

REPORT TO	ON
Governance Committee	17 November 2020



TITLE	REPORT OF
Constitution Review	Director of Governance & Monitoring Officer

Is this report confidential?	No
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PURPOSE OF THE REPORT

1. To seek approval of changes to the constitution. These changes will include removal of repetition, changes to the council’s standing orders and changes in relation to Executive Member Decision making processes. The report will also seek approval of an updated report template.

RECOMMENDATIONS

2. That the following amendments to the constitution are recommended to full Council for adoption
 - a. Terms of Reference to for Council, Executive Cabinet and Committees
 - b. Standing Orders
 - c. Scheme of Delegation – as it relates to committees and Cabinet.
3. That the process for Executive Decisions be amended to be member led.
4. That the report template be approved for adoption.

EXECUTIVE SUMMARY

5. The Annual Governance Statement action plan included a requirement to review the council’s constitution. This is being undertaken in stages. A preliminary consideration was undertaken over the summer and amendments were proposed and adopted. This phase concentrates on making the document more useable but also paying particular consideration to the decision making processes and standing orders. Latter phases will include a review of the code of conduct for members, a review of financial regulations and a more complete review of the scheme of delegation.
6. The Executive Leader of the council has requested that any review include a consideration of decision making on delegated Executive functions which are currently officer rather than member led, with a view to reversing this.
7. This report will include recommendations and options on amendments to the constitution for consideration. The recommendations and options have been formulated by the Monitoring Officer based upon his view, consultation with the Group Leaders and following a consultative meeting with members of the Governance Committee Constitution Task Group meeting. Details of the consultations are contained in this report.

CORPORATE PRIORITIES

8. The report relates to the following corporate priorities: (tick all those applicable):

An exemplary Council	<input checked="" type="checkbox"/>
Thriving communities	<input type="checkbox"/>
A fair local economy that works for everyone	<input type="checkbox"/>
Good homes, green spaces, healthy places	<input type="checkbox"/>

PRINCIPLES BEING APPLIED IN THE REVIEW

9. Principles proposed to be applied and on which the proposed amendments are based are:-
- Meetings should, if not as a principle, be shorter in length, and should limit opportunities to depart from the agenda papers.
 - Rules for debate should be maintained although procedural formality should be reduced.
 - Speaking rights for non committee members and members of the public should be reviewed, although any review should not limit democratic accountability
 - The business of the meeting should be specifically tied to the terms of reference of that committee, to prevent repetition and overlap of business across committees. Where a function has been delegated full Council should be reluctant to have full reconsiderations of any recommendations made as a result of the delegation.
 - Changes to the Constitution should be considered in the context of the constitution as a complete document, rather than just limiting to consideration of specific committees' functions, to streamline council business, limiting repetition of decision making functions across committees. This is to ensure members, when considering the proposals, appreciate that no rights are being lost as such, but there is a requirement to exercise them at the right time.
10. These principles were considered and broadly approved by the group leaders as part of a preliminary consultation exercise.

LENGTH OF MEETINGS

11. It should be acknowledged that council and committee meetings will last for as long as they need to. This will demonstrate that all decisions have been properly considered. However, it should also be acknowledged that lengthy meetings will have an impact on the quality of debate on later items. Often these will be the confidential matters which may need careful discussion.
12. Steps are being taken separately to review agenda setting. This will include consideration of forward planning of decision making. It is not always possible to avoid bringing multiple items to the same meeting but with improved meeting timetabling could be improved.
13. Similarly, it is recognised that improving the reports before council and committees will have a potential impact on the length of meetings. These are not matters for this report but they are recognised and actions are being implemented.
14. In order to better control the length of meetings standing orders should be considered and the rules of debate and rights to speak reviewed. These are issues relating to the constitution and appropriate for consideration.

RULES OF DEBATE

- 15.** It is not proposed to fundamentally change the rules of debate for members of the committee. However, there are certain formalities which can be time consuming and are no longer needed. These include the requirement for 5 members to stand to support a request for a named vote. This is not necessary. Were this to be an in-person meeting, the technology enables all votes to be named votes, in a hybrid or remote meeting scenario then any vote requested (by indicating opposition to a motion or proposition) would be “named”.
- 16.** The rights of members of the committee to speak are not proposed to be altered. It should be remembered that for all committees (except Council, where all councillors are members and cabinet who are appointed by the Executive Leader) membership is by council appointment. The members of the committee should contribute to the debate and should have sufficient experience or knowledge to ensure that all relevant matters are considered.

