

AUDIT AND GOVERNANCE COMMITTEE



Report subject	BCP Constitution
Meeting date	23 January 2020
Status	Public Report
Executive summary	To recommend changes to the Constitution of the Council.
Recommendations	<p>It is RECOMMENDED to Council that:</p> <p>(a) the additions and amendments to the BCP Council Constitution as set out in this report be approved and incorporated within the BCP Constitution;</p> <p>(b) that necessary and consequential technical and formatting related updates and revisions to the Constitution be made by the Monitoring Officer in accordance with the powers delegated to her.</p>
Reason for recommendations	Update and review of the BCP Constitution.

Portfolio Holder(s):	Councillor Viki Slade, Portfolio Holder for Resources
Corporate Director	Julian Osgathorpe, Corporate Director, Resources
Contributors	Tanya Coulter, Director, Law and Governance and Richard Jones, Head of Democratic Services
Wards	All
Classification	For Recommendation to Council

Background

1. The Terms of Reference of the Audit and Governance Committee include 'Maintaining an overview of the Council's Constitution and governance arrangements in all respects'.
2. In discharge of this responsibility the Committee established a Working Party of five of its Councillors.
3. The Working Party met on three occasions between the end of October 2019 and January 2020.
4. The Working Group considered a schedule of issues identified in the period since the formal establishment of BCP Council. These issues had been identified by a range of different sources and many of them have been the subject of much debate since the Constitution was adopted and the new arrangements implemented. These were considered by the Group at its meeting on 30th October 2019.
5. The Working Group also consulted with all members of the Council seeking their views on the types of issues that should be included in the review and their comments on the issues already identified. These were considered by the Group at its meeting on 25th November 2019. The most recent meeting of the Group took place on 8th January 2020 and the Group considered that the following issues and proposals should be taken forward for debate and recommendation to the Audit and Governance Committee.

Statutory Officers Disciplinary arrangements

6. To comply with relevant Regulations, Councils are required to have in place arrangements to manage disciplinary issues relating to, and potential dismissal of, Statutory Officers (the Head of Paid Service/Chief Executive; Chief Finance Officer

and Monitoring Officer). These arrangements are required to enable proper structured investigation and disciplinary measures to take place and to provide the required level of independent input into the process. The national negotiating body for senior officers has agreed a model framework and process which accords with the Regulations. The framework required is the establishment of a standing Investigation and Disciplinary Committee ('IDC') and the creation of an 'Independent Persons Panel'. The existing Appeals Committee (with slightly revised Terms of Reference) will provide the forum for the required appeals process. This requirement was understood by the Shadow Authority and the aim at the time was to ensure arrangements were in place within the first year of the new Council.

7. The Working Group were of the view that the number of Councillors on the 'IDC' should be seven and that the Councillors selected to serve on the Committee should normally have appropriate experience in terms of length and nature of service as a Councillor and in terms of their personal professional background.

8. It is recommended that the Terms of Reference for the Investigation and Disciplinary Committee ('IDC') set out in **Appendix A** of this report be adopted and included within the BCP Constitution. It is further recommended that an Independent Panel is established consisting of the three Independent Persons appointed by the Council pursuant to the Localism Act requirements. For reference purposes the Guidance and Model Procedure which it is recommended the Council adopt is contained within the Chief Executives Handbook. The Handbook can be viewed at <https://www.local.gov.uk/sites/default/files/documents/Chf%20Exec%20Handbook%2013Oct16.pdf>

9. It is recommended, in addition, that the following additional clause be added to the Terms of Reference of the existing Appeals Committee [Part 2 Rule 7.1 (f)]:

The Appeals Committee will have responsibility for determining appeals relating to disciplinary action against in respect of the relevant Statutory Officers.

All Councillors to sit on at least one Committee

10. The View of the Working Group is that all Councillors should sit on at least one Committee. The opportunity exists to consider in the future whether a maximum number of Committees per Councillor might also be appropriate.

11. It is recommended that the following be added to the Constitution [Part 4D Sub Part A Rule 1].

All Councillors will sit on at least one Committee or Panel of the Council.

The inclusion of copies of Minutes of all Committees in the agenda for full Council meetings.

12. The Working Group noted the significantly improved arrangements in place for accessing electronically the agenda and minutes of Committees. Members also, of course, have the ability, either formally or informally, to ask questions about the minutes of any Committee.

13. It is recommended that the requirement [Part4D Sub Part A Rule 8] that copies of the minutes of all Committees should be included within the agenda for the meeting of full Council should be deleted.

Voting on Appointments

14. The Constitution currently provides that voting on appointments should be by secret ballot although this provision, and whether it should continue to apply in BCP Council, has been the subject of considerable discussion.

15. It is recommended that the decision on whether the provision within the Constitution requiring voting on appointments to be by secret ballot should be retained or deleted should be determined by a vote at the Full Council.

16. If this approach is adopted by the Council it is suggested that the formal vote should be held at the next meeting of the Council when Members can receive a report setting out the background and the range of options for consideration.

Councillors 'calling-in' applications to Planning Committee

17. There is a view, which is supported by the Working Group, that Councillors should have the maximum time in which to request that a planning application should be considered by the Committee rather than be determined at Officer level.

18. The Working Group consulted on this matter with the newly appointed Head of Planning for BCP Council. The Working Group discussed the relevant "start date" for the call-in period; whether if amendments are made to an application there should be another call-in period; whether residents should have the right to call-in decisions to Committee rather than leaving the matter to ward councillors; and whether retrospective applications should always be dealt with by Committee.

