

Amendments to the Constitution

Final Decision-Maker	Council
Lead Head of Service	Patricia Narebor – Head of Legal Partnership and Monitoring Officer
Lead Officer and Report Author	Sam Bailey – Democratic Services Manager
Classification	Public
Wards affected	All

Executive Summary

This report sets out a number of proposed changes to the constitution for the Committee to decide on which are:

- Amendment to the provisions of minuting the question and answer session at Council meetings;
- Amendments to the Health and Safety roles and responsibilities in the constitution;
- Clarification of the role of Chairmen on outside bodies which are listed in both Chairman's responsibilities and the Council's list of Outside Bodies; and
- Additional wording relating to the Brenchley Charity in the Council's List of Outside Bodies to clarify the automatic and nominative trustees.

This report makes the following recommendations to this Committee:

1. That Council is recommended to agree the amendments to the Constitution relating to Questions by Members of the Public (Appendix 1).
2. That Council is recommended to agree the amendments to the Constitution relating to health and safety (Appendix 2).
3. That Council is recommended to agree the amendments to the Constitution relating to Outside Bodies (Appendix 3).

Timetable

Meeting	Date
Democracy Committee	5 September 2018
Council	26 September 2018

Amendments to the Constitution

1. INTRODUCTION AND BACKGROUND

- 1.1 The Monitoring Officer, as part of the statutory duty to be responsible for the operation of the Council's Constitution, undertakes regular reviews of the Constitution. Any changes requiring Council approval that are outside of the delegation given to the Monitoring Officer to make minor amendments are reported to this Committee before being recommended to Council.
- 1.2 The changes outlined in this report are as a result of operational issues identified by officers and members when using the constitution.
- 1.3 The Democratic Services and Legal teams are undertaking a page turn exercise of the constitution to conduct a thorough review of the document to identify and rectify any inaccuracies or problem areas. The majority of these changes will likely be able to be amended under the Monitoring Officer's delegation and will be reported back to this Committee once the amendments have been made. However anything more substantial will need to be brought back to Committee, and then Council, for decision.

Questions by Members of the Public at Council

- 1.4 In relation to questions from the public at Council meetings, under part 3 "Rules of Procedure", paragraph 13.9, "Written Answers", the Constitution currently states:

All questions shall be responded to in writing and the response shall be published in the minutes of the meeting along with the question and placed upon the Council's website
- 1.5 It is not clear whether this statement relates simply to written answers, which are required when there is lack of time to deal with the question or the particular councillor to whom the question is addressed is not present at the meeting; or applies to all answers. Knowles, the definitive source for Local Authority committee practice, states the following in relation to minuting question time:

Some local authorities minute verbatim the questions that are asked at council meetings, and the answers provided by cabinet members. Where this practice is adopted then both the question and answer should be recorded. Some authorities merely record the question with a note to the effect that the portfolio holder/cabinet member replied without specifying the terms of the answer.
- 1.6 Currently the provisions within the constitution do not make it clear that the minutes should record the question and answers asked verbatim, however this is what has been happening in practice in line with the guidance provided by Knowles.

- 1.7 Minuting the responses to questions verbatim is problematic for the Committee clerk taking the minutes for the following reasons:
- Taking notes of a verbatim response to a question is very difficult during the meeting, and in reality the clerk will have to refer to the webcast after the meeting to make a verbatim record.
 - Responding to a question orally is very different in form to responding in writing. The committee clerk must ensure the correct grammar and punctuation is added in, without changing the emphasis and tone of the response. This can make responses recorded in the minutes look disjointed or at worst inaccurate.
 - If there are inaccuracies in the response given at Council, these cannot be clarified afterwards.
 - The council webcasts all Council meetings, including the Question and Answer sessions, so there is already a record of the response.
 - It is not usual practice in any other circumstances for an individual contribution from a member to be minuted and especially not verbatim.
- 1.8 Due to the problems outlined above, publishing Council minutes in a timely manner after the meeting can put an unfair amount of pressure on the clerk for the Council meeting, particularly if the question and answer session is lengthy.
- 1.9 As the Council already has a webcasting service, and has done for a number of years, there is already a record of the response to any questions raised. Therefore it is proposed that the constitution is amended as set out in Appendix 1 to remove the requirement to minute the responses to oral questions, but instead to direct the public to the Council's webcast of the meeting to see the response to the question and to note that the question was responded to. Where written answers are given, because of lack of time to deal with the question at the meeting, or because the relevant councillor is not present, the written answer will still be provided in the minutes.

