

MAIDSTONE BOROUGH COUNCIL

COUNCIL

22 APRIL 2015

REPORT OF THE COUNCILLOR WORKING GROUP

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1. **NEW CONSTITUTION FOR MAIDSTONE BOROUGH COUNCIL**

1.1 **Issue for Decision**

1.1.1 On 10 December 2014 full Council agreed to change the system of governance of Maidstone Borough Council from Cabinet Governance to Committee Governance. The Council is unable to pass any further resolution to change the Council's governance arrangements for five years. The Council now needs to implement the change, which will take effect at the Annual Meeting of the Council on 23 May 2015.

1.1.2 In order to facilitate that change a new Constitution has been developed, in conjunction with a working group of Councillors. There have also been a number of Councillor training sessions to discuss the implications of operating a new Committee Governance system and the content of the new Constitution.

The principal changes are intended to secure increased Councillor participation; more effective and efficient decision making; and improved and increased public involvement. There are a number of changes in the way that the Council will operate, in particular, the inability to delegate functions to individual Councillors (other than local matters at Ward level).

1.1.3 All significant policy decisions (other than those reserved to Council) will be taken by four new service committees, as follows:

- **Policy and Resources Committee** – which considers the Council's budget and strategic plan, economic development, corporate matters and has an overarching role should disputes or differences arise between Committees;
- **Strategic Planning, Sustainability and Transport Committee** – covers the Local Plan, development

management policies and transport matters including parking and park and ride;

- **Communities, Housing and Environment Committee** – considers housing strategy, waste and recycling strategy (it is also the Council's crime and disorder committee); and
- **Heritage, Culture and Leisure Committee** - dealing with matters relating to the Council's parks and open spaces, events, the leisure offer and culture and heritage services.

1.1.4 The draft of the proposed new Constitution for the Council has been circulated under separate cover. A summary of the changes is set out below split into high level structural changes and separately more detailed operational changes.

1.2 **RECOMMENDED:**

1.2.1 That the new Constitution for Maidstone Borough Council circulated separately, be adopted to come into effect from the Annual Meeting of the Council on 23 May 2015.

1.3 **SUMMARY OF CHANGES**

1.3.1 High level and structural changes include the following:

- A shorter Constitution, omitting the Articles from the previous Constitution;
- Style changes with reference to "Councillors" rather than "Members" in most places; and "members of the public" rather than "residents"/"citizens";
- No references to Cabinet or Executive governance nor Overview and Scrutiny (other than in relation to crime and disorder or health matters);
- Creation of four main service committees that will review policy and operate in a more open and strategic manner;
- Merger of the Audit Committee with Standards in a new Audit, Governance and Standards Committee; General Purposes becomes the Democracy Committee; and the Member and Employment Development Panel becomes the Employment Committee (with Councillor development moving to Democracy) (Licensing and Planning remain largely the same);
- The creation of an Urgency Committee to deal with matters which may need to be determined between scheduled meetings

of Council and Policy and Resources Committee that are truly urgent and above the level of financial delegation to Officers. (It is not envisaged that this Committee will meet very frequently, or at all.) The proposed membership is each of the Leaders of the five largest political groups represented on the Council from time to time;

- Description of the roles and responsibilities of the Chairmen of the new Service Committees added;
- No Budget and Policy Framework Procedure Rules, since all decisions flow from full Council through the delegation in the Constitution to Committees, Sub-Committees and Officers, rather than some decisions being made by Council and some by the Executive (no dispute resolution provisions are therefore required);
- No "key decisions" nor "forward plan" since these expressions feature within executive governance arrangements, although there will be a calendar of meetings available on the Council's website with advance notification of potential items of business, in due course;
- A fuller Summary and Explanation as part 1 of the constitution;
- All of the delegations to committees, sub-committees and officers (including proper officers) are brought together in part 2 of the constitution;
- All of the Procedure Rules are together in part 3;
- All Codes and Protocols are together in part 4;
- The new Members Allowances scheme is to be inserted as part 5 when adopted by the Council, following consideration of the report of the Independent Remuneration Panel;
- The Management structure chart is included at part 6; and
- A new Glossary of terms has been added at the end of the Constitution, to aid interpretation.

1.3.2 Legislative references have also been updated to take account of changes in the law, including some changes that will take effect in early May 2015.

1.3.3 The Constitution also contains a number of hypertext links and the Summary and Explanation in particular is written in simple English so that anyone who may deal with the Council is able to understand the

way in which the Council operates and its procedure rules, codes and protocols.

