

Significant Changes List

The information shown is in the below format:

- Draft constitutional rule as proposed
- A) Officer Comments (if any)
- B) External Legal Comments (if any)

Please note that this is a working document and will be updated as meetings of the working group and Democracy and General Purposes Committee continue.

Specific Issues that are due to be resolved in the near future are:

- Members' Access to Information

PART A – CORE PROVISIONS

A2, 3.4 (Rights of Members to Access Information & Meetings)

For information purposes only; to be considered by Democracy and General Purposes in March 2022.

"3.4.1. An elected Member is entitled by virtue of his or her office to have access to all documents in the Council's possession, including those containing Exempt or Confidential Information, and to attend all meetings of a member body even where the public have been excluded, where he or she has a need to know.

3.4.2. Any officer or body with delegated authority to make a decision under this Constitution determining whether a Member has a need to know shall consider the prima facie existence of that need to know where: -

- (a) The Member sits on the relevant Member body considering the matter or is likely to sit on that body as a substitute.*
- (b) The Member is considering exercising or is exercising any Rights in Respect to Proceedings summarised in Provision 3.5 below in connection with such a matter; or*
- (c) The information relates directly to matter the Member's role in representing their Ward.*

This is subject to there being exceptional circumstances where it would be manifestly unreasonable for the council to acknowledge a need-to-know certain information and/or where disclosure of that information to the Member would be contrary to some other enactment.

3.4.3. The Access to Information Procedure Rules in Part C seek inter alia to apply this principle, subject to the proviso that where there is any conflict in the application of those Rules and the principles in this Provision 3, the principles in this Provision 3 shall prevail".

AND A2, 6.7 (Miscellaneous)

6.7.1: 'Any sub-Committee of any of the aforementioned Committees shall:
e) Be subject to the prima facie need to know of Members of its parent Committee, save for the Licensing Committee in respect of any sub-Committee determining an application'

Officer
Comment

In relation to 3.4.1;

Elected Members are not entitled to all Information by virtue of their position. Evidenced by case law, Counsel's advice to D&GP (2019) and the need to know arising from Schedule 12A LGA 1972.

In relation to 3.4.2 a);

Likely to sit as a Substitute does not constitute a need to know, as by actively sitting as a Substitute that Member would be given any Part II papers.

In relation to 3.4.2 c) and 6.7.1 e);

This depends on the assessment of a 'need to know' by the Proper Officer/MO.

In relation to 3.4.3;

There should not be conflict within the constitution. The need to know arises from statutory principles.

External
Legal
Comment

In my view it still does not accurately reflect the law and the committee will need to be given full and detailed legal advice on this point (as will full Council when it ultimately considers the constitution).

A2, 4.3.2 (Types of Decision; Significance)

- (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).

Officer Comment	The figure shown at (b) will be discussed with the Section 151 Officer.
External Legal Comment	There needs to be clarity about what "other material" decisions are and what this means for the decision making process
<p><u>A2, 6.5.4 (Disputes Panel, D&GP ToR)</u> "The Functions of the Democracy & General Purposes Committee shall include: - (c) <i>Via its Disputes Panel, determining individual Member complaints and grievances as to the application of this Constitution and the rights of Members under it, albeit without prejudice to the role of those Members presiding at meetings</i>".</p>	
Officer Comment	<p>Undermines the role of the Proper Officer/MO in determining the application of the constitution and AtI and the role of Democratic Services in providing procedural advice. This could lead to worsening relationships between Officers and Members, particularly with the Chairman and could lead to a lack of trust.</p> <p>There is a further risk of inappropriate or illegal decisions being made. Exempt and/or confidential information would have to be disclosed to the Panel Members, even if they are not a member of the relevant decision-making Committee originally considering the issue.</p> <p>At the Dec. 2021 meeting of the Working Group, the Disputes Panel was agreed however it was noted that further consideration on the operation of the panel was required, e.g. whether it would prevent a decision's implementation.</p> <p>Members on the panel would need appropriate advice and expertise in terms of data protection on AtI.</p>
External Legal Comment	None.
<p><u>PART C – RULES OF PROCEDURE</u></p>	
<p><u>C1, 12.14 (Motions on Notice)</u> Outlines requirements on Motions on Notice.</p>	

"This Rule 12 is subject to the over-riding requirement that any motion before the Full Council concerning a Member's rights to access information or documents must be determined by the Full Council".