Health and Safety Responsibilities

- 1.10 In May 2018, a review of governance arrangements in relation to Health and Safety was conducted and reported to Corporate Leadership Team. It was concluded that additional emphasis relating to health and safety roles and responsibilities was required in the constitution. The suggested amendments to the constitution are outlined in Appendix 2.

Outside Bodies

- 1.11 Two particular issues have been raised in relation to Chairman and Vice Chairman responsibilities for Outside Bodies.
- 1.12 At its meeting of 10 July, the Strategic Planning, Sustainability and Transportation Committee resolved:

That Democracy Committee is requested to review the matter of overlap between Chairman's Duties and Appointments to Outside Bodies within the Constitution.

- 1.13 The example given was that under the 'Role of the Chairman of Strategic Planning, Sustainability and Transportation Committee' the constitution specifies the Chairman's role as (emphasis added):

To take a lead role in this Committee of fostering close links with key stakeholders including Parish Councils, the Developers Forum, English Heritage and transport interest groups such as **Quality Bus Partnership**, Transport Users Group and Rail Stakeholders Group.

- 1.14 The Chairman highlighted that the Quality Bus Partnership is already listed as an Outside Body in the Council's list of Outside Bodies, so therefore it is the responsibility of the member appointed by the Council to foster close links with this body.

- 1.15 Therefore it is recommended that reference to the Quality Bus Partnership is removed from the list of responsibilities. Although there is a difference between fostering close links with bodies related to the responsibilities of Committees and being the Council's nominated delegate on an outside body, removing the reference to the Quality Bus Partnership from this part of the constitution will eliminate a source of uncertainty.

- 1.16 Some additional text is also required in the Council's list of Outside Bodies. It was recently highlighted to the Democratic Services team that although the Brenchley Charity is listed in the list of Outside Bodies in the Constitution, the exact appointments required to the charity are not listed. The Brenchley Charity requires that the Chairman and Vice Chairman of Heritage Culture and Leisure Committee are automatically appointed, along with two other nominative trustees. Therefore it is recommended that wording to explain this is added to the list of Outside Bodies.

- 1.17 Both of these changes relating to Outside Bodies are show in Appendix 3 to this report.

2. AVAILABLE OPTIONS

- 2.1 The Committee could choose not to recommend to Council to amend the constitution as suggested, however this would mean that the problems already identified with the constitution are not resolved.
- 2.2 The Committee could suggest alternative ways of amending the constitution to resolve the issues identified. If the Committee was minded to do this then the wording would need to be considered very carefully at the meeting. It would be preferable if alternative wording for changing the constitution is submitted to the Democratic Services or Legal Services teams in advance so that advice can be provided at the meeting.

2.3 The Committee could recommend the proposed changes to the Constitution to Council.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

3.1 The preferred option is 2.3, as the proposed changes to the constitution will provide clarity and assist with efficient administration of Council business.

4. RISK

4.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 The issue of Questions and Answers at Council meetings was raised by the Democratic Services Team, and discussed with the Chairman and Vice Chairman of Democracy Committee.

5.2 Suggestions around Outside Bodies were received from the Vice Chairman of Heritage Culture and Leisure Committee and the Strategic Planning, Sustainability and Transportation Committee.

5.3 The Health and Safety amendments were agreed by CLT before being submitted for consideration by Democracy Committee.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 If the Committee agrees the amendments they will be considered by Council on 26 September.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they will support the Council's overall	Democratic and Administration Services Manager

	achievement of its aims as set out in section 3.	
Risk Management	Already covered in section 4 'Risk'.	Democratic and Administration Services Manager
Financial	The proposals set out in the recommendations have no direct financial implications.	Section 151 Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Democratic and Administration Services Manager
Legal	The proposed changes are within the powers of this committee to consider and recommend to Council. The background to the suggested changes is set out in the body of the report.	Principal Solicitor Contentious and Corporate Governance
Privacy and Data Protection	No impact	[Legal Team]
Equalities	It has been identified that there will be circumstances where requests for a written response to an oral question should be met. For example, a reasonable adjustment may be required due to a disability. This is to ensure there is no disadvantage or detriment to an individual with a protected characteristic.	Equalities and Corporate Policy Officer
Crime and Disorder	No impact	Democratic and Administration Services Manager
Procurement	No impact	Democratic and Administration Services Manager

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Amendments to Questions by Members of the Public
 - Appendix 2: Amendments Relating to Health and Safety
 - Appendix 3: Amendments Relating to Outside Bodies
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9. BACKGROUND PAPERS

None