

New Constitution: Consideration of Draft Sections, Member Rights and Decision Making

Final Decision-Maker	Council
Lead Head of Service	Jayne Bolas, Monitoring Officer; and Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Angela Woodhouse, Head of Policy, Communications and Governance; and Oliviya Parfitt, Democratic Services Officer
Classification	Public
Wards affected	All

Executive Summary

Appendix A contains the next set of relevant draft constitution sections for the new Governance Model. As agreed at the meeting of this Committee in November 2021 the sections included for consideration relate to Member rights including, agenda items, questions and decision making. The report does not include access to information as this is still subject to review by the working group. The full draft constitution will be considered by this Committee on March 9 2022.

Purpose of Report

Consideration and agreement.

This report makes the following recommendations to this Committee:

1. Consider the new draft constitution sections relating to the role of the Leader, Policy Advisory Committees, Overview and Scrutiny, Procedure Rules and the Administration's Programme proposed by the working group attached at Appendix A, for inclusion in the new draft constitution and the options at para 3 and provide direction on the way forward.
2. All drafting agreed to be in accordance with legal requirements.

Timetable

Meeting	Date
Democracy and General Purposes Committee	26 January 2022
Democracy and General Purposes Committee	16 February 2022
Democracy and General Purposes Committee	9 March 2022
Council	13 April 2022

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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>The new constitution will need to ensure effective decision-making processes are in place to achieve the strategic priorities.</p>	Head of Policy, Communications and Governance
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The new constitution will need to ensure effective decision-making processes are in place to achieve the strategic priorities.</p>	Head of Policy, Communications and Governance
Risk Management	Covered in the risk section at 5.	Head of Policy, Communications and Governance
Financial	<p>It was agreed that the cost for the new constitution will be met from reserves. The cost estimate was made prior to the Chair of the Democracy and General Purposes Committee leading the member working group taking on the drafting and the working group expanding the scope of the work; consequently, the cost now involved is likely to be in excess of that originally envisaged.</p>	Section 151 Officer & Finance Team

<p>Staffing</p>	<p>The drafting of the new constitution has been supported by the Head of Policy, Communications and Governance, Monitoring Officer and a Democratic Services Officer. As the new draft is not just a simple change to reflect the revised governance structure agreed by Full Council (i.e. the move from a Committee system to an Executive system for member decision making) but an entirely new structure for the Constitution with multiple other changes the work has been significant.</p>	<p>Head of Policy, Communications and Governance</p>
<p>Legal</p>	<p>The Localism Act 2011 amended and inserted Part 1A of the Local Government Act 2000. The provisions enable a Council to operate one of three permitted forms of governance:</p> <ul style="list-style-type: none"> (a) Executive arrangements; or (b) A committee system; or (c) Arrangements prescribed by the Secretary of State. <p>The executive arrangement may consist of a 'executive' leader and cabinet under the 2000 Act, section 9C (3); or the directly elected mayor and cabinet model of governance under section 9C (2). The executive may not exceed 10 members of the Council, to include the Leader and/or Mayor.</p> <p>The executive arrangement of a Council must include provision for the appointment of one or more overview and scrutiny committees to review and scrutinise executive decisions made, or other action taken – LGA 2000, section 9F.</p> <p>The 2000 Act divides the functions into Council functions, local choice and executive functions. The allocation of functions is prescribed under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Anything not listed in these regulations is an executive function.</p> <p>The Council is required to have an up-to-date written Constitution setting out how the Council</p>	<p>Interim Deputy Head of Legal Partnership</p>

	conducts its business, who takes which decisions and how to work with the Council. The Constitution should contain the Council's Standing Orders, the Code of Conduct, information required by the Secretary of State and other information as the Council considers appropriate – section 9P LGA 2000.	
Privacy and Data Protection	No impact.	Corporate Insight, Communities and Governance Manager
Equalities	The recommendations do not propose a change that will require an equalities impact assessment.	Equalities & Communities Officer
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Head of Policy, Communications and Governance
Crime and Disorder	It is proposed that the legislative requirements for Overview and Scrutiny of Crime and Disorder Reduction will be contained within the terms of reference for the new Overview and Scrutiny Committee (this requirement is currently discharged by the Communities, Housing and Environment Committee).	Head of Policy, Communications and Governance
Procurement	There has been and will continue to be a need procure external legal advice to assist with the development of the constitution.	Head of Policy, Communications and Governance
Biodiversity and Climate Change	There are no direct implications of this report on biodiversity and climate change.	Biodiversity and Climate Change Manager

2. INTRODUCTION AND BACKGROUND

2.1 The constitution is the key governance document for the Council and should set out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are prescribed in law and others are a matter for the Council to choose. The constitution should make clear to members of the Council, its Officers and the public how the council works, what people's rights are and how all decisions will be made in accordance with the law. It is a key document and needs to be as clear as possible and kept regularly under review and updated.

