there is any concern as to what steps should be taken, in the case of officers, advice should be sought from their line manager; councillors should seek advice from the Monitoring Officer. The council's policies on data protection and information governance should also be given due consideration.

Update to Appendix 2.1 proposed by Officers:

4.20 Further to recent training provided to officers on the Scheme of Delegation, Corporate Leadership Team (CLT) have provided a list of proposed updated to the Live Register of Delegations contained within Appendix 2.1 so as to ensure that their officers are empowered to conduct their daily work with any necessary delegated authority which in turn should reduce the number of reports and urgent decisions brought to various Committees for operational decision making.

4.21 An updated version of Appendix 2.1 is attached to this report – Appendix 2 - any changes or new provisions are included in red text.

Update to Appendix 3

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- 4.22 During the course of this municipal year, legislation was introduced that changed the process of pavement licenses. To reflect this, changes are proposed to the Terms of Reference for Licensing and Planning Policy Committee as follows:
- 4.22.1 To move the responsibility for Fee setting for pavement licenses to LPPC from 25-26 onward;
 - 4.22.2 To expand the Terms of Reference for LPPC to include broader licensing responsibilities to cover matters relating to, but not limited to, pavement licensing, hyponitism, zoo licensing, dog breeding/boarding, scrap metal dealing, charity street collection, accupuncture/tatooing/piercings;
 - 4.22.3 To expand the Terms of Reference for Licensing (General) Sub-Cttee, to have delegated to it by LPPC the power to determine applications and licences with respect to the matters listed above;
- 4.23 Further to this, a proposed update to the Terms of Reference for Planning Committee is also proposed:
- 4.23.1 To receive and review the summary of Planning Performance on a quarterly basis.
 - 4.23.2 This was requested by the Chair of Planning Committee and the Council's Planning & Development Manager has advised that he is able to accommodate this request.
- 4.24 Finally, a proposed update to the Terms of Reference for Crime and Disorder Committee is also suggested:
- 4.24.1 *Areas of responsibility* – New para *g*. To take decisions on the making, amending and revocation of PSPOs
 - 4.24.2 This is suggested to ensure that it is clear that this task regarding Public space Protection Orders is delegated by full Council to C&D to determine.

Update to Appendix 4 & 5

- 4.25 Appendices 4 and 5 contain the Standing Order for Full council and all Committees; a few procedural issues are proposed for resolution:
- 4.25.1 Introduction of the role of Leader of the Council in relation to Standing Orders –

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- 4.25.2 It is generally the practice, apart from the statutory provisions providing for political balance in the membership of committees, etc., for authorities to acknowledge the existence and the role of party politics in the provision made in standing orders.
- 4.25.3 An example of this, is that the Chief Executive will:
- 4.25.3.1 ordinarily turn to the Leader of the Council (i.e. the leader of the majority political group on the council rather than - as in the past - to the chairman of the council or the mayor) in circumstances of urgency to take the Council's collective view of a matter; and,
- 4.25.3.2 as circumstances may dictate, consult also the leader of the largest opposition group.
- 4.25.4 These roles are not currently acknowledged within the Council's Constitution so it is proposed to do so.
- 4.25.5 The acknowledgement of new roles for members would normally lead to a requirement to review whether a Special Responsibility Allowance should be paid; it is proposed not to do so for the following reasons:
- 4.25.5.1 The duties, responsibilities and expectation of both roles remains unchanged from those carried out by both respective members
- 4.25.5.2 It is not considered that recognising either roles will notably create additional work for either member
- 4.25.5.3 A formal review would require convening the IRP throughout 2025 – and mindful of LGR –
- 4.25.5.4 it is not felt that this would be an effective use of officer and member time.
- 4.25.6 Having duly reviewed Constitutions from a number of councils operating a committee system (Bristol City Council; Brighton & Hove City Council, Cambridge City Council, Sheffield City Council and Runnymede Borough Council) which recognise the role of Leader; the following changes are proposed – as set out within Appendix 3 to this Report.
- 4.25.7 Update to CPR 12.2 – There is no right to suspend Standing Orders at Committee but there is at Full Council; this may cause confusion where a Committee Chair is minded to suspend Standing Orders to allow for a meeting to overrun the guillotine. To avoid this risk, wording to the effect of “No motion to suspend rules of procedure shall be permitted” as a new CPR 12.2.6 is proposed.
- 4.25.8 Update to CPR 12.3 – Two issues:
- 4.25.8.1 The formatting of CPR 12.3 has given cause for confusion recently when dealing with motions received by full council and then referred to committees. The issue concerned

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whether CPR 12.3.4 applied to those motions or not; it is the view of the Council's Monitoring Officer that they do not (i.e. that it is not appropriate procedurally to allow for a motion voted upon at full council to be amended as that would nullify the intent of full council, which has greater standing than the Committee). It is proposed to move CPR 12.3.4 so that it is renumbered to become CPR 12.4 and make it clearer that this provision does not apply to motions from full council; wording will be added to CPR 12.3 to reaffirm this. Additional wording may also be required to make it clear that having received a motion from Full Council, that the receiving Committee is then entitled to approve or amend the recommendation contained within the officer's covering report.

- 4.25.8.2 Additional wording will also be added to CPR 12.3 to make it clearer that where the proposer of a motion at full council that is then voted upon to be debated by a relevant Committee is also a member of that same Committee, that they are not restricted to the provisions within CPR 12.3 that are intended to apply where a motion is referred to a committee which the maker of the motion is not a member of – words to the effect of, "If the proposer of the motion is a Member of the Committee, they shall be able to take part in the Committee's debate on the matter as normal" shall be added to CPR 12.3

Annex 4-8

- 4.26 It is proposed to remove Section 6.1, which currently states that "if a Member, who is not on the Planning Cttee, wishes to support a particular viewpoint then that Member has a right to appear at the Planning Cttee and seek permission to address the meeting". This suggests that ANY Member can speak at Committee if given permission, when later in Annex 4-8 it states that the only non-Members able to speak at Planning Cttee are Ward Cllrs or Cllrs who call-in planning applications; removal will avoid the risk of conflicting provisions.
- 4.27 Likewise, section 11.1, lists the categories of people able to speak at Planning Committee but it currently does not include 'Call-in Members', even though such Members are included on the list later at 11.9.ii, where speaker order is set out.

5 Risk Assessment

Legal or other duties

5.1 Equality Impact Assessment

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5.1.1 None of the proposed changes are believed to trigger the requirement for an Equality Impact Assessment; for the reasons noted within each proposal, any impacts are believed to be minimal and positive in nature.

5.2 Crime & Disorder

5.2.1 Not applicable.

5.3 Safeguarding

5.3.1 Not applicable.

5.4 Dependencies

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

5.5 Other

5.5.1 None

6 Financial Implications

6.1 None arising from the contents of this report.

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

7 Legal Implications

7.1 **Legal Officer's comments:** Any relevant comments are contained within the body of this report.

8 Policies, Plans & Partnerships

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

- Effective Council

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

8.3 **Climate & Environmental Impact of recommendations:** Not applicable

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

8.5 **Partnerships:** Not applicable

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9 Background papers

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

Previous reports:

- Standard and Constitution Committee – 4 June 2024

Other papers:

- None