

ITEM **3(a)**

Milton Keynes Council
Advice Note – Summary of Constitutional Review
June 2018

CONSTITUTION REVIEW

1 ADVICE REQUESTED

- 1.1 Milton Keynes Council ("the Council") has commissioned Bevan Brittan LLP to carry out a review and health-check of its Constitution.
- 1.2 The Council wishes to have a review of compliance with legislative provisions and best practice with a view to developing a clearer, more succinct Constitution which better reflects the present values of the Council, is accessible, up to date and will incorporate changes to modernise the document and make it easier to use.
- 1.3 The issues which prompted a constitutional review include:
 - A document which has grown over years and is not internally consistent;
 - Desire to have a more easily understandable document that meets the needs of officers and members;
 - Concern at legal compliance and extensive statutory references;
 - Recognition that the constitution is not best serving the interests of the Council to deliver consistent, efficient and effective decision making;
 - An unwieldy document that could be simplified (currently split into 54 parts on the Council's website);
 - Reduce duplication, "clean up" and "slim down" the Constitution;
 - Changes in personalities and loss of corporate knowledge about why things are where within the constitution or done in a particular way (although it largely follows the Model Constitution);
 - A structure which requires significant maintenance and is not future proof, with a need for all changes to be approved by Council;
 - Opportunities to reduce bureaucracy, that also helps members and officers to take decisions more robustly with more clarity over who takes which decisions;
 - An LGA peer review on governance with specific recommendations for overview and scrutiny; and
 - Desire to have a more living, working document.
- 1.4 The deliverables from the first stage of the project are the production of:
 - A 'health-check' report summarising the overall position and making suggestions for improvements/best practice (this document);
 - A compliance checklist identifying how the Constitution complies with statutory requirements and the Constitution Direction, identifying any areas of concern; and
 - A proposed version of the contents page of the new/updated constitution.
- 1.5 This report will look at the context and the legislative requirements placed upon the Council and then consider how the Constitution compares and then how it could be shortened, streamlined and improved.

- 1.6 The purpose of the current Constitution is stated in Article 1 to be as follows, to:
- *"enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisation*
 - *Support the active involvement of citizens in the process of Local Authority-decision making*
 - *Help Councillors represent their constituents more effectively*
 - *Enable decisions to be taken efficiently, effectively and effectively*
 - *Create a powerful and effective means of holding decision-makers to public account*
 - *Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions*
 - *Ensure that proposals and decisions are effectively and fairly reviewed*
 - *Provide a framework for the delivery of the Council's contribution to the Sustainable Communities Strategy*
 - *Provide a means of improving the delivery of services to the community."*
- 1.7 The above are drafted based upon the Model Constitution (with minor variations), but in practice we are not convinced that the current Constitution does the above (nor would any constitution, unless it was much more citizen (or public) focussed).
- 1.8 The current structure is based upon the Model Constitution and is somewhat chunky and repetitive – further details of which are set out below, along with recommendations for change. Adopting our recommendations would make it easier for members of the public and Councillors to navigate the Council's constitution and to make sense of how the Council operates, if the document is stripped of duplication, back to the key elements (see below) with hyperlinks to relevant parts of the Council's website.
- ## 2 CONTEXT
- 2.1 A local authority is under a duty to prepare and keep up to date its constitution under section 9P Local Government Act 2000 as amended. The Constitution must contain:
- the Council's standing orders/procedure rules;
 - the members' code of conduct;
 - such information as the Secretary of State may direct;
 - such other information (if any) as the authority considers appropriate.
- 2.2 A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things. Whilst issued under Part II Local Government Act 2000 the Direction survives the re-enactment into Part 1A (section 9B et seq.) of the 2000 Act by the Localism Act 2011 (under section 17 Interpretation Act 1978).
- 2.3 Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