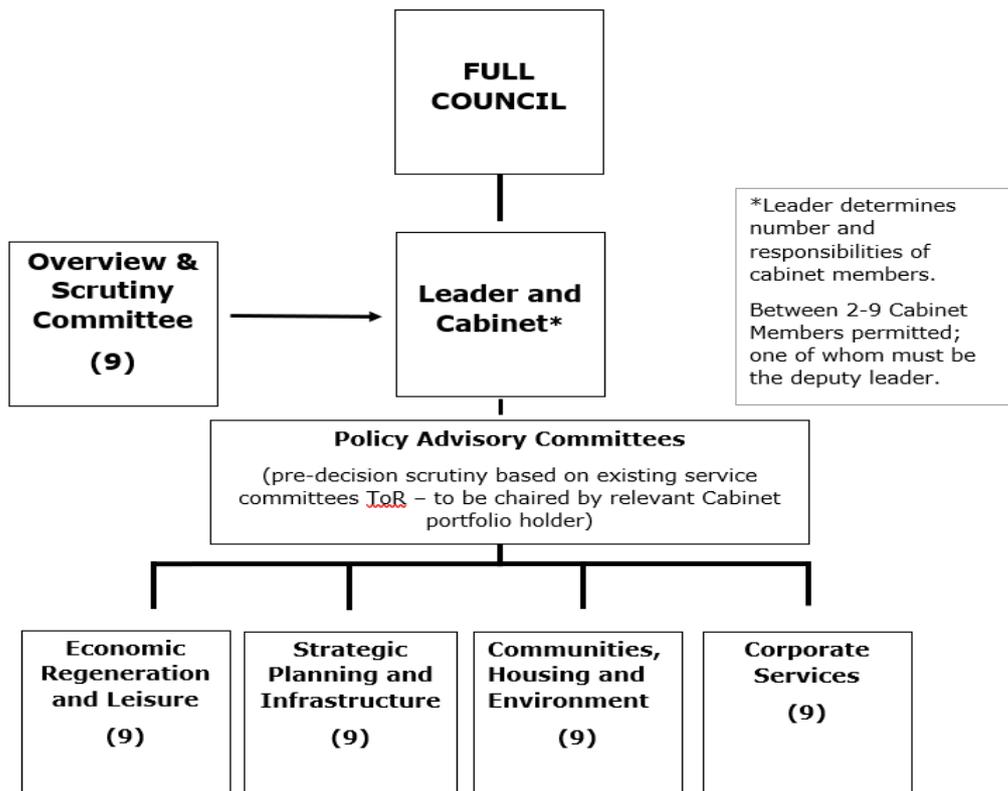
2.2 In May 2021 the Council approved the following motion:

- " (1) That Council agrees, in principle, to revert to executive arrangements from its next Annual Meeting for the municipal year 2022/23 onwards.
- (2) That Council recognises the substantial work required to bring forward final proposals, to review interim arrangements and other aspects of member involvement.
- (3) That Democracy & General Purposes Committee be requested to consider the matters outlined in (2) and put a proposed executive arrangements model to Council for adoption in order to allow the executive arrangements to be adopted to meet the principle agreed in (1)."

2.3 The Democracy and General Purposes Committee appointed a working group to develop a new model. The Working Group identified the principles that would be important in the new model and subsequent constitution:

- Member inclusivity throughout the decision-making process
- Increased transparency of decision making
- A member led decision making process; and
- Increased pre-decision scrutiny

A model was developed to meet the principles above with the addition of four Policy Advisory Committees (PACs) to a traditional Leader and Executive model aligned to portfolios to ensure greater member involvement at a pre-decision stage. The single overview and scrutiny committee (OSC) will also undertake crime and disorder functions. All Cabinet decisions, except those outlined as part of the administration's programme (individual or collective), are proposed to be subject to pre-decision scrutiny at the relevant PAC, unless dealt with under the urgency provisions.



*This diagram does not include regulatory/statutory/other Committees such as; Audit, Governance and Standards, Licensing, Planning, Crime and Disorder Committee, Appointment Sub-Committee, Democracy and General Purposes Committee.

