

## UPDATE TO THE CONSTITUTION

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<b>Wards affected:</b>	(All Wards);
<b>Appendices (attached):</b>	Appendix 1 – New Standing Order to be added to Appendix 4 of the current Constitution Appendix 2 – Updates to Appendix 2.1 of the current Constitution Appendix 3 – Updates to various sections of the current Constitution to reflect the role of Leader of the Council.

### Summary

The following report proposes a number of constitutional updates that flow from discussions held at the Council's recent Standards and Constitution Committee, held on 16 April 2025. The recommendations considered by Committee originated from the Constitutional Member Working Group, recommendations from the Chair of this Committee and recommendations from the Council's Monitoring Officer.

### Recommendation (s)

#### Council is asked to:

- (1) Approve and 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 4 (para 4.21, 4.22, 4.23, 4.24.7, 4.24.8, 4.25 and 4.26) of this report.
- (4) Delegate to the Monitoring Officer, in consultation with the Chair of the Standards and Constitution Committee, the authority required to update the Council's Constitution to bring into effect recommendations 2 and 3 above

## **1 Reason for Recommendation**

- 1.1 Following work carried out further to this Council's Standards and Constitution Committee Work Programme, this report sets out the recommended changes to be proposed to Full Council for its approval.

## **2 Background**

- 2.1 This Council's Standards and Constitution Committee (S&C) met at the start of the current municipal year (4 June 2024) and resolved to:
  - 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 At its meeting held on 16 April 2025, this Council's Standards and Constitution Committee considered:
  - 2.2.1 Those items within the Work Programme that were considered by CWG;
  - 2.2.2 Those items within the Work Programme that were not considered by CWG, and
  - 2.2.3 Those items within the Work Programme that were paused in order to consider the impact of Local Government Reorganisation (LGR) upon this Council, that are due to remain 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.

## **3 Issues considered by CWG along with their recommendations, that have been accepted by S&C:**

- 3.1 The following matters were considered by CWG on 19 September with the following recommendations to this Council's Standards and Constitution Committee; the actions noted that follow were discussed by the Chair of this Committee and the Council's Monitoring Officer, in advance of the Committee meeting held on 16 April 2025:

# Council

## 6 May 2025

- 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 2.2.3 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 2.2.3 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, **suggest** rewording any question or statement received to bring it into proper form and to secure reasonable clarity and/or brevity.
    - 1. Nb. The additional wording above in red was added further to the recommendation of S&C at its meeting held on 16 April.
  - (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 question themselves as set out in Annex 4-2, para 2.9 to either of their questions if so required.
- 3.1.4 A further amendment to Annex 4-2 was considered by CWG; at the meeting held on 16 April 2025, it was agreed that this will go back to CWG to review as part of its work programme for the next municipal year.

#### 4 Issues recommended by S&C 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.

# Council

## 6 May 2025

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.

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*

# Council

## 6 May 2025

*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.*

- 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 S&C was 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). It also recommended that this new Standing Order be added to Appendix 4 to the Council's Constitution (see paragraph 4.28 below)

### 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.

## Council

### 6 May 2025

- 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 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*

## Council

### 6 May 2025

- 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 Further amendment to Annex 2-4 was considered at the meeting held on 16 April 2025, where it was agreed that this will go back to CWG to review as part of its work programme for the next municipal year.

#### Update to Appendix 2.1 proposed by Officers:

- 4.19 Further to recent training provided to officers on the Scheme of Delegation, Corporate Leadership Team (CLT) have provided a list of proposed updates 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.
- 4.20 An updated version of Appendix 2.1 is attached to this report – **Appendix 2** - any changes or new provisions are included in red text. In addition, changes to P1, HS26, CG2, CS2 and CS12 recommended by S&C on 16 April have also been added in red.