- 2.4 The Council's Constitution currently comprises 7 Parts (many divided into a number of sections). In total there are 54 sections and schedules. The alpha-numeric page referencing system could be confusing to a member of the public and the Council may wish to consider alternatives. A member of the public did not already know which part to look in; it would be difficult to locate a specific section of the Constitution. The Council's Constitution can be found at the following link: <http://milton-keynes.cmis.uk.com/milton-keynes/PublicDocuments.aspx>
- 2.5 It is helpful that in addition to uploading the separate parts of the Constitution, the Council also uploads a complete document. This makes searching for key terms within the document easier. If the Council were to adopt the use of internal hyperlinks, care would need to be taken to ensure that these this worked amongst the multiple uploaded documents. It would be helpful if this was at the top of the list of documents rather than at the end.
- 2.6 The Constitution appears to have developed over time with amendments that are not always consistent in approach and in some areas there are provisions that are effectively guidance or explanation that whilst in themselves are helpful documents, do not need to be within the constitution (e.g. the Acquisition and Disposal of Land and Buildings Procedure Rules and the Monitoring Officer Protocol).
- 2.7 Since the Constitution must be adopted by resolution of Council changes to such guidance or explanation may only be approved by resolution of Council, unless enhanced delegated powers are given to make changes. Should such guidelines sit outside of the constitution then it would be easier to amend and update them. Such documents could be hyperlinked to the intranet or the web rather than being lost altogether, in the same way that links could be provided to the existing web pages outlining individual Councillors, their wards and interests etc.
- 2.8 It also appears that the Constitution is not always consistent with what may be stated on the Council's website, which does not have to be approved by full Council before being changed. An example would be overview and scrutiny: Part 1 states that there are 9 overview and scrutiny committees, but only 6 are listed in Article 6. However, the Council's website states: "*There are three Scrutiny Committees and a Management Committee which support the work of the Cabinet and the Council as a whole.*"
- 2.9 The Council has articulated three priorities and summarises the key outcomes it aspires to deliver in each area in its Council Plan 2016-20. These are not reflected in the current constitution, which refers to five themes taken from the 2012-16 Corporate Plan. The Councils current key aims are:
- A City of Opportunity
 - An Affordable City
 - A Healthy City
- 2.10 When reviewing the detailed provisions in the Constitution we would suggest that the opportunity be taken to consider how the Constitution could better focus on these outcomes – for example should Scrutiny reflect the above priorities rather than the current functional split?
- 2.11 An LGA peer review into governance and scrutiny was undertaken in 2017, which included a number of recommendations. Of particular significance for the Constitution are:
- Ensure that scrutiny work programmes and activity align with the Council Plan, and remain focused on key issues, with the flexibility to incorporate relevant issues as they arise;
 - Review the remit of the scrutiny committees to ensure that all major Council business is covered and understood by all;
 - Nominate a senior officer to sponsor / champion each scrutiny committee;

- Review current requirements for call-in – thresholds and rationale – to ensure that these remain fit for purpose.

2.12 The above principles ought to be incorporated into any review of the Constitution.

2.13 The Council has recently held elections in May 2018 and it elects its Councillors in thirds in 3 out of every 4 years. The next year without elections will be 2021. The Council is currently under no overall control, with the Conservatives forming the largest party and current political proportions being Conservatives – 24; Labour (including Labour & Co-operative Members) – 21; and Liberal Democrats - 12. The Cabinet is Labour led (presumably with the support of the Liberal Democrats).

2.14 The Council has an active Constitution Commission that considers proposed amendments to the Constitution and makes recommendations for changes to the constitution to full Council. (Unlike many other Councils, neither the Constitution Commission nor the Monitoring Officer has any real power to change the constitution without a resolution of Council.)

2.15 There appears to be all party support for a review and revision of the Constitution.

3 THE REVIEW

3.1 This report considers the findings of our review and makes suggestions as to how the Constitution could be changed.

3.2 Judith Barnes attended a meeting at the Council's Offices with representative of the Constitution Commission, the Monitoring Officer, Deputy Monitoring Officer and Democratic Services Manager, on 24 April 2017 to discuss the principles of the review and the reasons for the review, many of which are set out in paragraph 1.3 above.

3.3 There was general agreement that the Constitution should reflect the locality and the organisation and be more personalised to Milton Keynes and its decision-making, rather than a 'slave' to the Model Constitution.

3.4 As well as endorsing the issues set out at 1.3 above members were keen to have a better understanding and clarity around decision-making, including who takes decisions and how. It would be helpful to understand where the line is drawn between councillors and officers in decision-making and how better to facilitate decisions and council business. Members accept that some of this will be based upon principles as it is not possible to legislate for everything, however, there is the desire to promote effective decision-making and avoid knee-jerk reactions along the lines that there is always the need to amend the constitution. There were concerns to ensure that ward members involved at the appropriate level and perhaps reference to what issues should be strengthened in the member and officer protocol.

3.5 Where possible, members would like flowcharts outlining decision-making bodies and where agreeable to including hyperlinks and removing some of the current sections. The introduction should properly explain how the council takes decisions lawfully in respect of the Council's functions.

3.6 With regard to the policy framework members would like clarity over the plans and strategies that are required to be within the policy framework before deciding whether to change those plans and strategies that currently need to be agreed by both cabinet and Council.

3.7 Members queried whether there should be more proactive scrutiny of cabinet decisions prior to consideration, like Cambridge City Council? Proactive scrutiny can certainly be very helpful when considering alternative courses of action and consulting and engaging with service users, businesses and/or members of the public.

3.8 On petitions members would prefer that these are referred to the cabinet for consideration.

3.9 Members felt that a Glossary of terms used would be useful.

3.10 Additionally in meeting with the Constitution Commission members other issues were discussed and identified:

- Desire to have a more easily understandable document that meets the needs of members and officers in particular but also the public, which will improve opportunities for public engagement, and give the public greater rights to address the Council, question Councillors and understand ways in which they may seek redress;
- Provide greater transparency;
- An opportunity to update the Press and Media Guidelines;
- Desire to have a more uniform approach to scrutiny across the Council, rather than focusing on Cabinet Members, as is currently the case.
- There is support to remove the Articles (although some content will need to be retained, perhaps by being moved elsewhere).
- Powers and delegations are currently diffuse throughout various parts of the Constitution.
- There is no Proper Officer register.
- Various parts of the Constitution require updating, in particular:
 - Legislation
 - Delegations
 - Management Structure changes (including removing reference to officer roles which no longer exist).