- 2.4 In response to questions, it was clarified at Democracy and General Purposes Committee meeting on 8 September 2021 that “(t)he Constitution would be created using a previous version the 2014 when the Council had an executive model in place, and the Legal Team with external expert advice would lead this work.” This reflected the distinctive roles and responsibilities of councillors and officers i.e. it would be for Councillors to set direction and principles and for officers (and in this case an external legal expert with specialist expertise) to the draft the constitution on that basis for the working group to review, debate and refine. As Members are aware the document at Appendix A is a proposed draft being a rewrite by the Chairman of this Committee and discussed at the Working Group.
- 2.5 On 29 September 2021 Council approved the new model of executive governance proposed by Democracy and General Purposes Committee.

The agreed resolutions are outlined below:

1. “That the Executive Model outlined at paragraph 3.3 of the report to the Democracy and General Purposes Committee, attached as Appendix 1¹ to the report of the Committee, be adopted at the Annual Meeting of the Council in 2022.
2. That the timetable for developing and implementing the new Executive Model set out in paragraph 2.4 and section 7 of the report to the Democracy and General Purposes Committee, attached as Appendix 1 to the report of the Committee, be approved.

¹ see diagram above

3. That the use of reserves to fund the work required to review and redraft the Constitution be approved.”

As part of the proposal, it was agreed that the Governance Arrangements Working Group would continue to operate and review the redrafted significant parts of the constitution prior to Democracy and General Purposes recommendation to Council for adoption.

- 2.6 In November 2021 Democracy and General Purposes considered and noted the below approach to drafting the new constitution:

Topic	Working Group Meetings	DGP – Committee	Council
Leader and Cabinet <ul style="list-style-type: none"> • PACs and OSC • Procedure Rules • Leader’s annual speech/administration’s programme • Local Choice Functions 	Framework 11 November 2021 and 2 nd Meeting TBC November Draft Constitution Sections considered by working group on 9 December 2021	26 January 2022 (publication on 18 January 2022)	
Member Rights <ul style="list-style-type: none"> • Access to Information • Agenda items • Questions • Decision making including key decisions 	Framework 16 December 2021 Draft Constitution considered by working group on 13 January 2022	16 February 2022 (publication on 8 February 2022)	
Remaining Constitution	Draft Constitution considered by working group on 17 February 2022	9 March 2022 (published on 1 March 2022)	13 April 2022 (published on 5 April 2022)

- 2.7 Democracy and General Purposes considered sections of the constitution relevant to the Leader and Cabinet, Policy Advisory Committees (PACs), Overview and Scrutiny, Local Choice Functions, the Administration’s Programme and Procedure rules at its meeting January. The Committee made observations regarding the draft sections requesting that the constitution be written in plain English and laid out simply to increase useability. Consideration was given to the appointment of the Chairs of PACs and additional questions were asked about access to information and charitable trusts.

- 2.8 The working group has not yet concluded its detailed work on Access to Information so this will be presented to the committee in the final draft in March, unless it is deemed necessary to call an extraordinary meeting for this purpose.

2.9 In accordance with the remaining timetable the Committee is asked to consider the following sections of the new constitution, Attached at **Appendix A:**

Section	Topic
Part A1.	The Council and the Constitution
Part A2.	Core Provisions of the Constitution
Part C1.	Council Procedure Rules
Part C2.	Committee Procedure Rules
Part C3.	Executive Procedure Rules

2.10 **Appendix A** includes the draft sections relevant to the themes agreed for consideration. Part A has been included as this sets out the provisions and higher principles of the new constitution and relates to the areas to be considered and covered in Part C. This Committee has already commented on and considered the parts presented but is asked to consider the parts that relate to member rights, decision making and key decisions.

2.11 Attached at **Appendix B** is a list of significant changes, where legal advice has been given this is highlighted with the external lawyer's comments provided. This should be read alongside **Appendix A**.

2.12 **Part A**, sets out the higher-level principles and core provisions of the constitution.

2.13 **Part C**, sets out various rules of procedure around how certain proceedings of the Council are regulated and how decisions are made.

2.14 **Changes of Significance by Topic**

Member Rights as summarised in Part A2:

(New rights that have been added are in italics and highlighted)

- The right, together with four (4) others, to requisition an Extraordinary Meeting of the Council;
- *The right to move amendments to any Motion by the Leader concerning the Administration's Programme for the Municipal Year;*
- The right to move a Motion on Notice at a meeting of the Council;
- The right to ask Questions on Notice at meetings of the Council, the Committees and the Executive;
- The right to have a subject added to the agenda of a meeting of a Committee;

- The right to refer the determination of a planning application affecting the Member's Ward to the Planning Committee;
- *The right to refer a breach of planning control to the Planning Committee;*
- *The right, together with two (2) others, to refer a serious nuisance or a major service failing directly to the Executive;*
- *The right, together with two (2) others, to call-in a decision of the Executive for scrutiny;*
- The right to issue a Member Call for Action;
- *The right to refer a dispute about his or her rights under this Constitution to a Panel of the Democracy & General Purposes Committee for determination.*

Decision Making

Decision making is covered in Part A2 at section 4 and within the procedure rules of the Council, Executive and Committees at C1, C2 and C3. The definition of a key decision is the same definition in place in 2015 under the previous Leader and Cabinet Model. The decisions have been further defined to identify procedural and decisions of less significance and other material decisions.