#### Update to Appendix 3

- 4.21 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:
  - 4.21.1 To move the responsibility for Fee setting for pavement licenses to LPPC from 25-26 onward;
  - 4.21.2 To expand the Terms of Reference for LPPC to include broader licensing responsibilities to cover matters relating to, but not limited to, pavement licensing, hypnotism, zoo licensing, dog breeding/boarding, scrap metal dealing, charity street collection, acupuncture/tattooing/piercings;
  - 4.21.3 To expand the Terms of Reference for Licensing (General) Sub-Committee, to have delegated to it by LPPC the power to determine applications and licences with respect to the matters listed above;
- 4.22 Further to this, a proposed update to the Terms of Reference for Planning Committee is also proposed:

## Council 6 May 2025

4.22.1 To receive and review the summary of Planning Performance on a quarterly basis.

4.22.2 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.

4.23 Finally, a proposed update to the Terms of Reference for Crime and Disorder Committee is also suggested:

4.23.1 *Areas of responsibility* – New para *g*. To take decisions on the making, amending and revocation of PSPOs

4.23.2 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

4.24 Appendices 4 and 5 contain the Standing Order for Full council and all Committees; a few procedural issues are proposed for resolution:

4.24.1 Introduction of the role of Leader of the Council in relation to Standing Orders –

4.24.2 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.

4.24.3 An example of this, is that the Chief Executive will:

4.24.3.1 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,

4.24.3.2 as circumstances may dictate, consult also the leader of the largest opposition group.

4.24.4 These roles are not currently acknowledged within the Council's Constitution so it is proposed to do so.

4.24.5 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:



4.24.5.1 The duties, responsibilities and expectation of both roles remains unchanged from those carried out by both respective members

4.24.5.2 It is not considered that recognising either roles will notably create additional work for either member

4.24.5.3 A formal review would require convening the IRP throughout 2025 – and mindful of LGR –

4.24.5.4 It is not felt that this would be an effective use of officer and member time.

4.24.6 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**.

4.24.6.1 Further to the draft before S&C on 16 April, they recommended to Full Council the following changes to the text within Appendix 3:

4.24.6.11. Removal of the proposed amendment to FCR 5.6;

4.24.6.12. Refer the creation of the role of Leader of the Opposition to the Constitution Working Group for exploration in the new municipal year, and

4.24.6.13. That the proposed wording of paragraph 1.3 of new Annex 4-10 be amended to “Should the Leader wish to resign from their role, further to provisions 1.2.1 above, their resignation must be in writing (including email) and be sent to **all councillors**, the Head of Paid Service and the Monitoring Officer.

4.24.7 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.

4.24.8 Update to CPR 12.3 – Two issues:

4.24.8.1 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 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.

4.24.8.2 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.

4.24.8.3 S&C made a final recommendation, in addition to adopting and recommending those above, at its meeting on 16 April – S&C recommend the removal of FCR 5.5 ii. of Appendix 4 of the Constitution, as it accepted that there was no reason why a Policy Chair or Chair of Audit and Scrutiny cannot sit as Chair of Planning Committee.

## **Annex 4-8**

- 4.25 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.
- 4.26 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.
- 4.27 S&C recommended a change to section 8.1 of the Annex 4-8 – which will change the words "any" to "ward", to reflect that "Planning Application Call-in" applies to a Planning Committee Member, or ward councillor, moving forward.

## **Delegation**

- 4.28 Further to the brevity of time between the S&C meeting held on 16 April and the deadline to publish reports for the meeting of Council to be held on 6 May, it has not proved possible to provide an updated version of the Council's Constitution displaying - via tracked changes - the updates set out within paragraph 3.13 and Section 4 of this report. It is therefore recommended that the Council's Monitoring Officer be delegated authority to bring into effect all of the recommended changes adopted and approved by Full Council after the meeting; this delegation is limited to adopting the approved wording within this report and its appendices and shall be carried out in consultation with the incoming Chair of Standards and Constitution Committee to provide member oversight of this process.

## 5 Risk Assessment

### Legal or other duties

#### 5.1 Equality Impact Assessment

- 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

## 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
- Standard and Constitution Committee – 16 April 2025

### **Other papers:**

- None