Officer
Comment

Needs further consideration as this would involve disclosing confidential/exempt information.

External
Legal
Comment

This clause creates significant practical problems and is inconsistent with other parts of the constitution. If a member is not entitled to a document as a matter of law but the issue can be referred to full council then in order to determine whether the information should be provided the Council will need to see the information which means the member will see it even if they are not entitled to it! This should not be included.

C2, 8.4 (Exclusion of the Public & Press)

"In accordance with the Access to Information Procedure Rules, a Committee meeting: -

8.4.1. Shall go into closed session where Confidential Information is to be discussed

8.4.2. May go into closed session where Exempt Information is to be discussed in relation to an item.

This means that the press and members of the public shall be excluded from the meeting. No such exclusion however shall apply to any elected Member, including any Visiting Member".

Officer
Comment

None.

For information, this applies at Cabinet Meetings also.

External
Legal
Comments

See comments on Member Access to Information.

C2, 11.8 (Points of Order)

In explaining the point of order;

"The Member must indicate the Provision, Rule or Law and the way in which he or she consider it has been broken. The ruling of the Member Chairing the meeting on the matter will be final".

Officer Comment	The Member would have the right to have their dispute considered by the Member Dispute Panel. The Panel could not over-rule the original decision made and it would be retrospective.
External Legal Comment	None.
<p><u>C2, 14.2 (Referral of Enforcement Matters to the Planning Committee)</u></p> <p>Outlines the process for Member Agenda Item Requests in relation to enforcement.</p>	
Officer Comment	<p>Planning Committee received updates and the Head of Planning and Development often discharges their delegation for this purpose; Given the Planning Committee’s workload and that it is regulatory in nature, it may be impractical to add to the agenda for the Committee and Officers; as the latter is then required to provide a report when reasonable notice is given. What is reasonable notice?</p> <p>The SPI Committee’s KPIS include the no. of enforcement cases;</p> <p>Specific enforcement matters would be confidential in nature and require Part II Papers.</p>
External Legal Comment	None.
<p><u>C3, 3.8 (Meeting Agenda)</u></p> <p><i>"3.9.1 - Any Member on the Executive may require the Proper Officer to ensure that an item is placed on the agenda of the next available meeting of the Executive for consideration whether or not authority has been delegated to the Executive, a committee of the Executive, any individual Member on the Executive, or Officer in respect of that matter.</i></p> <p><i>3.9.3 - If the volume of business for any meeting appears excessive, the Leader, in consultation with the Proper Officer, may defer consideration to the next appropriate meeting except that items placed on the agenda by the Council may not be deferred if the Council requires them to be considered at that meeting".</i></p>	

Officer Comment	Should the Leader be responsible for the agenda items as Chairman?
External Legal Comment	In relation to 3.9.1; Matter should be limited to Executive functions.
<p><u>C4, 13.2 (Determination)</u></p> <p><i>'13.2.1 The power to determine a Member's rights to information and documents held by the council rests with the Members as a whole, being the council. any Member body or individual Member or Officer with delegated authority to determine such matters...'</i></p> <p><i>13.2.2 In the evening of any dispute or disagreement about whether a Member is entitled to any document of information; -</i></p> <p><i>a) Where a Member is present, or is seeking to be present, at any meeting of an Member Body, the Member chairing the meeting or the Member body itself may determine to acknowledge a Member's need to know in accessing any part of that meeting held in closed session or any papers for that meeting containing Exempt of confidential Information. The Proper Officer, the Monitoring Officer or other Legal Officer present may also determine to acknowledge such a need to know'.</i></p>	
Officer Comments	<p><u>In relation to 13.2.1;</u></p> <p>Is it appropriate for an individual Member to be able to determine another Member's Need to Know? Would they not need to have a good knowledge of the criteria/legislation?</p> <p><u>In relation to 13.2.2;</u></p> <p>As above but specifically relating to the Chairman. It is not clear here whether it is the Member or Proper Officer that has the final decision. Further, any other Legal Officer present may not have the required knowledge in relation to Access to Information to determine the decision and what if there is only a Democratic Services Officer present?</p> <p>Could lead to exempt and/or confidential information being disclosed unlawfully. This section has been added into the Constitution.</p>
External Legal Comments	None.