SPEAKING RIGHTS – NON-COMMITTEE MEMBERS

- 17.** The constitution effectively provides an open committee system, permitting non-committee members to speak to agenda items. This has significant benefits in relation to robust decision making, providing an opportunity for a broad range of views to be taken into account. However, a consequence can be that there are more views being taken from non-members of the committee than the committee themselves, running the risk of undermining that committee membership. This is a difficult balance and it should be recognised that other councils remove non-member speaking altogether or severely limit it.
- 18.** It is not proposed to take away non-committee member rights to speak, there are too many benefits in this open system. However, this will be reviewed regularly and the chair will be reminded they have broad powers to control who may speak at the meeting. If a member wishes to be a member of a particular committee then they should lobby their group to be one of their representatives. If (to take this to a conclusion) all members attend all meetings and speak then why even have committees? Effectively all decisions are being made by full council.
- 19.** There are particular rights relating to Planning and Licensing Committee and it is not proposed to change any non member rights in relation to these committees. However, guidance will be issued to members on the appropriateness of their participation.

SPEAKING RIGHTS – MEMBERS OF THE PUBLIC

- 20.** The public are a proper part of the democratic process and it is correct to permit questions to be put to councillors both at Cabinet and Council. It is not clear however what the benefit of permitting members to speak directly on agenda items is. It would be proposed to remove this right. Public participation at meetings can be maintained through the formal written questions process, with the public being able to put questions to the meeting or individual councillors. Further, any views they have on agenda items can be made through their elected representative, with councillors of course having the right to speak.
- 21.** It is very important for members to accept that the council are a representative body, with councillors elected to represent their communities, to speak on their behalf. Whilst allowing some public participation at meetings provides visible democratic accountability, there is a difference between meetings “held in public” where the public can attend and witness, and “public meetings” where the public actively participate throughout. Council meetings should fall in the former category.
- 22.** It is therefore proposed to remove the general right for members of the public to ask questions or make statements on agenda items as part of the debate. Instead members of the public will be

directed to use the existing right to ask questions of the Council or the meeting in writing. Members will then be in a position to provide a response at the meeting (as the written question will be received on notice). The total time for public questions for each relevant meeting will be 30 minutes, with written responses provided to all questioners whether the question has been considered at the meeting or not.

23. There are again particular rules relating to Planning and Licensing Committee. It is proposed to review these but not at this time due to the current limitations occasioned by hybrid meetings. It is recognised that public participation is key to these meetings, although the scale of this involvement does need further consideration.

LIMITATION OF REPETITION

24. A decision once made should not be re-debated at a separate meeting. This should be distinct from reconsideration which is prohibited by the constitution under the 6 month rule. The re-debate does not move the business of the council forward and serves no purpose as it will not lead to a further vote.
25. The constitution has clearly defined the terms of reference for each meeting. These have been redrafted, and are attached to this report, but the drafting does not change the responsibilities of each committee. With the open committee system in place there is plenty of opportunity for councillors to have input into decisions. Debate should therefore be restricted on, for example, Cabinet Decisions when they are reported to Council. In this example there is also a role for scrutiny in considering the decisions of the Executive, which provides other opportunity for members to challenge decisions.

THE CONSTITUTION AS A COMPLETE DOCUMENT

26. There is a danger that some of the individual proposals may be perceived as limiting either members ability to participate in a meeting or remove the public right to hold the council to account. In both instances having a negative effect on democratic accountability and the process.
27. The purpose behind this principle is to ensure that where changes are proposed to the constitution it is recognised that there is often a balancing right elsewhere that provides the necessary protections that are believed lost. An example (as given above) is that while it may be thought that preventing debate of an executive cabinet decision at full council limits accountability, this ignores that there is an open cabinet system, enabling members to attend cabinet and participate at the point of the decision, and the ability to call in Executive Decisions for reconsideration.

QUESTIONS TO MEMBERS

28. There is a significant right within the constitution for questions to be put to Executive Members and members with special responsibilities. There is no restriction on what can be asked.
29. It is not proposed to remove this right altogether, but to amend it requiring questions to all Members, to be put in writing and allowing a maximum period of time for this agenda item (30 minutes). This change recognises that there are already significant opportunities to question the Executive and other members at other points on the agenda, for example on presentation of reports from the relevant committee.
30. It should also be remembered that the constitution provides for Notices of Motion (on notice) to be submitted for debate and consideration. This again provides opportunities to raise issues before Council or committee.

EXECUTIVE MEMBER LED DECISION MAKING

31. The constitution does allow for executive member decision making but it specifically requires this to be officer led in consultation with the relevant executive member. The monitoring officer had been requested to put forward proposals to enable member led decision making.
32. The Monitoring Officer supports this change. Member led decision making improves accountability. Executive Members own the decisions. I also believe it will improve the quality of the reports/decisions.
33. Proposals will be presented which will amend the current process. Instead of officers making the decisions in consultation with the members, Executive Member Decisions will be prepared and signed off by the Executive Member only. The recommendations will be based on the views of officers of the Council formed during the preparation of the report.
34. There will be no reduction in transparency as the publication requirements both prior to the decision being taken and after will be the same.
35. Member led decision making will improve the working relationships between officers and members, as consultation will be an ongoing process, with proposals being developed together prior to presentation for approval.