3.11 Terminology: In terms of the language used, as well as simple English, members favoured the following – highlighted bold:

- **Councillor** v Member;
- Executive v **Cabinet**;
- Citizen v **resident/member of the public/service user**;
- **Chief Executive** or Head of Paid Service;
- **Chair** v Chairman; and
- **Chief Finance Officer (Corporate Director of Resources)** v s 151 or both.

3.12 Executive functions are currently delegated to the Chief Executive, Corporate Director, Service Director or Assistant Director under whose managerial responsibility the executive function falls. There do not appear to be provisions that allow sub-delegation, nor the collation of individual schemes of delegation for each directorate/department/head of service other than for executive functions. From our review we would recommend that further delegation is included in the general principles around officer delegation and that written schemes of sub-delegation are kept and updated every six months (or as a minimum annually).

3.13 There are some areas where officer powers should be extended, including the ability to take enforcement action etc. provided the necessary legal, financial and technical resources are in place to do so. The review will also enable the new Constitution to better reflect the delegations within the LGSS scheme of delegation, that have recently been considered by the Constitution Commission.

3.14 More clarity around deputising should also be included, as well as updating of the statutory officer, inclusion of proper officer and other officer delegations. The review of the Constitution is also likely to bring opportunities for an objective view of potential changes and streamlining of functions that could improve efficiency and effectiveness, perhaps reducing the number of decision-making bodies.

4 OVERALL CONCLUSIONS OF THE REVIEW

4.1 Overall we have found that the Council's Constitution to be largely legally compliant and is, certainly compared to a number of other Constitutions we have seen and reviewed, relatively short, reasonably well drafted and reasonably clear, except in relation to the delegation of functions which we believe are too dispersed throughout different segments of the Constitution and in some respects lack the depth expected.

4.2 Attached to this report are also:-

- 4.2.1 A compliance checklist (**Appendix One**) showing how and where the Constitution complies with the relevant statutory requirements in the Constitution Direction and identifying areas requiring review/updating; and
- 4.2.2 A proposed contents page for the new Constitution (**Appendix Two**).
- 4.3 There are a few areas where further information is required to be contained in the Constitution to meet the statutory requirements (see Appendix One) and a number of legislative references need updating, but these should be easily remedied.
- 4.4 At 307 pages, it is not unduly long. However, it comprises 54 separate documents and there are a number of aspects that we consider could be improved. We consider that an updated slimmed down version would better fit the way the Council intends to operate and would achieve the stated aims and issues above. Our report goes on to identify these aspects and suggest a way forward.
- 4.5 In our experience, members and officers can give considerable weight to the impact a revised Constitution can have on the operation and culture of a council and can focus hopes for change on the production of a revised document. Whilst we absolutely agree that a robust and effective Constitution can make a real difference to the operation and governance of a council, it is, on its own, not sufficient to change ways of working, established behaviours or ingrained approaches. The actual process of production of a new Constitution can be very powerful in providing an opportunity for open debate about the fundamental issues of how the Council operates and the development of a Constitution which reflects this (and which has buy in from all stakeholders) can set the ground rules for how the Council operates. Joint discussion on a new Constitution may help to start building more trust between members and officers.
- 4.6 In terms of aspects of the Constitution which we have identified as needing particular focus, the following four areas should be addressed:
- Form and Structure
 - Accuracy, updating and future proofing
 - Decision Making
 - Member bodies
 - Officer delegations
 - Procedure rules
 - Budget and Policy Framework and Financial Procedure Rules
- 4.7 It would be useful to test our recommendations with senior officers and possibly interested members, perhaps through a meeting of the Constitution Committee to enable members to contribute from the outset to the proposed changes and through Officers, potentially through the Corporate Management Team.

5 FORM AND STRUCTURE OF THE CONSTITUTION

- 5.1 Whilst based on the Model constitution, the Council's constitution does not read as a modern document and could be improved significantly through the use of more modern language, web links and better presentation in a revised structure. The Introduction is well-written and reads well but would benefit from some more information about how the Council works being drawn from the Articles to give a more comprehensive picture.
- 5.2 By having a general summary in the Introduction, then the Articles, then substantive sections, things are often stated three or more times, often in slightly different ways and it is very difficult to be certain

that the full picture is being presented on any issue without exhaustive searching. This should all be cut down and assimilated into a much clearer document.

- 5.3 As part of this exercise the Constitution should be rigorously edited to remove repetition and to make it more user friendly. We would recommend that the Council removes the Articles (around 40 pages of text) from the Constitution. This will reduce repetition from the Constitution since much of the Articles are replicated elsewhere. Some of the content of the Articles will need to be moved to other parts of the Constitution (for example Article 11 (Joint Arrangements) could appear within the Responsibilities for Functions section). We also recommend that the Terms of Reference of all Committees should be together and in the same style/format. Experience tells us that the content of the Articles should be carefully mapped so that Members can see where provisions have been moved to other parts of the Constitution. We make our suggestions in detail in the table below.
- 5.4 There is much in the Constitution which is important for the Council to have somewhere, but need not be contained in this document. Policies and procedures etc. can be referenced through web links which would make the whole document less daunting and unwieldy and, if they are not a formal part of the Constitution, allows the documents to be more easily updated/refreshed. We would suggest that the Council could consider removing the following parts of the Constitution:
- Part 2 – The Articles (18 Parts a schedule and 40 pages)
 - Part 4 – Acquisition and Disposal of Land and Buildings Procedure Rules
 - Part 5 -
 - Duplication of DPIs in the Members' Planning Code and possibly the full Planning Code could be hyperlinked rather than in the Constitution
 - Procedure and Forms associated with rules on gifts and hospitality
 - Monitoring Officer Protocol
- 5.5 This will all make it more accessible to its users who include:
- The public
 - Members
 - Officers
 - Partners and stakeholders of the Council.

