

REVIEW OF THE COUNCIL CONSTITUTION 2018/19

Responsible Member: Councillor Morris (Chair of the Constitution Commission)

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Executive Summary:

To update the Constitution Commission on the work that has been carried out to review and improve the Constitution following the recent external health check to ensure it is up to date and easy to use.

1. Recommendations

1.1 The Constitution Commission is recommended to:

- (a) note the work of the Officer Working Group in reviewing the Constitution and providing proposed updates in line with the external health check;
- (b) note the outcome of the Member Survey set out at Annex A to this report;
- (c) agree to recommend to Council the proposed new format and Introduction to the Constitution, attached to this Report at Annex B;
- (d) agree to recommend to Council the updated Responsibility for Functions Format at Annex C;
- (e) agree to recommend to Council the updated Policy Framework and Local Choice Functions at Annex D;
- (f) agree to recommend to Council the Diagram of all Council Committees, Sub Committees and Panels with revised Terms of Reference at Annex E;
- (g) agree to recommend to Council the updated comprehensive Officer Scheme of Delegation at Annex E;
- (h) note that the existing Executive Scheme of Delegation to the Leader and Cabinet will be incorporated into the new format unchanged;
- (i) agree to carry out a Review of the Council's Rules of Procedure during October and November 2018;

- (j) agree to report on the work of the Commission and recommend a revised Constitution to the meeting of the Council on 23 January 2019, to enable the revised constitution to be published and effective from 1 February 2019; and
- (k) recommend to Council following the Review that the Monitoring Officer be authorised to publish a final clean version of the constitution (removing track changes, bold, correct any numbering, editing or formatting errors).

2. Introduction

- 2.1 The Constitution sets out how the Council operates, how decision are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The Council has a legal duty to publish an up to date Constitution and it should be reviewed annually with any necessary changes being normally considered at the annual council meeting.
- 2.2 The Constitution must contain:
 - (a) the Council's standing orders/procedure rules;
 - (b) the members' code of conduct;
 - (c) such information as the Secretary of State may direct;
 - (d) such other information (if any) as the authority considers appropriate.
- 2.3 A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within council 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.
- 2.4 The Council's Constitution currently comprises 307 pages organised into 7 Parts (many divided into a number of sections). In total there are 54 sections and schedules. The document is difficult to navigate and the alpha-numeric page referencing system is unwieldy. A member of the public who did not already know which part to look in would find it difficult to locate a specific section of the Constitution as there is a very limited search facility. The Council's Constitution can be found at the following link:
<http://miltonkeynes.cmis.uk.com/milton-keynes/PublicDocuments.aspx>
- 2.5 The Constitution is not always consistent with the Council's website. 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."
- 2.6 An LGA peer review into governance and scrutiny was undertaken in 2017. This included a number of recommendations of particular significance for the Constitution:

- (a) 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;
- (b) Review the remit of the scrutiny committees to ensure that all major Council business is covered and understood by all;
- (c) Nominate a senior officer to sponsor / champion each scrutiny committee;
- (d) Review current requirements for call-in – thresholds and rationale – to ensure that these remain fit for purpose.
- (e) the above principles ought to be incorporated into any review of the Constitution.

2.7 The Council established a cross party Constitution Commission to consider proposed changes to ensure the Constitution is kept up to date.

2.8 The Commission met on 31 January 2018 and commissioned an external review to check that the Constitution was up to date with legislation and best practice. The Commission met on 12 July 2018 to consider the findings of the external review. It agreed that a light touch review should be carried out following the external review recommendations. The Commission also commissioned an all member survey to alert all members to the review and to seek their early comments on how the Constitution could be improved.

3. **External Health Check Review**

3.1 Bevan Brittan LLP was commissioned following the Commission's meeting on 31 January 2018. The Commission requested 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.

3.2 The issues raised by members which prompted the external review included:

- (a) A document which has grown over years and is not internally consistent;
- (b) Desire to have a more easily understandable document that meets the needs of officers and members;
- (c) Concern at legal compliance and extensive statutory references;
- (d) Recognition that the constitution is not best serving the interests of the Council to deliver consistent, efficient and effective decision making;
- (e) An unwieldy document that could be simplified (currently split into 54 parts on the Council's website);
- (f) Reduce duplication, "clean up" and "slim down" the Constitution;
- (g) A structure which requires significant maintenance and is not future proof, with a need for all changes to be approved by Council;