Significant Decisions:

- (a) *Key decisions will be those which:*
 - (i) *result in the Council incurring expenditure, or making savings, of more than £250,000; or*
 - (ii) *are significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.*
- (b) Procedural and De Minimis Decisions are those decisions pertaining to procedural matters and those decisions of little or no policy significance where expenditure or loss is less than £5,000.
- (c) Other Material Decisions are those decisions not otherwise falling into (a) or (b).

Member Dispute Panel

- as the Mayor or Chair's rule at a meeting is final then this panel will meet retrospectively to then consider the decision made in respect of a point of order – it is unclear how this will work in practice. This has come forward via the working group.

Visiting Members

- For meetings of the Executive, Visiting Members have to give written notice to speak 1 clear day before the meeting.

3. AVAILABLE OPTIONS

3.1 To Agree the Draft Sections as Per Appendix A

The working group have spent a significant amount of time reviewing and developing the sections of the constitution attached. As the new constitution is a complete rewrite rather than a simple review and insertion of new sections to fulfil the requirements of the change in governance models, the committee should review and consider the implications thoroughly.

3.2 Amend the sections as presented

The Committee may wish to put forward amendments to the text as is written.

3.3 Request the governance working group rewrite sections

The Committee could request that sections are revised if Councillors do not wish that significant parts are changed

3.4 Request a simple redraft of the current constitution

The Committee could request that the current constitution is redrafted to purely incorporate the changes to an Executive model of governance as approved at Council. An example section could be provided by the external legal advisor. This would be in line with the direction set out at the DGP meeting in September 2021.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 The Committee could take any of the options above.

There are concerns about the practical application and use of the document for example, with the ability to ensure the smooth running of meetings and applying procedure rules with the removal of mayoral/chairman discretion, and other Councillor discretions and having to cross reference in places to apply the constitution. There is also a need for detailed legal advice to be provided on aspects of the Constitution which are due to be presented to committee at future meetings.

5. RISK

5.1 There are several risks that need to be considered as the constitution is developed.

5.2 Reputational Risk

If the Council does not have an appropriate decision-making framework in place, and cannot make timely decisions or take appropriate actions, the Council's reputation will be compromised.

5.3 Legal Risk

Risk of something being unlawful in the constitution as drafted or in the way in which it governs decision making. A number of unlawful matters have already been identified and raised at the previous meeting of this Committee. Any further concerns will be reported to the committee at the appropriate stage.

5.4 Practicality of the document and decision making

There is a risk that the proposed new constitution as drafted will have an adverse impact on the smooth running of decision making and meetings. There is a duty for those advising decision makers to ensure they provide the best advice possible for the benefit of the whole Council to ensure good governance. Comments in Appendix B show concerns on the application of the constitution.

5.5 Timing

A timetable for completing the constitution redrafting is in place and is on track. As the development of the constitution has taken a different approach than anticipated, mitigations have been put in place including additional meetings of the working group and advice and input from the external legal advisor.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 The Democracy and General Purposes Committee through the governance arrangements working group have been involved in the development of the new executive model as a Member-led process. Consultation has previously been carried out via councillor survey as part of the development of the new model and this has informed the development of the new constitution.

6.2 This Committee have already considered sections of the constitution in January, the changes approved at that meeting will be made prior to the final draft being presented to Democracy and General Purposes in March 2022.

6.3 Council approved the next steps for developing the new executive model of governance at its meeting in September as outlined below:

Activity	Date	Purpose
Publication of Proposals	October 2021	Publish Proposals and required notices
Working Group	October 2021 to March 2022	Develop Constitution
Officers	October 2021 onwards	Officers to develop staffing to support new arrangements ready for 1 May 2022
Panel	January - March 2022	Members Allowance Scheme reviewed

DGP	March 2022	Recommend constitution to Council
Council	April 2022	Approve Constitution and members Allowance Scheme

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 The process for drafting the constitution is set out at paragraph 2.3 of this report.

8. REPORT APPENDICES

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

- Appendix A: Working Group Drafted Constitution Sections
 - Appendix B: Table of significant changes with comment
 - Appendix C: Notes of the working group meetings
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9. BACKGROUND PAPERS

Report to Council 29 September 2021 – New Executive Model