

Lancaster City Council
Report outlining changes to the Constitution
4 March 2019



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1 BACKGROUND

- 1.1 Lancaster City Council ("the Council") commissioned Bevan Brittan LLP to carry out a review and health-check of its Constitution in spring 2018. The Council wished to develop a clearer, more succinct Constitution which is more accessible, up to date and will incorporate changes to modernise the document and make it easier to use.
- 1.2 The original structure was based upon the Model Constitution but had been enhanced over time and was clunky and repetitive. A new draft Constitution has been prepared that should make it easier for Councillors and members of the public to navigate and to make sense of how the Council operates. It has been stripped back to the more key elements with hyperlinks to relevant parts of the Council's website that already hold relevant information or may be supplemented by additional information.
- 1.3 An LGA peer review in 2015 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.
- 1.4 The new Constitution developed for the Council certainly reflects individual decision-making by portfolio holders and allows for informal member and officer meetings, greater delegation and streamlining of decision-making – which were also suggested in an Action Plan that was approved in February 2017.
- 1.5 It is hoped that the new arrangements will also lead to improvements in handling meetings, so that certain practices (such as Questions of Officers at Council without notice or time limit) are in future dealt with outside of Council meetings – since Officers may answer Councillors' questions at any time. Council is not the forum within which to "spring" questions upon Officers; it is Councillors' forum for discussion and debate.
- 1.6 Changes proposed in the draft Constitution represent the work of several Constitution Working Group meetings supported by Democratic Services, the Interim Head of Legal and Democratic Services and Judith Barnes, Partner Bevan Brittan LLP.

2 REQUIREMENTS OF A CONSTITUTION

- 2.1 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.

2.2 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).

2.3 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 LANCASTER CITY COUNCILS CONSTITUTION

3.1 The Council's Constitution currently comprises 11 Parts (many divided into a number of sections) numbering around 312 pages. 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>

3.2 Separate and 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) made it impossible to use an electronic search facility to find things easily, however, the new version is much shorter with over 100 fewer pages and where documents sit outside of the Constitution on the web, they can more easily be kept up to date (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.

3.3 Issues presented by both Members and Officers have been considered.

4 SUMMARY OF THE CHANGES MADE

4.1 Issues presented by both Members and Officers have been considered by the Constitution Working Group.

4.2 Terminology is now gender neutral using "Chair" rather than "Chairman" and instead of "proportional representation" or "PR" utilising the expression in the statute of "political balance". Other changes include references to:

- Councillor rather than Member;
- Cabinet rather than Executive;
- Removing Citizen and referring to people who live work or study or are members of the public;
- Chief Executive rather than Head of Paid Service; and
- Chief Finance Officer rather than 151 Officer.

4.3 The Constitution now has six parts rather than 11, as follows:

Part 1 is the introduction, summary and overview.

Part 2 sets out which parts of the Council are responsible for carrying out the various functions of the Council.

Part 3 contains the various rules of procedure which govern how the Council conducts its business, including how it makes decisions and how meetings are conducted.

Part 4 includes codes and protocols that govern how Councillors and employees/Council Officers must behave in performing their duties.

Part 5 is the Councillors' Allowance Scheme, which sets the level of financial allowances which Councillors receive for performing their duties.

Part 6 is a Glossary which explains some of the terminology used in the document.

- 4.4 We recommended that the Council removed the Articles (30 pages) from the Constitution reducing repetition, since much of the Articles are replicated elsewhere. The new structure of the Constitution removes the Articles and is compared with the current version at Appendix 1 and the destination of the Articles are set out in Appendix 2.
- 4.5 The Terms of Reference of all Committees are now together and in the same style/format.
- 4.6 Apart from the changes to the structure, some of the main changes have been to reduce content and hyperlink various documents (see Appendix 3). Members may be particularly interested in the following changes:
- An expanded Summary and Explanation to make the description of the purpose and function of the Council and the Constitution much clearer;
 - there is now a table that explains who has the power to update various parts of the Constitution in paragraph 10.5 of Part 1.
 - to change the term of office of the leader to a period of two years instead of four;
 - to the business of Council to include the Council's Veterans Champion role;
 - to include reference to the Independent Remuneration Panel; Independent Persons Panel; and to amend various terms of reference of committees;
 - to have one Licencing Committee and a series of ad hoc sub-committees more in line with statutory guidance;
 - to allow substitutes on Licensing Committee;
 - to include the member engagement forum pre-planning application process;
 - to include the tenants forum;
 - to introduce a new scheme of delegation to officers based upon the new structure and post titles (structure charts to be prepared) – this could be further shortened – the intention being that any further delegation would be set out in local schemes of delegation authorised by each director; and
 - a proper officer list has been included, which will be populated with relevant officers.
- 4.7 The Officer Employment Procedure Rules) have been updated regarding staff matters and these are prescribed in more detail in Appendix 1. This is largely to deal with the requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 as amended in 2015 and the new Chief Executive and Chief Officers Terms and Conditions of Service issued in 2017. There is now the

ability of the Personnel Committee to set up an ad-hoc Appraisal Panel for the Chief Executive and ad-hoc Investigation and Disciplinary Committee meetings as required in order to marry up with the latest JNC Terms and Conditions of Service for Chief Executives and Chief Officers in respect of discipline, capability and grievances.

