

Lancaster City Council
Advice Note – Summary of Constitutional Review
28 February 2018

DRAFT



CONSTITUTION REVIEW

1 ADVICE REQUESTED

- 1.1 Lancaster City Council ("the Council") has commissioned Bevan Brittan LLP to carry out a review and health-check of its Constitution. Bevan Brittan is a law firm with significant experience of advising local authorities on all aspects of governance and decision making. We have undertaken many reviews of constitutions for council clients.
- 1.2 The Council wishes to have a review of compliance with legislative provisions and best practice with a view to developing a clearer, more succinct Constitution which is accessible, up to date and will incorporate changes to modernise the document and make it easier to use.
- 1.3 Often we find that the issues which prompt a constitutional review include several of the following:
 - A document which has grown over years and is not internally consistent;
 - Desire to have a more easily understandable document that meets the needs of officers in particular;
 - Concern at legal compliance and the extensive list of statutory references;
 - Recognition that the constitution is not best serving the interests of the Council to deliver consistent, efficient and effective decision making;
 - An unwieldy document that could be simplified;
 - Change in personalities and loss of corporate knowledge about why things are where within the constitution or done in a particular way;
 - A structure which requires significant maintenance and is not future proof, with a need for many changes to be approved by Council;
 - Opportunities to reduce bureaucracy;
 - Desire to have a more living, working document.
- 1.4 The purpose of the current Constitution is stated in Article 1 to be as follows, to:
 - "Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisation.
 - Assist the Council in promoting economic, social and environmental well being.
 - Provide a means of improving the delivery of services to the community.
 - Support the active involvement of citizens in the process of Local Authority decision making.
 - Help Councillors represent their constituents more effectively.
 - Enable decisions to be taken efficiently, effectively and impartially.
 - Create a powerful and effective means of holding decision-makers to public account.;
 - Ensure that no individual will be involved in reviewing or scrutinising a decision which they took or took part in.

- Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons *for decisions*.

1.5 The above are drafted based upon the Model Constitution, but in practice we are not convinced that the current Constitution does the above (nor would any constitution, unless it was much more citizen (or public) focussed).

1.6 The current structure is based upon the Model Constitution and is somewhat chunky and repetitive – further details of which are set out below, along with recommendations for change. Adopting our recommendations would make it easier for members of the public to navigate the Council's constitution and to make sense of how the Council operates, if the document is stripped back to the key elements and hyperlinks to relevant parts of the Council's website.

2 CONTEXT

2.1 The Council has articulated four priorities and summarises the key outcomes it aspires to deliver in each area in a Corporate Plan. These are:

- clean, green and safe;
- health and wellbeing;
- sustainable economic development/growth; and
- community leadership.

2.2 An LGA peer review was undertaken in 2015 and reported on the above and the key challenges facing the Council. The review noted the 2015 election result that led to a new minority Labour administration after many years of no overall control. Noting an experienced Leader and Chief Executive with almost half of the Council's members being new members (27 out of 60) the report suggested a range of steps be taken in relation to governance and decision-making, including:

- More power be delegated to individual Cabinet Members to accelerate the pace of decision-making and strengthen the accountability of individual members;
- Informal Cabinet meetings with senior members to explore policy options on major decisions and seek to build consensus before reports go to cabinet;
- More joint working between members and Officers on policy issues;
- Greater attention to risk management and consider the Council's appetite for risk;
- Better use to be made of Overview and Scrutiny, especially more proactive involvement in policy development, exploring different options;
- Greater investment in the digital agenda (particularly in view of the potential for savings and ability to access services for a rural community) with an appointment of a digital champion to retain strong and political oversight.

The report recognised the linkages with the Universities of Lancaster and Cumbria (which may be able to assist on the digital agenda). Some of the above issues could be reflected in any new constitution developed for the Council.

2.3 The Council produced an action Plan that was last updated in February 2017. The Action Plan suggests that the Council should, in particular consider:

- Review the scheme of delegation following appointment of Chief Officer: Legal and Governance;

- Does the Leader/Cabinet want further delegation?;
- Review definition of key decisions – look at criteria for level of decision taking into account risk;
- Agree what a proportionate approach to risk management looks like; and
- Changes to the operation of Overview and Scrutiny to be proposed through the Council Business Committee

2.4 Additionally it is apparent from the Council's constitution that parts have developed piecemeal and in parts unusually with things like "proportional representation" or PR replacing "political balance" and that certain practices (such as Questions of Officers at Council without notice or time limit) are not necessarily conducive to good governance, especially where Officers are not aware of the particular facts and circumstances of the case – this could be seen as undermining of Officers.. There is no procedure for this in the Constitution and seems to have arisen through convention. Members have every opportunity to raise issues with Officers outside of Council meetings – that is not the forum within which to "spring" questions upon them. There is less of an issue asking questions of an Officer where there has been an officer briefing note but Members should remember that Council is their forum for discussion and debate.