6 ACCURACY, UPDATING AND FUTURE PROOFING

- 6.1 We note from the Amendment History on p2 of the Constitution that it is amended on average 3-4 times a year.
- 6.2 The Management Structure at Part 7 includes a number of named officers. Whilst it can be useful to name senior officers, we would not recommend referring to such a large number of officers by name. We would query whether keeping this up to date will be a significant and unnecessary administrative burden. We suggest that this structure could appear on the Intranet (updated as necessary, but with the version in the Constitution only naming the Chief Executive and the Corporate Directors, or not naming any officers at all and simply referring to posts).
- 6.3 Local authority arrangements do change and whilst this means Constitutions have to be updated, this should not be a constant exercise. The drafting should be future proofed so changes in post holders, legislation etc. should not, necessarily of themselves, trigger a redraft.

- 6.4 Whilst the current Constitution is largely up to date, a number of statutory and legislative references need to be updated throughout the document particularly references to sections in the Local Government Act 2000 and the Accounts and Audit Regulations.
- 6.5 A shorter, more accessible document will make it easier for any changes to be considered carefully, implemented clearly and for there to be a robust system of version control and explanation to all users of what changes have been made any why.
- 6.6 We would also recommend that the Monitoring Officer be provided with greater delegation to make changes to include changes which improve drafting and clarity and the efficiency of operations. Such powers could require all members to be notified of the changes made as and when they are undertaken. At present the Monitoring Officer is limited to making changes to the titles of officers and the management structure, however, such amendments may not take effect until they are agreed by the Council. Effectively this means there is no delegated power to update the constitution.

7 DECISION MAKING

- 7.1 A key part of the Constitution (and which sets the tone for the culture the Council wishes to operate) is how decisions are taken. This includes the balance between:
- The decision making powers of the Leader and the decision making powers of Portfolio Holders; and
 - Member decision making or officer delegation.
- 7.2 The right balance must also be struck in the Constitution to ensure:
- Recognition that the Council is a member-led authority;
 - Appropriate transparency and involvement in decision making;
 - Efficiency of business; and
 - The ability to respond swiftly to events (whilst ensuring probity and checks and balances).
- 7.3 Many provisions cross refer to numerous Parts of the Constitution (including the Articles) and are not therefore standalone sections, meaning there is a need to go in and out of documents to be sure of compliance with all requirements of the Constitution.
- 7.4 We note that there is not a consolidated Scheme of Officer Delegation included within the Constitution. Delegations to Officers are spread throughout the document, including:
- Article 13 – Officers (sets out in broad terms the Chief Executives officer responsibilities, Monitoring Officer, CFO, Assistant Director of Democratic Services, Director of Children's Services and the Director of Adult Social Services).
 - Article 15 – Finance, Contracts and Legal Matters sets out additional delegations to Assistant Director Legal Services to institute and defend legal proceedings, authenticate documents and apply (or authorise the application of) the common seal of the Council.
 - Article 17 – Review and Revision of the Constitution sets out delegations to the Service Director (Legal and Democratic Services / Monitoring Officer) to update the constitution, subject to Council approval.
 - Responsibility for Functions:
 - Decisions regarding development control are in a Scheme of Delegation which is specific to development control dated 21 June 2017.

- Delegations from the Regulatory Committee are authorised on the basis of a scheme of delegation approved by the Council on 13 January 2004 and updated from time to time. This document does not appear in the Constitution.
- Assistant Director Democratic Services is empowered to form a Panel for dealing with appeals against dismissal, grading and grievances.
- Responsibility for Local Choice Functions includes delegations to various officers.
- The Leader's Executive Scheme of Delegation (paras 14 – 17) includes delegations in respect of Executive Functions to the Chief Executive, Corporate Directors, Service Directors or Assistant Director.
- There is a table of financial limits at page V12 of the Leader's Executive Scheme of Delegation.
- There is no list of Proper Officers and therefore it is unclear who has such responsibilities – we are able to supply an indicative list, should that be of assistance.

7.5 There is no requirement to list delegations to officers by delegating body, or to list executive and non-executive powers separately. We would suggest though that the Council considers consolidating the Officer Delegations into a single Scheme of Officer Delegation so that it is clear who is responsible for which function. In the absence of the requirement to appoint deputies and clarity over sub-delegation it is unclear who has authority to take decisions in the absence of the relevant Director, especially if there are no Assistant Directors available to act.

7.6 In respect of Non-Executive Functions the Terms of Reference for the Regulatory, Development Control and Licencing Committees appear in a table starting on page U1. We would recommend that each committee has its membership and terms of reference set out in the format of the Standards Committee in Article 9. There are a number of sub-committees and Panels that are not referenced with their own Terms of Reference, including the Hearings Sub-Committee and Appeals sub-committee of the Standards Committee including composition etc.