MORE DETAILED CHANGES

- 1.3.4 The Summary and Explanation is now 12 pages long and includes some of the matters that were previously contained within the Articles (which were over 30 pages in length). There is a structure chart for the Council's committee structure and this part summarises the roles and responsibilities of the Mayor, Leader, Chairmen, members of the public, Statutory Officers, Directors and joint service delivery arrangements with other Councils.
- 1.3.5 The next part contains the responsibility for functions. This part has sought to identify the delegation of functions from Council to Committees, Sub-Committees and Officers. There are some financial levels set out in the Appendix to the Financial Procedure Rules in part 3 that apply to the allocation of functions, as well as setting out the responsibilities as to who may take decisions. The main Committee changes are set out above, however, it is also proposed that the Joint Consultative Committee be reduced in size from 8 Councillors and 8 Trades Union members to 4 Councillors and 4 Trades Union members (3 UNISON and 1 UNITE).
- 1.3.6 The main changes in the rules of procedure include the following:
 - Questions by members of the public to be answered in the order in which they are received and to last for up to one hour (Committees will be half an hour); questions from Councillors to be reduced at Council to half an hour;
 - All public questions will be answered in writing, a copy of which will appear with the minutes of the meeting and shall be posted with the reply on the Council's website;
 - Ability for any three Councillors to refer a decision of a service Committee to Policy and Resources Committee for reconsideration; likewise any five Councillors would have the ability to refer a decision of Policy and Resources Committee to full Council for reconsideration. However, should additional information come to light or other circumstances arise which mean that the original service committee may be able to take a different decision (that would resolve matters) then the Chairman of the original Committee on the request of three Members in writing may call a further meeting of the Committee to consider the matter again and to resolve the matter in a different way, in which case the referral falls away.

- Under the current Constitution Councillors are required to commit to undertake training within an agreed period for certain Committees (Planning and Licensing), to ensure that Councillors understand the detailed rules that govern the decisions made by that particular Committee e.g. material planning considerations for Planning Committee and for all members of that Committee annually. This training requirement has been strengthened as the new constitution states that failure to undertake annual refresher training will result in the Councillor ceasing to be a member of the committee until the refresher training has been undertaken. The Democracy Committee will oversee the provision of this training along with Induction training.

- 1.3.7 The financial procedure rules largely remain the same, although there are suggested changes in the level of delegation, particularly for virement (increasing from £40,000 to £100,000); the Chief Finance Officer will be authorised to accept tenders or quotations up to £75,000 (increased from £50,000) in line with previous decisions of the Council to authorise expenditure up to that level; Chief Finance Officer virement and supplementary estimates (increase from £25,000 to £50,000); and minor changes to values in the contracts procedure rules, increasing £5,000 to £10,000 above which a written risk assessment is required and £15,000 to £25,000 for something to be included on the Council's contract register and in relation to which separate files shall be required recording details of contract awards, waivers and extensions.
- 1.3.8 The Contract Procedure Rules now reflect the changes required because of the Public Contracts Regulations 2015, although most of the detailed rules involved in purchasing and tendering are included within the Council's Purchasing Guide, which is also in the process being updated.
- 1.3.9 The Officer Employment Procedure Rules have been updated to take account of the legislative changes introduced by the Local Government Standing Order Regulations 2015 which involve Independent Persons appointed to assist the Monitoring Officer with member conduct also being involved in disciplinary action against the three statutory protected officers (Head of Paid Service, Monitoring Officer and Chief Finance Officer) instead of a procedure which involves a Designated Independent Person.
- 1.3.10 The arrangements for dealing with alleged breaches of the Councillors' Code of Conduct have been included in the Constitution at 4.2, after the Code. These arrangements mirror the Kent-wide arrangements. One small amendment is proposed by the Monitoring Officer (in line with changes proposed at Tunbridge Wells Borough Council) and that relates to the time within which a complaint should be received in

relation to an alleged breach. The current arrangements only allow for complaints to be made within three months of the alleged breach. The three month limit would be removed (currently at 4.2 Annex 1 at 1.4 (f)) and a second example will be added to the current 1.4(j), as follows "*the alleged misconduct took place so long ago that the complaint should not be pursued*". In practice it would be left to the discretion of the Monitoring Officer in consultation with the Independent Person, to determine how long ago is too long ago.

1.3.11 Given that the arrangements also govern complaints relating to Parish Councillors within the Maidstone Borough, the Monitoring Officer has consulted all Parish Councils on the proposed change. The majority of Parish Councils that have responded at the date of this report generally support the removal of the three month time limit rule but some feel that it would be unfair on Councillors if there was not a defined deadline. Six or twelve months has been suggested. These representations have been considered carefully, but on balance the Monitoring Officer does not recommend replacing the three month rule with a longer defined time limit, such as six or twelve months. This is because there may be perfectly valid reasons why it takes longer than this to report a serious incident of Councillor conduct (e.g. a Police investigation is ongoing or the conduct is not discovered until later) and it would be very difficult to try and justify this rule to a member of the public that wished to complain in these circumstances. There are separate criteria in the existing arrangements which ensure that complaints will not be accepted about behaviour which took place so long ago that it would not be practicable or proportionate to investigate it. The proposed addition to 1.4(j) (which becomes 1.4(i)) strengthens these criteria.

1.3.12 The Protocol on Councillor and Officer Relations has also been updated and refreshed with some minor changes including stressing the need for respect between councillors and officers and ensuring that the protocol is balanced. It explicitly mentions that correspondence with Councillors should not be shared with other Councillors without the consent of the Councillor (unless the Monitoring Officer considers this to be justified in the circumstances of the case, for example to comply with a legal obligation).

1.3.13 Councillors are asked to consider the changes proposed to the Council's Constitution and to adopt the new Constitution with effect from Annual Council in May, subject to any amendments that may be made at this meeting.

1.3.14 It is proposed that the Democracy Committee review the operation and effectiveness of the new Constitution early in 2016, with a view to adopting and implementing appropriate changes in April/May 2016.