2.5 The Council will shortly face further elections for all members on 3rd May 2018 as it operates all out elections every four years.

3 THE REVIEW

3.1 This report considers the findings of our review and makes suggestions as to how the Constitution could be changed. Judith Barnes attended a meeting at the Council's Offices with the Monitoring Officer, other senior managers and three councillors on 28 November, 2017. The report will look at the legislative requirements placed upon the Council and then consider how the Constitution compares and then how it could be shortened, streamlined and improved.

3.2 A local authority is under a duty to prepare and keep up to date its constitution under section 9P Local Government Act 2000 as amended. The Constitution must contain:

- the Council's standing orders/procedure rules;
- the members' code of conduct;
- such information as the Secretary of State may direct;
- such other information (if any) as the authority considers appropriate.

3.3 A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things. Whilst issued under Part II Local Government Act 2000 the Direction survives the re-enactment into Part 1A (section 9B et seq.) of the 2000 Act by the Localism Act 2011 (under section 17 Interpretation Act 1978).

3.4 Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

3.5 The Council's Constitution currently comprises 11 Parts (many divided into a number of sections). In total there are at least 57 sections and schedules, but the contents page refers only to the 11 parts. Each part of the Constitution has its own index, which is helpful. However, if a member of the public did not already know which part to look in, it would be difficult to locate a specific section of the Constitution. The Council's Constitution can be found at the following link:

<https://committeeadmin.lancaster.gov.uk/ecCatDisplay.aspx?sch=doc&cat=219&path=0>. Distinct documents for each Part of the Constitution makes navigation of the document difficult for those who are familiar with it and virtually impossible where there is no familiarity and/or cross-references are essential to a complete understanding. The lack of a whole constitution or fewer parts (perhaps three or four significant chunks) means that it is impossible to use an electronic search facility to find things easily and the effect of this is that members of the public will be unable to readily comprehend the document. For example, Part 4 (Procedure Rules) comprises 10 separate PDF documents.

3.6 The Constitution appears to have developed over time with amendments that are not always consistent in approach and in some areas there are provisions that are effectively guidance or explanation that whilst in themselves are helpful documents, do not need to be within the constitution (e.g. the Press and Media Guidelines). Since the Constitution must be adopted by resolution of Council changes to such guidance or explanation may only be approved by resolution of Council, unless enhanced delegated powers are given to make changes. Should such guidelines sit outside of the constitution then it would be easier to amend and update them. Such documents could be hyperlinked to the intranet or the web rather than being lost altogether, in the same way that links could be provided to the existing web pages outlining individual Councillors, their wards and interests etc.

3.7 Additionally in meeting with the Council other issues were identified:

- Desire to have a more easily understandable document that meets the needs of members and officers in particular but also the public, which will improve opportunities for public engagement, and give the public greater rights to address the Council, question Councillors and seek redress.
- Provide greater transparency
- Update the Press and Media Guidelines
- Desire to streamline arrangements
- Desire to have a more uniform approach to scrutiny across the Council, rather than focusing on Cabinet Members, as is currently the case.
- The Constitution has been added to and revised on a piecemeal basis and is no longer internally consistent. It needs to be simpler, easy for Councillors to use, and give clear rights to the public which they are able to exercise.
- There is support to remove the Articles (although some content will need to be retained, perhaps by being moved elsewhere).
- Powers and delegations are currently diffuse throughout various parts of the Constitution.
- There is no Proper Officer register.
- Various parts of the Constitution require updating:
 - Legislation
 - Delegations
 - Management Structure (including removing reference to officer roles which no longer exist).
- The lists of Officers and Members within the Constitution require regular updating, which imposes an administrative burden on the Council.
- We have also seen more detailed comments on the:
 - Council Procedure Rules
 - Planning and Highways Regulatory Committee Procedure Rules

3.8 A list of issues was presented from both Member and Officer comments. A review of the Constitution may also bring opportunities for an objective view of potential changes and streamlining of functions that could improve efficiency and effectiveness, perhaps reducing the number of decision-making bodies.

3.9 Under Article 14 of the Constitution the Monitoring Officer "is to be aware of the strengths and weaknesses of the Constitution adopted by the Council and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1."