REPORT TEMPLATE

36. To address some of the issues raised above concerning the reports presented and their content the template is proposed to be updated. A suggested new template is attached which includes notes for completion of the different sections.

CONSULTATION CARRIED OUT AND OUTCOME OF CONSULTATION

37. The leaders of the groups have been consulted in relation to these proposed changes and principles. The principles received support, but the ways of implementing and applying them are not agreed.
38. The group leaders want to ensure that the rights of members to hold each other to account are preserved and are reluctant to dilute these rights.
39. Similarly, the rights of public participation are long established at this council and concern was expressed about the view of the public should their participation be limited in any way.
40. The proposed changes to executive member decisions was accepted although some clarity on implementation was sought.
41. All Leaders welcomed improvements to the content of reports although it was recognised that there is some disagreement between members as to the content of the reports and background papers. Some members wish to receive “all the detail” which will prevent or certainly restrict how much the report length and complexity can be reduced.
42. A previous report has also been presented to the Governance Committee Constitution Task Group, who directed that the proposed amendments to the Constitution should be presented to them for recommendation to full council for approval.
43. The outcome of the consideration of the principles in this report were
 - a. Particular concern was expressed over the length of agendas. Whilst this is outside the scope of this report, the monitoring officer outlined actions that were being taken to improve the forward planning of decision points for council business to try to limit too many reports being brought for decision at the same time.
 - b. The members were not keen on the introduction of a “guillotine” as a method of managing meeting length although it was recognised that chairs of meetings can close the meeting if they feel it appropriate.

- c. There was opposition to the limitation of member speaking rights at committees. Members expressed a view that this was not a significant issue in relation to the length of meetings and could be managed by the Chair of the meeting. The monitoring officer pointed out that members would have to respect the chair and resist “pushing back”, accepting any reasonable direction from the chair. (and this should recognise that there would be a presumption the chair was acting reasonably).
- d. There should be consideration of holding additional meetings when necessary.
- e. There is a long established right of public participation at SRBC at meetings and members were concerned about limiting this particularly in relation to planning matters. However, it was accepted that any participation should be tied to agenda items and not on unconnected or non-council responsibilities.

CHANGES PROPOSED

- 44.** Appendix 1 to this report addresses the introduction and guide to the constitution but in particular includes amended Terms of Reference for each council body. The amendments have sought to limit repetition although there are no substantial changes to the content.
- 45.** One change however (document 3B) is to address the request to move to Executive Member led decision making. This simply removes the statement which no cabinet functions have been delegated to individual members. This statement is unnecessary and has been interpreted as confirming no executive powers have been delegated to individual cabinet members.
- 46.** An additional provision has been added to this document specifically permitting Executive Member Decisions and prescribing how the power should be exercised. This is highlighted text.
- 47.** The remaining changes are largely presentational, attempting to make the documents more readable and shorter.
- 48.** Appendix 2 are the new proposed standing orders. In accordance with the principles above there has been an attempt to limit procedural formality whilst not reducing the framework for the debate. However, as outlined there are proposed changes to public speaking and questions to members. These suggestions are highlighted to enable easy identification. As there was significant opposition by members of the task group to limiting none-member engagement this has been reduced.
- 49.** It is accepted that members are reluctant to limit public engagement. One of the points made was that it is not a right significantly exercised and occasionally when it is, it is done so inappropriately (some public raising issues which are not council functions). Whilst it is acknowledged that changing public speaking rights may not therefore reduce meeting length it is still suggested it is appropriate to do so as proposed in the appendix to permitting the public to put questions in writing.
- 50.** It is still proposed to remove the questions to Members section of standing orders. The reasons have been provided. This is a matter for members.

COMMENTS OF THE STATUTORY FINANCE OFFICER

- 51.** No Comments

COMMENTS OF THE MONITORING OFFICER

- 52.** In the body of the report

OTHER IMPLICATIONS:

<p>▶ Risk</p> <p>▶ Equality & Diversity</p> <p>Add any other implications which you consider particularly relevant</p> <p>All inapplicable risks should be deleted before submission. Do not include 'N/A'.</p>	<p>Relevant comment to added here</p> <p>Relevant comment to added here</p> <p>Relevant comment to added here</p>
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BACKGROUND DOCUMENTS (or There are no background papers to this report)

List any background documents which are relevant, including policy documents or previous Cabinet reports. Remember for a public report all background documents referred to are open to public inspection on request. Use links to any web based documents.

APPENDICES (or There are no appendices to this report)

List the appendices in the order that they are attached to the report with titles as appropriate. Any spreadsheets/diagrams should be in pdf format and be headed up

Appendix A
Appendix B .

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Monitoring Officer

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