7.7 In **Part 5 and later Parts** (e.g. the Officer Employment Rules) specific provisions require updating regarding staff matters and these are prescribed in more detail in Appendix One. This is largely to deal with the requirements of the Local Authorities (Standing Orders) Amendment Regulations 2015 and the new Chief Executive and Chief Officers Terms and Conditions of Service issued in 2017. The Independent Person(s) need to be established as a separate Panel under s.102(4) of the Local Government Act 1972 from the Investigation and Disciplinary Committee in order to marry up with the latest JNC Terms and Conditions of Service for Chief Executives and Chief Officers for statutory officer discipline that could result in dismissal by full Council. There is no Employment Committee or similar from which an Investigation and Disciplinary Panel or sub-committee could be drawn.

7.8 We make the following additional observations and recommendations:

- We note that the Leader's Executive Scheme of Delegation includes a power for the Chief Executive, Corporate Directors, Service Directors or Assistant Directors to exercise executive functions. We support this approach, and would recommend its application in respect of non-executive functions as well in accordance with relevant policies, duties and requirements to prepare decision-records, where appropriate.
- We cannot see from the Constitution who is responsible for exercising the Chief Executive's functions in his/her absence.
- There is no Proper Officer list as required under the Local Government Act 1972.

7.9 Areas for further inclusion could include:

- Powers for the Chief Executive to exercise all officer delegated functions in the absence of relevant officers.
- Powers for the Chief Executive to exercise all executive functions where the Council has not elected a Leader and the post is vacant (though this could be seen as falling under the ability in para 14 for the Chief Executive to exercise powers to take key decisions "on grounds of urgency, efficiency or cost." it may be better to be more explicit and also to have reference to a post-holder to exercise such functions in the absence of the Chief Executive.)
- Powers to implement decisions and take all actions deemed necessary to implement executive and non-executive decisions.
- Powers to manage the finances of the relevant service including setting relevant fees and charges in consultation with the relevant portfolio-holder or Chair of Committee
- Powers potentially to supply other public authorities pursuant to the Local Authorities (Goods and Services) Act 1970 (potentially over a significant financial threshold requiring a Business Case) or companies/corporate bodies that the Council is involved in (whether by shareholding, membership or appointing persons to the Board/Management Committee)
- To take all relevant regulatory and enforcement action in connection with the exercise of functions, including without limitation, issuing any form of Notice, Order, Caution, an Injunction or authorising the commencement of prosecution or other proceedings (Monitoring Officer and designated other Chief Officers for Planning and Environment or Resources etc.?)
- Wider powers for the Monitoring Officer to conduct and manage legal proceedings and to authorise the compromise, settlement, withdrawal from or discontinuance of any proceedings or claim against the Council (including staffing matters and maladministration) in consultation with the Chief Finance Officer and relevant portfolio holder/ward member, as appropriate. The current powers in Article 15 to the Assistant Director Legal Services are limited,

7.10 It is not clear which officer (and member) is responsible for Data Protection – and those responsibilities should also reflect the requirements of the General Data Protection Regulation 2016 which came into force on 25 May 2018. Also which Officer (and members) are responsible for health and safety matters? The public will not have ready access to job descriptions and therefore in the interests of transparency the constitution should be clearer on the exercise of functions by officers in particular.

7.11 The **Joint Arrangements in Article 11** summarises the Council's joint arrangements well and would benefit from expansion and hyperlinks to relevant web pages established for each of the joint functions, particularly to meet the requirements of the Constitution Direction at "r" in Appendix One, (which requires inclusion of Terms of Reference, membership, etc.). It is not clear from the Constitution as it is currently drafted what if any joint arrangements the Council has in place. LGSS should be mentioned in this context as well as the Police and Crime Panel and Joint Growth Board arrangements (which we understand operates on the basis of concurrent committees).

7.12 In relation to the **Council Procedure Rules in Part 4, Section 1**, we would not make many significant suggestions for changes to the content which we consider are generally clear and comprehensive, although would reflect that:

- Paragraph 1.1(f) states that the Annual Meeting elects the Leader. It could be made clear that the Leader is elected for four years. The current drafting suggests that the election of the Leader is an annual occurrence.
- We would recommend including the ability for the Monitoring Officer (or other appropriate person) to rule out of order any questions, deputations, petitions, motions and comments

(both public and member) that are "vexatious, derogatory" as well as defamatory, frivolous, or offensive, or if they concern a Council employment or staffing matter – (in addition to the ability to rule out of order if previously considered within 6 months, or is unrelated to Council functions etc. and to refer to a more appropriate place).

- We would recommend that there be a procedure rule requiring members with a DPI to leave the room or chamber whilst a matter in which they have a DPI is considered unless they have a dispensation.
- Quorum for meetings of Council is a quarter (schedule 12 Para 6 LGA 1972), and the Council Procedure Rules reflect this. However, we recommend that the quorum of committees, sub-committees etc. should be specifically referenced in the Terms of Reference of each Committee.
- Should there be a procedure rule on the acceptance of petitions (rather than the Council's Petition Scheme?)