4 OVERALL CONCLUSIONS OF THE REVIEW

- 4.1 Overall we have found that the Council's Constitution to be largely legally compliant and is, certainly compared to a number of other Constitutions we have seen and reviewed, well drafted and reasonably clear, except in relation to the delegation of functions which are too dispersed throughout different segments of the Constitution.
- 4.2 Attached to this report are also:-
- 4.2.1 A compliance checklist (**Appendix One**) showing how and where the Constitution complies with the relevant statutory requirements in the Constitution Direction and identifying areas requiring review/updating; and
- 4.2.2 A proposed contents page for the new Constitution (**Appendix Two**).
- 4.3 There are a few areas where further information is required to be contained in the Constitution to meet the statutory requirements (see Appendix One) and a number of legislative references need updating, but these should be easily remedied.
- 4.4 At 312 pages, it is not unduly long. However, it comprises 57 separate sections/documents and there are a number of aspects that we consider could be improved. We consider that an updated slimmed down version would better fit the way the Council intends to operate and would achieve the stated aims and issues above. Our report goes on to identify these aspects and suggest a way forward.
- 4.5 In our experience, members and officers can give considerable weight to the impact a revised Constitution can have on the operation and culture of a council and can focus hopes for change on the production of a revised document. Whilst we absolutely agree that a robust and effective Constitution can make a real difference to the operation and governance of a council, it is, on its own, not sufficient to change ways of working, established behaviours or ingrained approaches. The actual process of production of a new Constitution can be very powerful in providing an opportunity for open debate about the fundamental issues of how the Council operates and the development of a Constitution which reflects this (and which has buy in from all stakeholders) can set the ground rules for how the Council operates. Joint discussion on a new constitution may help to start building more trust between members and officers.
- 4.6 In terms of aspects of the Constitution which we have identified as needing particular focus, the following four areas should be addressed:-
- Form and Structure
 - Accuracy, updating and future proofing
 - Decision Making
 - Member bodies
 - Officer delegations
 - Procedure rules
 - Budget and Policy Framework and Financial Procedure Rules
- 4.7 It would be useful to test our recommendations with senior officers and possibly interested members, perhaps through an informal member and officer working group and/or engagement of members through the Constitution Committee to enable members to contribute from the outset to the proposed changes.

5 FORM AND STRUCTURE OF THE CONSTITUTION

- 5.1 Whilst based on the Model constitution, the Council's constitution does not read as a modern document and could be improved significantly through the use of more modern language, web links and better presentation in a revised structure. The Introduction is well-written but would benefit from some more information about how the Council works being drawn from the Articles to give a more comprehensive picture.
- 5.2 By having a general summary in the Introduction, then the Articles, then substantive sections, things are often stated three or more times, often in slightly different ways and it is very difficult to be certain that the full picture is being presented on any issue without exhaustive searching. This should all be cut down and assimilated into a much clearer document. For example there are 73 separate references to "Key Decisions".
- 5.3 As part of this exercise the Constitution should be rigorously edited to remove repetition and to make it more user friendly. We would recommend that the Council removes the Articles (30 pages) from the Constitution. This will reduce repetition from the Constitution since much of the Articles are replicated elsewhere. Some of the content of the Articles will need to be moved to other parts of the Constitution (for example Article 11 could appear within the Responsibilities for Functions section). We also recommend that the Terms of Reference of all Committees should be together and in the same style/format. Experience tells us that the content of the Articles should be carefully mapped so that Members can see where provisions have been moved to other parts of the Constitution. We make our suggestions in detail in the table below.
- 5.4 There is much in the Constitution which is important for the Council to have somewhere, but need not be contained in this document. Policies and procedures etc can be referenced through web links which would make the whole document less daunting and unwieldy and, if they are not a formal part of the Constitution, allows them more easily to be updated/refreshed. We would suggest that the Council could consider removing the following parts of the Constitution:
- Part 2 – The Articles
 - Part 10 – Petition Scheme – these are no longer required by law
 - Part 6(3) – Appointments and Designations e.g. Calculation of PR – there are regulations that govern the calculations – this "guidance" could be on the web or just circulated to the Groups before Annual Council.
- 5.5 This will all make it more accessible to its users who include:
- The public
 - Members
 - Officers
 - Partners and stakeholders of the Council

6 ACCURACY, UPDATING AND FUTURE PROOFING

- 6.1 The Management Structure at Part 9 includes a number of named officers. Whilst it can be useful to name senior officers, we would not recommend referring to such a large number of officers by name. We would query whether keeping this up to date will be a significant and unnecessary administrative burden. We suggest that this structure could appear on the Intranet (updated as necessary, but the version in the Constitution only relates to the top three tiers of staff with post titles (and without names if desired). We also note that the Management Structure as it appears in the Constitution appears to be as at August 2013.