- (h) Opportunities to reduce bureaucracy, that also helps members and officers to take decisions more robustly with more clarity over who takes which decisions;
 - (i) An LGA peer review on governance with specific recommendations for overview and scrutiny; and
 - (j) Desire to have a more living, working document
- 3.3 The Commission was keen that the outcome of the review would allow members and the public to have a better understanding and clarity around decision-making, including who takes decisions and how. Members wished any revisions to indicate where the line is drawn between councillors and officers in decision-making and how better to facilitate decisions and council business. There were also concerns to ensure that ward members involved at the appropriate level.
- 3.4 Where possible, the Commission requested more use of flow charts and diagrams in the Constitution outlining decision-making bodies and where possible hyperlinks to enable easy navigation. The Introduction should properly explain how the council takes decisions lawfully in respect of the Council's functions.
- 4. All Member Survey September 2018**
- 4.1 An on line survey comprising 10 questions was devised to alert all councillors to the review of the constitution and to seek ideas for improvement. The survey was launched to all 57 Councillors on the 30 August 2018 seeking responses by Friday 14 September. Paper copies of the Survey were also provided. Annex A1 sets out the Survey Questions.
- 4.2 15 responses have been received to date representing 25% of the membership. Overall the responses are non-committal on the effectiveness of the current Constitution. However there were many comments on how it could be improved. These are set out in Annex A2 for the Commission to comment on. It is suggested that the Commission respond to the suggestions that have been made to date.
- 4.3 It was agreed that there would be discussion in the political group meetings during October and November 2018 before taking a comprehensive report to Council in early 2019 setting out proposed amendments to improve and update the Constitution.
- 5. New Format for the Constitution**
- 5.1 It is proposed to simplify Parts 1 and 2 of the current Constitution comprising the Introduction and the Articles of Constitution into a new easier to read introduction. The Introduction will set out the purpose of the Constitution and have on line links to the detail of the Constitution. The Articles are not a legal requirement and repeat many of the points in the Introduction and elsewhere in the Constitution.

5.2 The revised Constitution would be available on the Council's website as a complete document. This will make searching for key terms within the document easier. The new format will also make use of internal hyperlinks to allow a user to navigate quickly across the document

6. **Researching Best Practice**

6.1 Officers have reviewed the Model Constitution for councils in England created in 2014 by the Lawyers in Local Government Group by the law firm, Womble Bond Dickinson. The intention was to create a user-friendly suite of documents which can be tailored easily by in-house lawyers and constitutional experts to suit any type of council.

6.2 The Model constitution documents are produced with the assistance of a software programme produced by software provider Exari. The documents, with the numerous variables and options within them, are organised into a decision tree, where the selection of a particular branch is determined by the answers to a series of questions presented in an online interview. The model constitution documents have provided some useful ideas to improve the presentation of the essential aspects of the Constitution.

6.3 Officers have also considered a range of Constitutions from the new unitary group of Councils including Cheshire East along with more established Constitutions adopted by London Borough Councils and Swindon Council.

7. **New Introduction; Contents and Glossary**

7.1 The Commission agreed at its meeting in July 2018 to recommend the consistent use of terminology across the Constitution with the following preferences – highlighted bold:

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

7.2 These terms are defined in the new Glossary. The proposed new Introduction which explains how to use the Constitution and its purpose and contents is set out at **Annex B** with the proposed new Contents page

8. **Responsibility for Functions**

8.1 This part of the Constitution sets out all the delegations from the full Council itself and to its committees, sub committees and officers. It also sets out those matters known as the Budget and Policy Framework which are reserved for the full Council to decide. There is also number of Local Choice Function that Council can decide to exercise itself or to delegate to a committee or a named officer.

9. **The Full Council Powers and Responsibilities – The Policy Framework**

9.1 By law, the Council must have a policy framework. This is a list of plans and strategies which are relevant to the Council's functions and are required by law to be decided by the full Council, usually on the recommendation of the Cabinet.

9.2 The current Milton Keynes Council policy framework includes 13 Policy Documents as follows:

- Future Libraries MK Plan (Annual Library Plan)
- Safer MK Plan (Crime and Disorder Reduction Strategy)
- Plans and Strategies which together comprise the Development Plan and Development Plan Documents
- Youth Justice Plan
- Licensing Authority Policy Statement
- The Corporate Plan
- The Local Transport Plan
- Comprehensive Equality Scheme
- Economic Development Strategy
- Housing Strategy
- Local Investment Plan
- Low Carbon Strategy
- Regeneration Business Plan and Strategy

9.3 The Milton Keynes Policy Framework includes a number of plans and strategies which do not as a matter of law need to be included. These are the annual Library Plan; the Low Carbon Strategy, and the Regeneration Business Plan and Strategy. 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. It is recommended that these three plans be removed from the Policy Framework

9.4 There are two further Plans which need to be included in the Policy Framework by law [Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853]. These are the following which need to be added as part of this review:

- 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

9.5 Annex D sets out a proposed updated Policy Framework for the Commission to consider.

10. **Local Choice Functions**

10.1 These are certain functions of the Council which can be delegated to the Cabinet, a committee or a named officer. The Council has discretion as to how best to organise these matters and they usually form part of a table in the Constitution. The current Local Choice Table is out of date. An updated Table is set out in Annex D for members to approve.

11. **Committees' Terms of Reference**

11.1 The external review has recommended that there should be a diagram showing all the Council's committee and sub-committees and that each Committee has its membership and terms of reference set out in the current format of the Standards Committee in Article 9. The review also noted that 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 subcommittee of the Standards Committee. A diagram showing all the Committee and updated Terms of Reference are set out in Annex C.