7.13 The **Access to Information Procedure Rules in Part 4**, paragraph 21 give access to Members to all documents in the control of the executive which are to be transacted at a public meeting, except those which contain certain (not all) types of exempt or confidential information. This right of access is slightly narrower than the statutory and common law rights of Members and the Council should consider whether it would be desirable for such rights to be brought in line with the statutory requirements and the common law "need to know" basis, or whether the associated risks (including potential leaks and claims) are accepted.

7.14 The threshold for **Key Decisions** is currently **£500,000**. This is not an unusual threshold for a unitary authority of this size.

8 BUDGET AND POLICY FRAMEWORK AND FINANCIAL REGULATIONS

8.1 The Policy Framework is included in Article 4.1(a). It includes a number of plans and strategies which do not as a matter of law need to be included (such as the Low Carbon Strategy, and the Regeneration Business Plan and Strategy). Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853 include the following:

Plan	Legislation
Annual Library Plan	Section 1(2) of the Public Libraries and Museums Act 1964
Children and Young People's Plan	Children and Young People's Plan (England) Regulations 2005
Crime and Disorder Reduction Strategy	Sections 5 and 6 of the Crime and Disorder Act 1998
Licensing Authority Policy Statement	section 349 of the 2005 Gambling Act
Local Transport Plan	Section 108(3) of the Transport Act 2000
Plans and alterations which together comprise the Development Plan; and Development plan documents	section 54 of the Town and Country Planning Act 1990 Section 15 of the Planning and Compulsory Purchase Act 2004
Youth Justice Plan	Section 40 of the Crime and Disorder Act 1998

8.2 Additionally there is no longer a requirement for the Library Plan to feature in the budget and policy framework as the requirement is not for an Annual Plan. Whilst nothing prevents the Council from

adding additional plans and strategies to the Policy Framework, the Council may wish to consider the administrative burden of taking a larger number of plans and strategies to full Council when there is no legal requirement to do so.

- 8.3 The Budget and Policy and Framework Procedure Rules (BPFR) themselves are relatively short and do not contain the Policy Framework which is currently at Article 4 and so the Plans could be brought in here. The BPFPRs could be linked to the Financial Procedure Rules.
- 8.4 To reflect the requirements of the Local Audit and Accountability Act 2014 a new Local Audit Panel will need to be established with the statutory terms of reference (unless the Council has opted into Public Sector Audit Appointments (PSAA) Ltd) in which case a Local Audit Panel is optional rather than mandatory. If no Auditor Panel is included in the revised constitution then the Audit Committee Terms of Reference should make reference to auditor matters.

9 OTHER PROCEDURES, CODES AND PROTOCOLS

- 9.1 We can supply more detailed comments on this part of the Constitution if required but at this stage it is important to determine the structure of a new constitution (what is in and what is out) at a high level.
- 9.2 We would refer you to the draft contents page which sets out our views as to the codes, protocols and guidance documents that are no longer required or could be removed and placed on the Council's website and hyper-linked if necessary
- 9.3 The **Officer Employment Procedure Rules** require updating to fully meet the requirements of the 1993 and 2001 Standing Orders Regulations as amended. The Chief Executive and Chief Officer Terms and Conditions of Service now require the Independent Persons (however many may accept the invitation) to form an Independent Persons Panel, that is separate from but may meet concurrently with any Statutory Officers Investigation and Disciplinary Panel/sub-committee, which needs to be included in the Council's constitution along with some non-executive body that would deal with staffing matters, such as an employment committee or similar,.
- 9.4 Any such committee also needs the power to suspend the Chief Executive and we would normally expect an officer to be given the power to rule out frivolous or vexatious complaints. Note that the Officer Employment Rules refers to "a committee or sub-committee" without such a body existing in the terms of reference. This does not reflect the latest Regulations nor paragraph 88 nor the JNC Terms and Conditions, as we set out in Appendix 1.
- 9.5 **Contract Procedure Rules.** These are written in simple English which is commended. Reference to existing relevant frameworks including the Crown Commercial Services should be also included.
- 9.6 The Rules need to be updated to cover the 2015 Public Contracts Regulations and the options for Competitive Negotiated, Dynamic Purchasing and Light Touch as well as bi-annual increases to thresholds for services and works as follows from 1 January 2018 – 31 December 2019.
- 9.7 A short summary of the main thresholds from January 2018 is below.

TYPE OF AUTHORITY	TYPE OF CONTRACT			
	Works	Supplies & Services	Light Touch Regime Services	Concessions
Central government authorities	£4,551,413 (€5,548,000)	£118,133 (€144,000)	£615,278 (€750,000)	£4,551,413 (€5,548,000)
Sub-central authorities	£4,551,413 (€5,548,000)	£181,302 (€221,000)	£615,278 (€750,000)	£4,551,413 (€5,548,000)