- 6.2 Local authority arrangements do change and whilst this means Constitutions have to be updated, this should not be a constant exercise. The drafting should be future proofed so changes in post holders, legislation etc should not, of themselves, trigger a redraft.
- 6.3 Whilst the current Constitution is largely up to date, a number of statutory and legislative references need to be updated throughout the document (e.g. references to sections 9A et seq. Local Government Act 2000 in Part 1A rather than sections in Part II of the Act). In Part 3, Section 1 – Council at paragraph 1.17 the Local Authorities (Alcohol Consumption in Designated Public Places) 2001 have been superseded by the Local Authorities (Alcohol Consumption in Designated Public Places) 2007.
- 6.4 We consider that the Scheme of Delegations in the Constitution could also be made clearer by being more generic and wide-ranging and this would also make the document more manageable and future-proof as it should cover future changes to service specific legislation.
- 6.5 A shorter, more accessible document will make it easier for any changes to be considered carefully, implemented clearly and for there to be a robust system of version control and explanation to all users of what changes have been made any why.
- 6.6 We would also recommend that the Monitoring Officer be provided with greater delegation to make changes to include changes which improve drafting and clarity and efficiency of operations. Such powers could require all members to be notified of the changes made as and when they are undertaken. At present the Monitoring Officer is limited to making changes which either (a) keep the Constitution up to date, or (b) implement agreed consequential amendments as a result of Council decisions. We do, however, note that the Monitoring Officer has additional powers to amend the Scheme of Delegation to re-distribute existing delegations.

7 DECISION MAKING

- 7.1 A key part of the Constitution (and which sets the tone for the culture the Council wishes to operate) is how decisions are taken. This includes the balance between:
- Cabinet collective decision making or powers of the Leader (as individual portfolio holders do not have delegated powers); and
 - Member decision making or officer delegation.
- 7.2 The right balance must also be struck in the Constitution to ensure:
- Recognition that the Council is a member-led authority;
 - Appropriate transparency and involvement in decision making;
 - Efficiency of business; and
 - The ability to respond swiftly to events (whilst ensuring probity and checks and balances).
- 7.3 Many provisions cross refer to numerous Parts of the Constitution (including the Articles) and are not therefore standalone sections, meaning there is a need to go in and out of documents to be sure of compliance with all requirements of the Constitution.
- 7.4 In **Part 3, Section 2 - Local Choice Functions** have been allocated to Cabinet. We consider that this list be reviewed in detail to see how it sits along further delegations. For example, "any function related to contaminated land" is exercisable by Cabinet, but contaminated land is also listed under the functions of the Licensing Regulatory Committee. The same point applies to air quality. There needs to be certainty as to whether they are executive or non-executive functions.
- 7.5 In **Part 5 and later Parts** (e.g. the Officer Employment Procedure Rules) specific provisions require updating regarding staff matters and these are prescribed in more detail in Appendix One. This is

largely to deal with the requirements of the Local Authorities (Standing Orders) Amendment Regulations 2015 and the new Chief Executive and Chief Officers Terms and Conditions of Service issued in 2017. The Independent Person(s) need to be established as a separate Panel under s.102(4) of the Local Government Act 1972 from the Investigation and Disciplinary Committee in order to marry up with the latest JNC Terms and Conditions of Service for Chief Executives and Chief Officers.

7.6 In respect of **Part 3, Section 14, the Scheme of Delegation**, we note that the Constitution makes a distinction between executive and non-executive functions, and it is this distinction which dictates the structure of this section. It is then further divided by delegating bodies. Whilst there is a logic to this approach, it does make it difficult to see who is responsible for what. For example, powers are delegated to Chief Executive (alone) in six different places in the Scheme of Delegation. There is no obligation to split the officer delegations.

7.7 We make the following additional observations and recommendations:

- We note that the Scheme of Delegation does not include a general power for officers to further delegate to other officers. The Scheme of Delegation does provide specific powers for Senior Officers to designate staff to exercise certain powers.
- In the absence of the Chief Executive any delegation to the Chief Executive can be exercised by a Chief Officer. This is vague and will create uncertainty about who is the correct person to take decisions in the Chief Executive's absence – is it anyone on Chief Officer Terms and Conditions of service?. We suggest either naming a particular officer as Deputy in the absence of the Chief Executive (or any of the Statutory Officers) or creating a hierarchy of officers who can exercise this power.
- Under the Executive Functions – Matters of Urgency section there are powers relating to day to day running of the Council. We would not consider that these would usually be considered matters of urgency, and they would sit better elsewhere.
- There is no Proper Officer list as required under the Local Government Act 1972.

7.8 Areas for further inclusion could include:

- Powers for the Chief Executive to exercise all officer delegated functions in the absence of relevant officers
- Powers for the Chief Executive to exercise all executive functions where the Council has not elected a Leader and the post is vacant
- Powers for the Chief Executive and Chief/Statutory Officers to take urgent action (other than those functions which by law must be reserved to a member body e.g. setting the budget at full Council) subject to a suitable reporting process to appropriate members, where considered to be in the best interests of the Council
- Powers to implement decisions and take all necessary actions to implement executive and non-executive decisions
- Powers to manage the finances of the relevant service including setting relevant fees and charges in consultation with the relevant portfolio-holder or Chair of Committee
- Powers to supply other public authorities pursuant to the Local Authorities (Goods and Services) Act 1970 (potentially over a significant financial threshold requiring a Business Case) or companies/corporate bodies that the Council is involved in (whether by shareholding, membership or appointing persons to the Board/Management Committee)
- To take all relevant regulatory and enforcement action in connection with the exercise of functions, including without limitation, issuing any form of Notice, Order, Caution, an Injunction

or authorising the commencement of prosecution or other proceedings (Monitoring Officer and designated other Chief Officers for Planning and Environment or Resources etc.?)