4.8 The procedure rules are largely unchanged, although there are some changes as follows:

- to refer to only three types of Council meetings (annual, ordinary and extraordinary rather than special);
- to rule out of order questions and motions which are 'vexatious' in addition to being potentially defamatory, frivolous or offensive and also relating to individual staffing matters or the personal information of councillors and officers;
- the number of questions from members on notice will be three rather than two;
- a new provision has been included to allow for questions on motions, on notice the day before Council, at procedure rule 15.5;
- new rules for petitions are included in a new procedure rule 27; and
- new rules on member access to information have been included, particularly in light of the Data Protection Act 2018 and the GDPR, so that councillors need to follow the legislative provisions for access to information, rather than being afforded access to all meetings and exempt information. Members would need to demonstrate a 'need to know' in appropriate circumstances or a right under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089 in order to be able to see documentation that is exempt or confidential – this has been reflected in the revised Access to Information rules.

4.9 A number of other documents have been summarised and it is not intended that they be replicated in the new arrangements, although could remain as internal guidance or could be placed on the council's website.

4.10 The threshold for Key Decisions has been raised to £100,000 for Chief Officers; and up to £250,000 for a portfolio holder taking decisions to £250,000; the Leader and Cabinet would be unlimited.

4.11 The Budget and Policy and Framework Procedure Rules have been expanded to include the dispute process in the Local Authorities (Standing Orders)(England) Regulations 2001.

4.12 The Contract Procedure Rules and Financial Procedure Rules have not been updated and will remain as presently drafted, forming part of the work programme for 2019/20.

Bevan Brittan LLP
4 March 2019

Appendix 1 Summary of Structural Changes to the Constitution

Section in Current Constitution	Location in new Constitution	Summary of Changes
Part 1 Summary and Explanation	Part 1 Summary and Explanation	This has been expanded to include information previously in the Articles.
Part 2 - Articles	<i>Removed/relocated</i>	These have been removed and the information has been largely been relocated as detailed in Appendix 2 or omitted since it was duplication.
Part 3 – Responsibility for Functions	Part 2 – Responsibility for Functions	The Committee Terms of Reference and scheme of Officer delegation have been brought up to date.
Part 4 – Rules of Procedure	Part 3 – Rules of Procedure	These have been reduced – some are hyperlinked and those that remain have been amended in part
Part 5 – Financial Regulations	Part 3 – Rules of Procedure	The financial and contract procedure rules (to be reviewed next year)
Part 6 – Appointments and Designations	<i>Removed/relocated</i>	Election of Mayor and seniority of members – moved to Part 1; Father/Mother of the Council – Part 6 Glossary and Council terms of reference; Calculation of PR - omitted as the law provides for how political balance is calculated; Appointments to Outside Bodies – omitted - Guidance to be updated and hyperlinked Member champions: protocol and role definition– omitted
Part 7 – Codes and Protocols	Part 4 – Codes and Protocols	To be hyperlinked Public participation scheme for Planning and Licensing Press and Media Guidelines Arrangements for dealing with alleged breaches of the Councillors' Code of Conduct
Part 8 – Members Allowance Scheme	Part 5 – Councillors Allowance Scheme	This will be updated for 2019/20.
Part 9 – Management Structure	Part 2 – Responsibility for functions	This has yet to be drawn up into a chart is now included in Part 2 with the decision-making structures diagram.
Part 10 – Petition Scheme	<i>Removed</i>	The Petitions Scheme has been removed from the Constitution. It is not necessary to have such a detailed scheme any more – nor to include this level of detail in the Constitution. The Council Procedure Rules include new provisions on when and how petitions received by the Council will be considered. Guidance can be hyperlinked
Part 11 – Glossary	Part 6 – Glossary	Further terms can be included as required

Appendix 2 – Table detailing changes to the Summary and Explanation and the Articles