- 9.8 Contracts Finder requirements should also be included along with updated information relating to Concessions. More information on the need for explicit evaluation criteria should be included in the tender documentation and that all such documentation should be ready at the time of despatch.
- 9.9 The **Code of Conduct for Employees** is fairly comprehensive (if not too long) although reference should be made to the Bribery Act 2010. Paragraph 16 states that the Code will be subject to formal review in December 2002, which suggests that it may not have been updated for some time. There is no financial limit for officer gifts and hospitality.
- 9.10 The **Members' Code of Conduct**. The scope of the Code does not appear to extend to where a member of the public may perceive that a member is acting in an official capacity as well as "*exercising their duties*" as members. In the general obligations it largely follows the previous mandatory code, but is not as extensive and does not treat personal interests as prejudicial. There is a financial limit of £100 on gifts and hospitality. We note that Standards for England, whose guidance is referred to in this Code, no longer exists.
- 9.11 The **Protocol on Officer-Member Relations** appears to be comprehensive. The reference to the standards at the front is to the 10 principles which preceded the seven current "Nolan" principles and the Council may want to update this or take it out altogether. We note that there is considerable overlap between the Access to Information provisions and paragraph 3 of the Protocol. We also note that the rights of Access to exempt and confidential information is very broad.
- 9.12 The **Monitoring Officer Protocol** would usually be seen as an internal document, and is not required to be in the Constitution. However, if the Council considered that it would be beneficial to publish this document then it could be hyperlinked from the Constitution.

10 PROPOSALS FOR NEXT STEPS/ACTION

- 10.1 We understand that there is some momentum and desire to move ahead with a review of the constitution. We would support this and would also, from our experience of leading many constitutional reviews, advise that consideration be given to what should go in the new Constitution before re-drafting the document. This review should inform that exercise.
- 10.2 We would usually recommend involvement of relevant stakeholders in a consideration of the key issues (e.g. the Chief Finance Officer on the Financial Procedure Rules) and development of the new document in consultation with key groups (e.g. members when looking at Council and other procedure rules). This approach need not take a long time – with a clear and tightly managed project plan/timetable, this could be achieved on an informal basis and then be consulted upon more widely with interested Council members and officers.

11 KEY AREAS FOR ACTION

11.1 We suggest that areas of the Constitution are prioritised for consideration/focus as follows:-

Issue	Proposed Approach
Principles to drive the review of the Constitution	This report should be used to consider the proposed principles for drafting the document and recommend the basis for decision on how the revision of the Constitution should proceed, appropriate terminology etc.
Overall form and presentation and accuracy, updating and future proofing	The form, style, presentation and arrangements for updating/future proofing the constitution should be agreed as well as the approach to guide the Constitution redrafting e.g. removal of Articles; hyperlinks; and we would recommend that greater powers are given to the Monitoring Officer to update the constitution

Issue	Proposed Approach
Terminology	<p>There is inconsistency or lack of clarity around the use of language within the Constitution. For example:</p> <p>"Chief Officer" is used a number of times in the later part of the constitution, but it is not defined anywhere. "Council" and "Authority" (and "MKC") are used interchangeably at various points.</p> <p>Approach to language is important - see preferences discussed earlier. There may be other expressions the Council wishes to change.</p>
Articles	<p>These repeat much of what is stated elsewhere. We would recommend this section is removed and the content placed elsewhere, as follows:</p> <p>Article 1: Add re-vamped purpose of the Constitution to the Introduction and Explanation</p> <p>Article 2: Add member content to Introduction and Explanation with hyperlink to member details</p> <p>Article 3: Rights of citizens/members of the public to be included in Introduction and Explanation</p> <p>Article 4: Full Council - Omit/merge with Responsibility for Functions. Re the policy framework - add the plans to the Budget Framework to create the Budget and Policy Framework</p> <p>Article 5: Include details of the Mayor and chairing the Council into the Introduction and Explanation or hyperlink to somewhere on the councils website</p> <p>Article 6: The general role of Overview and Scrutiny should be in the Introduction and Explanation. Terms of reference of Overview and Scrutiny Committee/Panels should be consistent with Article 6 and so merge within the new Responsibility for Functions section with other Committee Terms of Reference (TOR)</p> <p>Article 7: Executive arrangements should be in the Responsibility for Functions part.</p> <p>Article 8: Regulatory and other committees should be included in the part on Responsibility for Functions and should include composition, quorum and TORs.</p> <p>Article 9: We would move the details of the Standards Committee to the Responsibility for Functions part.</p> <p>Article 10: We would move Area Consultative Forums to the Responsibility for Functions part.</p> <p>Article 11: Sets out Joint Arrangements, which it is important to include in the Constitution – this introduction of the new part should be expanded to cover non-executive and mixed function joint arrangements, along with the details of the actual joint arrangements</p>