- Wider powers for the Chief Executive/Monitoring Officer to authorise the settlement, withdrawal from or discontinuance of any proceedings or claim against the Council (including staffing matters and maladministration) in consultation with the Chief Finance Officer and relevant portfolio holder/ward member.

- 7.9 Generally under **Part 4, the Scheme of Delegation**, we would recommend that less reliance is placed upon specific legislative references. This is particularly the case in respect of the Licensing Regulatory Committee, the Licensing Act Committee, the Licensing Act Sub- Committee and the Planning and Highways Regulatory Committee. The exception to this would be Proper Officer references, which it may be helpful to identify elsewhere as well as under the existing corporate/Head of Legal references.
- 7.10 It is not clear which officer is responsible for Data Protection. The Constitution does refer in two places to an "Information Management Officer" but it does not make it clear who will perform this role. We note that the Council's Data Protection Policy refers to the Information Management Officer as being the Head of Governance. We also note that the policy is dated 2011 and does not appear to have been signed off by the Management Team. We recommend that the Council carries out a review to ensure that its data protection policies reflect the requirements of the General Data Protection Regulation 2016 which comes into force in May 2018.
- 7.11 The **Joint Arrangements in Article 10** summarises the Council's joint arrangements well and would benefit from expansion and hyperlinks to relevant web pages established for each of the joint functions, particularly to meet the requirements of the Constitution Direction at "r" in Appendix One, requiring inclusion of Terms of Reference, membership, etc. It is not clear from the Constitution as it is currently drafted what if any joint arrangements the Council has in place.
- 7.12 Paragraph 10.04(c) of Article 10 should be amended to make it clear that where another authority proposes to delegate an *executive* function to the Council then it should be the Council's Executive which takes the decision as to whether to accept that delegation and also to refer to mixed function Joint Committees.
- 7.13 In relation to the **Council Procedure Rules in Part 4, Section 1**, we would not make many significant suggestions for changes to the content which we consider are generally clear and comprehensive, although would reflect that:
- Paragraph 1.1(f) states that the Annual Meeting elects the Leader. It could be made clear that the Leader is elected for four years. The current drafting suggests that the election of the Leader is an annual occurrence.
 - We would recommend including the ability for the Monitoring Officer to rule out of order any questions, petitions, motions and comments (both public and member) that are "vexatious, derogatory" as well as defamatory, frivolous, or offensive, or if they concern a Council employment or staffing matter or could be – (in addition to the ability to rule out of order if previously considered within 6 months, is unrelated to Council functions etc and to refer to a more appropriate place).
 - Quorum for meetings of Council is a quarter (schedule 12 Para 6 LGA 1972), and the Council Procedure Rules reflect this. However, we recommend that the quorum of committees, sub-committees etc should be specifically referenced in the Terms of Reference of each Committee.
 - Should there be a procedure rule on the acceptance of petitions (rather than the Council's Petition Scheme?)
- 7.14 The **Access to Information Procedure Rules in Part 10**, paragraph 11 give access to Members to attend all meetings and access all reports, including reports which relate to exempt and confidential

items (except where the business relates to an individual officer (other than the Chief Executive or Chief Officer), an individual Member of the Council, an individual third party or the Member seeking access has a DPI). This right of access is broad and the Council should consider whether it would be desirable for such rights to be limited to the statutory requirements and the common law "need to know" basis, or whether the associated risks (including potential leaks and claims) are accepted.

- 7.15 We understand that the Council may wish to amend the threshold for **Key Decisions**. It is currently **£50,000**, which is very low for any council. A threshold of at least **£100,000** would be more usual for a District Council or even £250,000.

8 APPOINTMENTS AND DESIGNATIONS

- 8.1 We consider that Part 6 can be removed in its entirety, as it simply repeats the statutory rules on the calculation of political balance (PR/proportional representation). Including this section is unnecessary and creates an additional burden on the Council to ensure that it is kept up to date.