12. **New Local Audit Panel**

12.1 The Council will have to establish a new Local Audit Panel to reflect the requirements of the Local Audit and Accountability Act 2014 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. Advice from the Council's Corporate Director Resources is awaited on this aspect.

13. **Officer Scheme of Delegation**

13.1 Currently there is no consolidated Scheme of Officer Delegation included within the Constitution. Delegations to Officers are scattered throughout the document, including:

- (a) Article 13 – Officers (sets out in broad terms the Chief Executives officer responsibilities, Monitoring Officer, CFO, and Assistant Director of Democratic Services, Director of Children's Services and the Director of Adult Social Services).
- (b) 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.
- (c) 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.

- (d) Decisions regarding development control are in a Scheme of Delegation which is specific to development control dated 21 June 2017.
- (e) 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.
- (f) The Assistant Director Democratic Services is empowered to form a Panel for dealing with appeals against dismissal, grading and grievances.
- (g) The Responsibility for Local Choice Functions includes delegations to various officers.
- (h) 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.
- (i) There is a table of financial limits at page V12 of the Leader's Executive Scheme of Delegation.
- (j) 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. There is no Proper Officer list as required under the Local Government Act 1972

13.2 There is no requirement to list delegations to officers by delegating body, or to list executive and non-executive powers separately. However the Council is strongly recommended to consolidate all the Officer Delegations into a single Scheme of Officer Delegation so that it is clear who is responsible for which function. A consolidated document has been prepared based on the current arrangements at Annex E for members to approve. This new document also corrects the following issues:

1. Reserve powers for the Chief Executive to exercise all officers delegated functions in the absence of relevant officers.
2. Reserve powers for the Chief Executive to exercise all executive functions where the Council has not elected a Leader and the post is vacant.
3. Reserve powers for Corporate Directors to implement decisions and take all actions deemed necessary to implement executive and non-executive decisions.
4. Powers for Corporate Directors 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.
5. Powers for Corporate Directors to potentially supply to 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).

6. Powers for the Monitoring officer and other designated Chief Officers 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.
7. 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.
8. An Officer and a lead cabinet member needs to be designated as 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.
9. An Officer and lead cabinet member needs to be designated to be responsible for health and safety matters.

14. **Future Work and Next Steps**

- 14.1 The Constitution Commission is asked to consider and approve the proposed new format and contents for the revised Constitution. Work on updating the Council's Codes; Protocols and Rules of Procedure is underway as suggested in the external review. Progress on these matters will be reported to the next meeting of the Commission on 24 October 2018.
- 14.2 This work currently includes updating the Public Speaking at Development Control Committee; the Contract Procedure Rules and the Financial Regulation. Work is also needed to update the Officer Employment Procedure Rules to make it clear who is responsible for taking disciplinary action against JNC Chief Officers.
- 14.3 The Commission are invited to suggest any further areas of the Rules of Procedure they would wish to review as part of the next phase of work. It is proposed to report fully to Council on the 23 January 2019 with recommendations to adopt a new revised Constitution to come into effect before the 2019/20 year.

15. **Implications**

15.1 Policy

Keeping the Council's Constitution up to date and in a user friendly format will support the Council's Corporate Priorities, Vision and Values.

15.2 Resources and Risk

There are no immediate resource implications

	Capital	N	Revenue	N	Accommodation
	IT	Y	Medium Term Plan	N	Asset Management

15.3 Legal

Section 37 of the Local Government Act 2000 sets out the duty of the Council to prepare and keep up to date its constitution as follows:

- “(1) A local authority which are operating executive arrangements or alternative arrangements must prepare and keep up to date a document (referred to in this section as their constitution) which contains— (a) such information as the Secretary of State may direct, (b) a copy of the authority’s standing orders for the time being, (c) a copy of the authority’s code of conduct for the time being under section 51; and (d) such other information (if any) as the authority consider appropriate.
- (2) A local authority must ensure that copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours.
- (3) A local authority must supply a copy of their constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.”

15.4 Other Implications

None identified.

N	Equalities/Diversity	N	Sustainability	Y	Human Rights
Y	E-Government	Y	Stakeholders	N	Crime and Disorder

Background Papers: Milton Keynes Council Advice Note – Summary of Constitutional Review June 2018 Bevan Brittan
 Cheshire East Council Constitution 2018
 Swindon Council Constitution 2018
 Lawyers in Local Government Model Form of Constitution
 Created by Womble Dickenson Dees

Annexes: Annex A – Member Survey Questions and individual comments
 Annex B - Proposed new format and Introduction to the Constitution
 Annex C - Updated Responsibility for Functions Format with Diagram of all Council Committees, Sub Committees and Panels with revised Terms of Reference
 Annex D - Updated Policy Framework and Local Choice Functions
 Annex E - Updated comprehensive Officer Scheme of Delegation