Section	Summary of Changes
Summary and Explanation	<p>This section previously included information about the Constitution, the operation of the Council and its parts that was replicated in the Articles.</p> <p>Following the removal of the Articles, we have expanded slightly the scope of this section to set out in more detail. It now includes:</p> <ul style="list-style-type: none"> • An explanation of the purpose of the Constitution • What the Council is and how it operates • Who Councillors are, what they are responsible for and how they are elected • What the Cabinet is and what it does • The role of the Mayor • Who the officers of the Council are and what they do • The rights of residents including the rights to access services, vote and submit petitions • A summary of the Joint Arrangements which the Council is party to. • The Councils scrutiny arrangements • Principles of decision making and how they are recorded • The duty to monitor and review the Constitution • When and how the Constitution can be waived • Publication
Destination of the Articles	<p>In the current Constitution these repeated much of what is stated elsewhere. It also created uncertainty by restating, in a slightly different form, information which appears elsewhere, such as in the procedure rules. We have therefore removed this section, and relocated its content as follows:</p> <p>Article 1: Constitution - Most of this section has been moved to the Summary and Explanation.</p> <p>Article 2: Members - Most of the information in Article 2 has been moved to the Summary and Explanation.</p> <p>Article 3: Citizens - Most of the content from this section now appears in the Summary and Explanation. We have sought to set out the residents rights in more broad terms (such as the right to be consulted and the right to submit petitions) than is currently the case.</p> <p>Article 4: Full Council - Part of this section has been moved to the Summary and Explanation. Most of the detail, however, has been moved to the Responsibilities for Functions section to avoid duplication. We have reduced the number of plans and strategies comprising the Policy Framework, as set out in the main body of the report.</p>

Section	Summary of Changes
	<p>This is to reduce the administrative burden on the Council, as every plan and strategy in the policy framework can only be amended by Full Council.</p> <p>Article 5: Chairing the Council - We have summarised the role of the Mayor in the Summary and Explanation. The role of the Mayor is also covered in the Council Procedure Rules, when managing meetings.</p> <p>Article 6: Overview and Scrutiny - We have moved the terms of reference of Scrutiny and Budget and Performance Panel to sit with other terms of reference of committees in the Responsibility for Functions section. A summary of the Council's Scrutiny Arrangements can be found in the Summary and Explanation.</p> <p>Article 7: The Cabinet - Executive arrangements now appear in the Responsibility for Functions Part. A summary of the Council's Scrutiny Arrangements can be found in the Summary and Explanation.</p> <p>Article 8: Regulatory and other committee details had already been placed with other terms of reference of committees in the Responsibility for Functions Part.</p> <p>Article 9: Area Forums – the Council does not have any – omitted, except for reference in the Glossary.</p> <p>Article 10: It is important that Joint Arrangements are reflected in the Constitution and they now appear in the Responsibility for Functions Part 2.</p> <p>Article 11: Officers - The Summary and Explanation provides a brief summary of the role of Officers. We have moved the detail from Article 11 to the officer delegations in the Responsibilities for Functions section in Part 2, and the officer delegation section includes more details about which areas officers have responsibility for. At the end of the officer delegations there is a list of proper officer functions which deals with the various legislative provisions that require the allocation of a proper officer.</p> <p>Article 12: Decision-making - This Article contains important information, but it largely duplicates what appears elsewhere. We have moved the decision making principles to the Summary and Explanation. The definition of a Key Decision now appears in the Glossary Summary and Explanation, and has been simplified.</p> <p>Article 13: Finance, contracts and legal matters – these properly sit within the Responsibility for Functions section.</p> <p>Article 14: Review and revision of the Constitution - likewise the rules are included in the Responsibility for Functions section, but summarised in the Summary and Explanation.</p> <p>Article 15: Suspension and interpretation of the Constitution can be found in the Summary and Explanation.</p> <p>Schedule – Description of Executive Arrangements: Executive Arrangements are now described in the Responsibility for Functions section and the Council Procedure Rules.</p>

Appendix 3

The following documents to be hyperlinked:

- List of Councillors and contact details
 - o Including Group represented;
 - o electoral details;
 - o declarations of interests;
 - o training records; and
 - o attendance records;
- Calendar of Council meetings
- Portfolios of Cabinet Members and list of responsibilities
- Description of Councillors' Roles and responsibilities
- Public participation scheme for Planning and Licensing
- Council complaints procedure;
- Link to terms of reference of the leading Joint Consultative Committee (personnel committee);
- Appeals Committee Tree Preservation Order procedure rules;
- Protocol on planning.
- Press and Media Guidelines
- Appointments to Outside Bodies, Boards and Partnerships
- Arrangements for dealing with alleged breaches of the Councillors' Code of Conduct
- Petitions Guidance – (amended to reflect new procedure rule 27 as Guidance on the web and hyperlinked)