9 BUDGET AND POLICY FRAMEWORK AND FINANCIAL REGULATIONS

- 9.1 The Policy Framework is included in Article 4.01. We note that it includes the "sweep up" phrase: *"Any other plan or strategy (whether statutory or non-statutory) in respect of which Council from time to time determines that the decision on its adoption or approvals should be taken by it rather than the Cabinet"* but strictly speaking, it will not be a matter for the Council to decide where it is not listed and is an executive function.
- 9.2 The Budget and Policy and Framework Procedure Rules (BPFR) themselves are relatively short and do not contain the Policy Framework which is currently at Article 4 and should be brought in here. The BPFRs could be linked to the Financial Procedure Rules.
- 9.3 The Financial Procedure Rules need to be updated to reflect the Accounts and Audit Regulations 2015. Paragraphs 2.2.10 and 2.2.11 also need to be updated to reflect that the Local Audit and Accountability Act 2014 has come into force since these paragraphs were drafted. Paragraphs 6.3.7 and 6.3.8 will also require updating for the same reason. A new Local Audit Panel will need to be established with the statutory terms of reference.
- 9.4 In paragraph 4 of the Budget and Policy Framework Procedure Rules an urgent decision can be taken by Cabinet or any of its Committees, Officers, or joint arrangements discharging executive functions if:
- a) if it is not practical in the opinion of the Chief Executive to convene a quorate meeting of the Council; and
 - (b) the Chief Executive after consultation with the Chairman of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency.
- 9.5 The Council may wish to delegate the matter to the Chief Executive rather than the Cabinet and also to define, or provide guidance, as to what constitutes Urgency.

10 OTHER PROCEDURES, CODES AND PROTOCOLS

- 10.1 We can supply more detailed comments on this part of the Constitution if required but at this stage it is important to determine the structure of a new constitution (what is in and what is out) at a high level.
- 10.2 We would refer you to the draft contents page which sets out our views as to the codes, protocols and guidance documents that are no longer required or could be removed and placed on the Council's website and hyper-linked if necessary
- 10.3 The **Officer Employment Procedure Rules at Part 17** largely recite the Local Authorities (Standing Order) Regulations 2001 as amended without tailoring them properly to the Councils requirements –

further information on changes required to staff provisions is set out in Appendix One. The Chief Executive and Chief Officer Terms and Conditions of Service now require the Independent Persons (however many may accept the invitation) to form an Independent Persons Panel, that can meet concurrently with any Statutory Officers Disciplinary Action Panel.

10.4 We note that paragraph 9 of the Officer Employment Rules gives the Committee delegated authority to take disciplinary action against the Head of Paid Service including dismissal. This does not reflect the latest Regulations nor paragraph 88 nor the JNC Terms and Conditions, as we set out in the table at paragraph 11 below.

10.5 **Contract Procedure Rules.** These are written in simple English which is commended. They need to be updated and perhaps ought to make reference to the Public Services (Social Value) Act 2012 at the early commissioning stage and the purchasing strategy. Reference to existing relevant frameworks including the Crown Commercial Services should be also included.

10.6 The Rules need to be updated to cover the 2015 Public Contracts Regulations and the options for Competitive Negotiated, Dynamic Purchasing and Light Touch as well as bi-annual increases to thresholds for services and works as follows from 1 January 2018 – 31 December 2019.

10.7 A short summary of the main thresholds from January 2018 is below.

TYPE OF AUTHORITY	TYPE OF CONTRACT			
	Works	Supplies & Services	Light Touch Regime Services	Concessions
Central government authorities	£4,551,413 (€5,548,000)	£118,133 (€144,000)	£615,278 (€750,000)	£4,551,413 (€5,548,000)
Sub-central authorities	£4,551,413 (€5,548,000)	£181,302 (€221,000)	£615,278 (€750,000)	£4,551,413 (€5,548,000)

10.8 Contracts Finder requirements should also be included along with updated information relating to Concessions. More information on the need for explicit evaluation criteria should be included in the tender documentation and that all such documentation should be ready at the time of despatch.

10.9 There is a **Glossary**, but in our view there should be one Glossary of Terms for the whole constitution, not individual Parts, to ensure consistency.

10.10 The **Officer Code at Part 7 – 1** is fairly comprehensive (if not too long) although reference should be made to the Bribery Act 2010. There is no financial limit on gifts and hospitality, which should be kept in a central record for transparency. The seven Nolan Principles (which appear in the Member Code of Conduct) could also be referred to here. They apply equally to Officers and Members.

10.11 The **Members' Code of Conduct at Part 7 - 3**. The scope of the Code does not appear to extend to where a member of the public may perceive that a member is acting in an official capacity. In other respects it largely follows the previous mandatory code. There is a financial limit of £50 on gifts and hospitality. We note that Standards for England, whose guidance is referred to in this Code, no longer exists.

10.12 The **Member and Officer Protocol at Part 7 – 6** appears to be comprehensive. We note that there is considerable overlap between the Access to Information provisions at Paragraph 8 and the Protocol. We also note that the rights of Access to exempt and confidential information is very broad.

