

POLICY REVIEW AND DEVELOPMENT PANEL REPORT

REPORT TO:	Corporate Performance Panel		
DATE OF MEETING:	13 November 2023		
DATE:	2 November 2023		
TITLE:	Constitution Informal Working Group		
TYPE OF REPORT:	Policy Development		
PORTFOLIO(S):	Leader		
REPORT AUTHOR:	Monitoring Officer		
OPEN/EXEMPT	Open	WILL BE SUBJECT TO A FUTURE CABINET REPORT:	No – not the setting up of the informal working group

REPORT SUMMARY

SUMMARY:
<p>The Corporate Performance Panel is recommended to establish an informal working group to be known as the Constitution Informal Working Group with the terms of reference as attached to this paper at Appendix A to create a mechanism for the structured review of the Constitution, to support the good governance of the Council.</p>
KEY ISSUES:
<p>It is a legislative and constitutional requirement to review and update the Constitution. There is no current formal mechanism or structure in place incorporating both members and officers for the review of the Constitution. It is proposed to create a structured mechanism of review of the Constitution with a set scope and programme. Draft Terms of Reference are attached at Appendix A which will set the basis on which the Constitution Informal Working Group would operate.</p>
OTHER OPTIONS CONSIDERED:
<p>A) A desktop exercise, in which the Monitoring Officer goes through the Constitution to collate a proposed list of revisions to be brought forward through the usual democratic process. This is not considered preferable as the adoption of the Constitution is a Full Council function and accordingly there should be involvement and ownership by Councillors at the earliest opportunity.</p> <p>B) A review exercise by Councillors without the input of officers. This was discounted on the basis that the Constitution is the fundamental rule book and document of this Council and accordingly Members should be given the appropriate support and resource from officers, principally the Monitoring Officer, who has specific functions and duties in relation to the Constitution, to support the process of review.</p>
RECOMMENDATIONS:
<p>The Corporate Performance Panel is recommended to establish an informal working group to be known as the Constitution Informal Working Group with the terms of reference as attached to this paper at Appendix A.</p>
REASONS FOR RECOMMENDATIONS:
<p>To create a mechanism for the structured review of the Constitution, to support the good governance of the Council.</p>

REPORT DETAIL

1. Introduction

1.1 Under section 9P of the Local Government Act 2000, local authorities must prepare a constitution and keep it up to date.

1.2 The Council's Constitution contains the following with regards to its review and revision:

Article 15 - Review and Revision of the Constitution

Duty to Review the Constitution

15.01 The Council shall review the operation of this Constitution to ensure that the purposes and principles of the Constitution are given full effect. Such a review may be initiated by the Council at any time but shall be initiated at least once during the period between regular elections to the Council. In the absence of a resolution so to do by the third anniversary of a regular election, a review shall be deemed to have been initiated on the authority of this Article.

15.02 A review may be comprehensive or take the form of a programme dealing separately with particular Articles or Parts. In the latter case, the default provision in Article 15.01 will apply to any Article or Part not reviewed further to a resolution of the Council during the previous three years. Alongside or as part of this process the Monitoring Officer may make recommendations to Council on ways of improving the constitution and in so doing may:-

- Observe different meetings of the council
- Undertake audit trails of decisions
- Respond to issues raised with him/her by members, officers or others
- Compare best practice from other authorities and similar bodies

Duty to Monitor the Constitution

15.03 The Council's designated Monitoring Officer, will offer advice to the Council on

- (a) establishing means of monitoring the operation of the Constitution, which will provide evidence when it is required of its success in giving full effect to its purposes and principles, and
- (b) the process to be followed when reviewing is undertaken. In formulating this advice, the Monitoring Officer shall take into consideration the guidance published by the relevant government department.

Changes to the Constitution

15.04 **General** Changes to the Constitution may be made only by the Council after consideration by the Cabinet. The Monitoring Officer may unilaterally approve drafting changes to the Constitution where they correct obvious errors, to take into account changes in legislation or better give effect to the clear intention of the Constitution.

15.05 **Change of form of Executive** The Council will consult local people before determining whether to change to either an elected mayor and cabinet or an elected mayor and council manager.

1.3 It will be noted that a review of the Constitution must be initiated at least once per term. There is currently no structured way in which this review takes place.

1.4 The Centre for Governance and Scrutiny (CfGS) this year published a guidance note entitled: '*The review and redrafting of constitutions: guidance for English authorities*'. <https://www.cfgs.org.uk/wp-content/uploads/The-review-and-redrafting-of-constitutions-v.3.pdf>

1.5 Panel Members are strongly encouraged to read the CfGS Guidance in full as it is very applicable to this Council's current circumstances. There is no current formal mechanism or structure in place incorporating both members and officers for the review of the Constitution. The proposals set out herewith provide a mechanism for a permanent structure for the review and continuous improvement of the Constitution.