Issue	Proposed Approach
	<p>in which the council is involved.</p> <p>We would expect more details within the Responsibility for Functions part relating to Joint Arrangements (including LGSS etc.). The Constitution Direction suggests that the TOR of joint committees are included in the Constitution although where joint bodies have websites then these may be better hyperlinked, especially where the Council is not the host or lead authority.</p> <p>Article 12: Reference to the Audit Commission should be removed as this has been abolished. The TOR's should be moved to the Responsibility for Functions part and either refer to a Local Audit Panel or PSAA (as applicable) as being responsible for appointing the Council's external auditors.</p> <p>Article 13: The summary of officer roles and responsibilities would be better at the start of the officer delegations in the Responsibilities for Functions section. The details about the statutory officers fits better with the list of proper officer functions under various legislative provisions that should be highlighted in the Responsibility for Functions part. The role of officers could be summarised at a high level in the Introduction and explanation</p> <p>Article 14: Decision-making principles are important and should be relocated with the procedure rules, as part of the Access to Information Procedure Rules or the introduction to the Responsibility for Functions section.</p> <p>Article 15: Delegations in relation to Finance, contracts and legal matters properly sit within the Responsibility for Functions section and the Procedure Rules, where not already included.</p> <p>Article 16: This simply references the Members Allowance Scheme. We would mention this in the Introduction and Summary.</p> <p>Article 17: Likewise review and revision of the Constitution should be split between the Introduction and Explanation and the Responsibility for Functions section but we would increase the powers for the Monitoring Officer to make changes.</p> <p>Article 18: Suspension and interpretation of the Constitution should sit with the Procedure Rules. Publication details should be in the Introduction and Summary and accessible on the Website.</p>
Part 3 – Responsibility for Functions	<p>This would benefit from more comprehensive terms of reference for the Regulatory, Planning and Licensing Committees; along with relevant sub-committees and their TOR and membership etc. in a standard format – possibly tabular.</p> <p>We also recommend a consolidating the officer delegations into a single scheme.</p>
Part 3 – Responsibility for Functions – The Council	<p>This section should also make it clear that appointing the Council's auditors is now the responsibility of local audit panel or PSAA Ltd, pursuant to the Local Audit and Accountability Act 2014.</p>

Issue	Proposed Approach
Part 3 – Responsibility for Functions – The Cabinet	<p>This section could incorporate some of the useful content from Article 7, and we think it would be clearer to have all of the information in one place.</p> <p>Paragraph 7.7 of Article 7 should be included in the Responsibilities for Functions section (portfolios etc.).</p>
Part 3 – Responsibility for Functions - Scheme of Delegation to Members and Officers	<p>The current disparate parts of the Constitution should be brought together more coherently to provide clarity within a comprehensive Responsibility for Functions section. There are also areas which need addressing, particularly</p> <ul style="list-style-type: none"> • We would normally expect to see a full Proper Officer list of functions in the constitution and would suggest that some nomenclature is included to highlight such functions in the Responsibility for Functions section; • Consideration is given to the regulatory areas being stated more generically and with fewer references to legislation; • There are a number of other functions that need to be added in (e.g. staffing, licensing and member conduct sub-committees) and matters such as health and safety and data protection. <p>But otherwise than set out above and earlier in this note, no fundamental issues have been identified with the core arrangements for the allocation of member and officer decision making – the challenge is to make the documents more accessible future-proof and user friendly.</p> <p>Should local schemes of delegation be preferred then each relevant service area could be required to develop their own scheme (within a standard non-negotiable template) in specified deadlines to ensure their own local delegations work effectively.</p> <p>The local schemes would need to be regularly updated and also filed centrally so that if a member of the public wishes to see them the provisions are generally available quickly.</p>
Procedure Rules	<p>A number of suggested changes have been made in the report for the Codes, Protocols and Procedure Rules</p>
Provisions in relation to staff	<p>It is not clear who is responsible for taking disciplinary action against JNC Chief Officers. The Officer Employment Procedure Rules state that this is a matter for a Committee, but the TOR's of committees do not explicitly include such matters.</p> <p>Now that the 2001 Standing Orders Regulations have been amended from no disciplinary action being taken against a statutory officer, to protection against dismissal of a statutory officer without a report to Council including consideration of representations by a panel of Independent Persons, the Officer Employment Procedure Rules should be updated.</p> <p>The Independent Persons, under the Statutory Officers Terms and</p>

Issue	Proposed Approach
	<p>Conditions of service now need to meet as a separate panel. That panel is able to meet concurrently with any Statutory Officers Investigation and Disciplinary Panel that would meet to consider allegations of gross misconduct or other conduct that could lead to the dismissal of a statutory officer. For disciplinary action that is unlikely to amount to gross misconduct or that will be unlikely to lead to dismissal the Panel of the Independent Persons would not need to meet. There ought to be an appeal for action short of dismissal.</p> <p>The number of members of the Investigation and Disciplinary Committee needs to be in political balance with at least one member of the Cabinet (not a majority) being included.</p> <p>The Terms and Conditions of service allow for a process to rule out frivolous or vexatious claims or matters that should be dealt with elsewhere. We would recommend that this is undertaken by an officer (the Monitoring Officer unless the allegations are against the Monitoring Officer in which case we would recommend the Head of Paid Service or Deputy Monitoring Officer) in consultation with the chair of the relevant Committee/panel.</p> <p>The Committee/panel should also include the power to suspend the Chief Executive – it is assumed that below the level of Chief Executive then the Chief Executive, a Director or Assistant Director will suspend a relevant Officer.</p> <p>We would also recommend that the Committee/panel has the ability to deal with severance on mutually acceptable terms, in line with council policies.</p> <p>We assume that severance policies are referred to or set out in the Council's annual pay policy statement? If not they should be somewhere on the Council's website and they are required to be reviewed regularly.</p>

Bevan Brittan LLP
7 June 2018