10.13 The **Press and Media Guidelines at Part 7 – 7** would usually be seen as an internal document, and is not required to be in the Constitution. However, if the Council considered that it would be beneficial to publish these guidelines then they could be hyperlinked from the Constitution.

11 PROPOSALS FOR NEXT STEPS/ACTION

- 11.1 We understand that there is some momentum and desire to move ahead with a review of the constitution. We would support this and would also, from our experience of leading many constitutional reviews, advise that consideration be given to what should go in the new Constitution before re-drafting the document. This review should inform that exercise.
- 11.2 We would usually recommend involvement of relevant stakeholders in a consideration of the key issues (e.g. the Chief Finance Officer on the Financial Procedure Rules) and development of the new document in consultation with key groups (e.g. members when looking at Council and other procedure rules). This approach need not take a long time – with a clear and tightly managed project plan/timetable, this could be achieved on an informal basis and then be consulted upon more widely with interested Council members and officers.

12 KEY AREAS FOR ACTION

12.1 We suggest that areas of the Constitution are prioritised for consideration/focus as follows:-

Issue	Proposed Approach
Principles to drive the review of the Constitution	This report should be used to consider the proposed principles for drafting the document and recommend the basis for decision on how the revision of the Constitution should proceed, appropriate terminology etc
Overall form and presentation and accuracy, updating and future proofing	The form, style, presentation and arrangements for updating/future proofing the constitution should be agreed as well as the approach to guide the Constitution redrafting e.g. hyperlinks – we would recommend that greater powers are given to the Monitoring Officer to update the constitution
Terminology	<p>There is inconsistency or lack of clarity around the use of language within the Constitution. For example:</p> <p>"Chief Officer" is an important term within the Constitution, but it is not defined anywhere (there are five Chief Officers listed at Part 9 – Structure Chart). "Council" and "Authority" are used interchangeably at various points.</p> <p>Approach to language is important e.g. does the Council prefer "citizens" or "members of the public" or "residents"? "Councillors" or "Members"; "Chairman" or "Chair" etc</p> <p>There may be other expressions the Council wishes to change.</p>
Articles	<p>These repeat much of what is stated elsewhere. We would recommend this section is removed and the content placed elsewhere, as follows:</p> <p>Article 1: Add re-vamped purpose of the Constitution to the Introduction and Explanation</p> <p>Article 2: Add content to Introduction and Explanation with hyperlink to member details</p> <p>Article 3: Rights of citizens/members of the public to be included in Introduction and Explanation</p>

Issue	Proposed Approach
	<p>Article 4: Full Council - Omit/merge with Responsibility for Functions. Re the policy framework - add the plans to the Budget Framework to create the Budget and Policy Framework</p> <p>Article 5: Include Chairing the Council in the Introduction and Explanation or hyperlink to somewhere on the councils website</p> <p>Article 6: The general role of Scrutiny should be in the Introduction and Explanation. Terms of reference of overview and scrutiny committee/Panels should be consistent with Article 6 and so merge within the new Responsibility for Functions section</p> <p>Article 7: Executive arrangements should be in the Responsibility for Functions – at present there is a page in Part 4 that should also go into this section</p> <p>Article 8: Regulatory committees have already been placed with other terms of reference of committees in the Responsibility for Functions section so the provisions here could be omitted</p> <p>Article 9: Area Forums – We understand, however, that the Council does not have any Area Forums and has no intention of creating any, in which case we recommend that this section can be removed in its entirety. A line could be included in the Introduction and Explanation mentioning that the Council may introduce them but has not done so.</p> <p>Article 10: Sets out Joint Arrangements, which it is important to include in the Constitution – this introduction of the new part should be expanded to cover non-executive and mixed function joint arrangements, along with the details of the actual joint arrangements in which the council is involved.</p> <p>We would expect more details within the Responsibilities for Functions part relating to Joint Arrangements (in line with Section 13 – Joint Committee for Revenues and Benefits). The Constitution Direction suggests that the terms of reference of joint committees is included in the Constitution although where joint bodies have websites then these may be better hyperlinked, especially where the council is not the host or lead authority.</p> <p>Article 11: The summary of officer roles and responsibilities would be better at the start of the officer delegations in the Responsibilities for Functions section. The details about the statutory officers fits better with the list of proper officer functions under various legislative provisions that should be highlighted in the Responsibility for Functions section.</p> <p>Article 12: Decision-making principles are important and should be relocated with the procedure rules, as part of the Access to Information Procedure Rules or the introduction to the Responsibility for Functions section.</p> <p>Article 13: Finance, contracts and legal matters properly sit within the Responsibility for Functions section and the Procedure Rules, where not already included.</p>