1.6 The following key paragraphs of the CfGS guidance are produced for relevance to this paper:

"We have found that it can be helpful to reflect, before reviewing and updating a constitution, on the principles that underpin its operation. This helps to ensure that the constitution as a whole reflects those principles. This helps to make sure that the document, and the wider governance framework, is internally consistent – and that people understand how the rules and processes in the constitution are used and interpreted." Page 5

"The review of a council constitution is not merely a desktop exercise, in which the Monitoring Officer goes through the document to check its accuracy. It is also not an exercise for a small group of members in a working group, churning their way through the document and making suggestions for changing in wording. It has to be more carefully planned and managed. The process and approach must be one with wide ownership and buy-in, as well as being one that centres the role of the Monitoring Officer in ensuring the rigour of the process." Page 6

"It is not possible to set out "best practice" for the conduct of reviews of council constitutions. Even if council constitutions are similar in structure and content, all councils are different – and governance needs are also different. However, CfGS's experience is that an approach which balances the role, insight and expertise of both members and officers works best." Page 7

"The constitution is not "owned" by the Monitoring Officer, or lawyers or other officers with a responsibility for governance. Everyone has an individual and collective responsibility to understand the constitution – as part of the governance framework – and their roles in upholding it by acting in accordance with it and its principles." Page 7

"In some councils, informal bodies are established to support constitutional reviews. Constitutional Working Groups are quite common bodies to perform this purpose. Whatever approach is taken, meaningful member engagement is a crucial part of any review process. Part of the scoping process for the work (see below) would usually involve agreement on where member input, and signoff, is necessary." Page 7

"... a "review of the constitution" can be extremely broad in scope, and given the dependencies described above, can impact a huge range of corporate and service issues – a scoping exercise will need to provide focus, in order to manage both member and officer expectations." Page 10

2. Proposal.

2.1 That the Corporate Performance Panel establish a 'Constitution Informal Working Group' ("CIWG") with the Terms of Reference attached at Appendix A.

3. Issues for the Panel to Consider

3.1 The consideration of this Council's governance structure, and the question of whether the Council moves to a Committee structure, remains a live issue for determination by the Council. Accordingly, a wholesale redraft of the Constitution is not recommended at this stage as the time and resource spent on this may be then entirely duplicated in having to prepare a new Constitution for a Committee structure.

3.2 Nevertheless, the Constitution is undoubtedly overdue a considered review and Panel Members are drawn to the draft Terms of Reference with regards to the CIWG taking the opportunity for the rest of this municipal year to establish its programme of review for the remaining term of this administration.

3.3 The reference by the CfGS of managing expectations should also be noted: it will not be possible to review and revise the whole Constitution all at once. It is recommended that a proportionate programme of review is established over the rest of this administration's term and that this structure for review be kept in place in perpetuity as the mechanism for continual review and improvement of the Constitution, unless there is a good reason to depart to another method in future.

3.4 Panel Members are also drawn to the consideration of membership of the CIWG. There is no requirement for the CIWG to be politically proportional and may be made up of any Councillors (i.e. not just CPP Panel Members and inclusive of Cabinet Members). Nominations of Councillors are proposed to be made by Group Leaders either before to the Chair of CPP or after the meeting.

3.5 It is proposed that the CIWG will report to the Corporate Performance Panel at least once per municipal year (NB optional for 23/24) with proposed changes to the Constitution and with a timeframe that would enable Full Council to approve any such approved changes at the last Full Council of each municipal year.

4. Corporate Priorities

With regards to the new proposed Corporate Strategy, establishing a permanent structured means of reviewing the Constitution will serve to promote the following priority:

Efficient and effective delivery of our services: To provide cost-effective, efficient services that meet the needs of our local communities, promote good governance, and provide sustainable financial planning and appropriate staffing.

And the following key principle:

Transparently: We will be open, honest and transparent in our decision making and ensure we follow best practice in governance

5. Financial Implications

The resource of Democratic Services and the Monitoring Officer will be required to support the CIWG.

6. Any other Implications/Risks

The creation of a mechanism for the structured review of the Constitution will support the Annual Governance Statement and Code of Corporate Governance.

7. Equal Opportunity Considerations

None

8. Environmental Considerations

None

9. Consultation

Group Leaders have been consulted on the proposal for a CIWG and in the case of the Conservative Group Leader, the consultation has been also within the role as Chair of CPP.

10. Conclusion

To support the good governance of this Council, Panel Members are invited to resolve to establish a Constitution Informal Working Group with the terms of reference as attached.

11. Background Papers

None that are not published already.