Issue	Proposed Approach
	<p>Article 14: Likewise review and revision of the Constitution should be split between the Introduction and Explanation and the Responsibility for Functions section but we would increase the powers for the Monitoring Officer to make changes and would omit the provisions around changes to existing executive arrangements in 14.02(b) –alternative arrangements we removed by the Localism Act 2011 and if the Council wished to change its governance then it would need to follow the new rules.</p> <p>Article 15: Suspension and interpretation of the Constitution should sit with the Procedure Rules. Publication details should be in the Introduction and Explanation and accessible on the Website.</p>
Part 3 – Responsibility for Functions	This section could be shortened by taking a more purposive approach to the committee terms of reference. For example, the Planning and Highways Regulatory Committee Terms of Reference lists 49 Functions of the Committee. Committee Terms of Reference shape the operation of the Council and care should be taken to ensure that members and officers get the opportunity to comment on proposed changes.
Part 3 – Responsibility for Functions – The Council	<p>Paragraph 1.17 the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 has been repealed. It is now the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2007.</p> <p>The requirement for approval Housing Land Transfer (as described in Article 4.01) has been repealed. This can be removed from the Constitution.</p> <p>This section should also make it clear that appointing the Council's auditors is now the responsibility of local audit panels pursuant to the Local Audit and Accountability Act 2014.</p>
Part 3 – Responsibility for Functions – The Cabinet	<p>This section could incorporate some of the useful content from Article 7, and we think it would be clearer to have all of the information in one place.</p> <p>Paragraph 7.07 of Article 7 should be included in the Responsibilities for Functions section.</p>
Part 3 – Responsibility for Functions - Scheme of Delegation to Members	<p>The current disparate parts of the Constitution should be brought together more coherently to provide clarity within a comprehensive Responsibility for Functions section. There are also areas which need addressing, particularly</p> <ul style="list-style-type: none"> • We would normally expect to see a full Proper Officer list of functions in the constitution and would suggest that some nomenclature is included to highlight such functions in the Responsibility for Functions section; • Consideration is given to areas being stated more generically and with fewer references to legislation;

Issue	Proposed Approach
	<ul style="list-style-type: none"> There are a number of Proper Officer and other functions that need to be added in. <p>But otherwise than set out above and earlier in this note, no fundamental issues have been identified with the core arrangements for the allocation of member and officer decision making – the challenge is to make the documents more accessible future-proof and user friendly.</p> <p>Should local schemes of delegation be preferred then each relevant service area could be required to develop their own scheme (within a standard non-negotiable template) in specified deadlines to ensure their own local delegations work effectively.</p> <p>The local schemes would need to be regularly updated and also filed centrally so that if a member of the public wishes to see them the provisions are generally available quickly.</p>
Procedure Rules	A number of suggested changes have been made in the report for the Codes, Protocols and Procedure Rules
Provisions in relation to staff	<p>In Part 5 the Personnel Committee does not contain any Terms of Reference (ToR) that explicitly cover dealing with grievances or severance of chief officers/senior officers.</p> <p>Should the Personnel Committee also be able to agree the Councils establishment and authorise restructuring or should restructuring completely be within the remit of the Chief Executive including the addition and deletion of posts?</p> <p>It is not clear who is responsible for taking disciplinary action against JNC Chief Officers. Paragraph 8 of the Officer Employment Procedure Rules state that this is a matter for the Personnel Committee, but the TOR's of that committee do not explicitly say that.</p> <p>Now that the 2001 Standing Orders Regulations have been amended from no disciplinary action being taken against a statutory officer, to protection against dismissal of a statutory officer without a report to Council including consideration of representations by a panel of Independent Persons, Paragraph 9 of the Officer Employment Procedure Rules, should be updated.</p> <p>The Independent Persons, under the Statutory Officers Terms and Conditions of service now need to meet as a separate panel. That panel is able to meet concurrently with any Statutory Officers Disciplinary Action Panel that would meet to consider allegations of gross misconduct or other conduct that could lead to the dismissal of a statutory officer. For disciplinary action that is unlikely to amount to gross misconduct or that will be unlikely to lead to dismissal the Panel should not include the Independent Persons.</p> <p>The number of members of the Investigation and Disciplinary Committee/ updated Personnel Committee could therefore be six with a quorum of five or less – subject to what is stated above about political balance and a member of the Cabinet being included.</p>

Issue	Proposed Approach
	<p>The Terms and Conditions of service allow for a process to rule out frivolous or vexatious claims or matters that should be dealt with elsewhere. We would recommend that this is undertaken by an officer (the Monitoring Officer unless the allegations are against the Monitoring Officer in which case we would recommend the Head of Paid Service or Deputy Monitoring Officer) in consultation with the chair of the relevant Committee/panel.</p> <p>We would also recommend that the panel has the ability to deal with severance on mutually acceptable terms, in line with council policies. We assume that severance policies are referred to or set out in the Council's annual pay policy statement? If not they should be somewhere on the Council's website and are required to be reviewed regularly.</p>

Bevan Brittan LLP
28 February 2018