19. Following the discussion, the Working Group considered that the following should be recommended:

- that the call-in period should commence when electronic publication of the application is put onto the website;

- that where there are amendments to the plans which require a further publication period, that councillors should be able to have the right to call-in the application during this publication period if it hasn't already been called in;
- that where a certain number of signatories are obtained to object to a proposal of those living, working or studying in the area that the application be considered by Committee where the objections are based upon planning grounds. It was considered that the number should be 20, and that the Head of Planning should have the formal authority to make the decision as to whether the objections are based upon planning grounds;
- the matter of retrospective applications should be considered further and additional proposals suggested for future discussion;
- the Head of Planning should have wider discretion within the Constitution to refer matters for consideration by Committee to ensure the Head of Planning is not constrained in this regard where they regard the matter to require a councillor decision rather than a delegated decision. The current wording of the Constitution is considered very restrictive in this regard and could conceivably prevent matters being referred to Committee by officers where officers may consider it appropriate for Committee to make a decision.

Meeting dates and times

20. A calendar of meetings for the next Municipal year commencing in May 2020 has been submitted to Council.

21. The Working Group supported development of a consensus towards agreeing meeting times that were acceptable across the spectrum of Councillors but accepting the different needs of individuals and the range of non-Council responsibilities and commitments that each had.

22. Chairmen of individual Committees should be aware that consideration should always be had to guarding against meetings that are overlong and which could thereby have an effect upon the quality of decision making.

23. The Working Group accepted that the location of meetings will sometimes, on an exceptional basis, need to be different from the venue in the Calendar dependent upon the subject matter being considered.

Public participation and access – Petitions, Questions and Statements at Council and Committee meetings

24. To clarify the position on receipt and processing of Petitions submitted by the public, the Working Group recognised the benefit of consolidating existing provisions relating to Petitions from the public.

25. The Working Group supported the proposal for a Petitions Scheme produced in parallel with the Constitutional provisions to provide clear advice to the public.

26. Changes also reflect the introduction and role going forward of the Transport Advisory Group and to reflect the work which has already been done by the Planning and Licencing Committees towards developing a protocol for their particular functions. Petitions relating to Planning and Licensing applications are not part of the Petitions Protocol and so should continue to be dealt with in accordance with the Planning and Licencing Protocols.

27. The Working Group considers that at full Council the current limit on the number of formal questions that a member of the public can ask should be limited to a maximum of four questions in any one Municipal year.

28. It also considers that the number of formal statements at full Council should be similarly limited to four statements in any one Municipal year. This reflects the current position.

29. It considers that questions and statements at Council can relate to Council business generally but that questions and statements to Cabinet and to Committees should be accepted only if they relate to an identified item of business on the agenda for that particular meeting, although it was agreed that this could cause potential issues for Overview and Scrutiny Committee where it was important that members of the public should be able to bring forward proposals. It was discussed at length and a view taken that in most cases questions could be linked to the item of the "Forward Plan" on the agenda for Overview and Scrutiny which may alleviate this risk, however there were some concerns on this aspect and it was agreed that this would require further discussion potentially at the full Audit and Governance Committee.

30. It is recommended that in Part 4D of the Constitution 'Appendix 6' be replaced with a new Appendix 6 as set out in **Appendix B** of this report and including the Petitions Scheme as set out in **Appendix C** of this report.

Recording of votes

31. When the position is reached that all meetings are streamed there will be immediate clarity about the way in which individual Councillors are casting their votes and the streamed meetings will be available through the website.

32. Discussion at the Working Group focused on the immediate issue of the public not knowing in many cases how their representative voted on a matter and whether there was a way of recording who voted in what way in every case at meetings. It was agreed that if this were possible and was a way of so recording manually on each occasion how members voted, then this should be the recommendation. Officers agreed to consider and provide further information at the meeting of the Audit and Governance Committee to aid consideration of this matter.

Audit and Governance Committee

33. At the meeting of the Audit and Governance Committee on 14 November 2019 the Committee received an appraisal and comparison of its own existing Terms of Reference compared with recommended best practice as set out in the Chartered Institute of Public Finance and Accounting ('CIPFA') 'Audit Committees' document (2018 Edition). Following the meeting, a revised set of Terms of Reference was produced.

34. It is recommended that the revised Terms of Reference for the Audit Committee as set out in **Appendix D** of this report be adopted and included within the BCP Constitution.

BCP Shadow Authority Interim Provisions

35. Article 14 of the Constitution described the interim arrangements during the transition period from the BCP Shadow Authority and it is recommended that this Article should now be deleted.

Technical and administrative updates

36. Throughout the process of review a number of technical and typographical corrections and amendments have been identified. These necessary and consequential technical and formatting related updates and revisions to the Constitution can be made by the Monitoring Officer in accordance with the powers delegated to her.

Issues that still remain outstanding

37. Maintaining the Constitution as an up-to-date and effective document is a constant and ongoing process.

38. There are further issues which have been identified but which are not included within this report but need to be the subject of further discussion with Members as time goes on.

Summary of financial implications

39. There are no financial implications arising from the recommendations in this report.

Summary of legal implications

40. The Constitution of the BCP Council complies with relevant legislation.

Summary of human resources implications

41. There are no human resources implications.

Summary of environmental impact

42. There is no environmental impact.

Summary of public health implications

43. There are no public health implications.

Summary of equality implications

44. The Constitution of the BCP Council sets out the rights of public access to the democratic process and the proposals are intended to increase the ease of access for the public and to further widen engagement amongst all groups.

Summary of risk assessment

45. The Constitution is a legally required document which prescribes the procedural and democratic arrangements for the proper governance of the Council.

Background papers

Appendices

Appendix A - Proposed Terms of Reference for the Investigation and Disciplinary Committee ('IDC')

Appendix B - Proposed replacement Appendix 6 of Part 4D of the Constitution

Appendix C - Proposed Petitions Scheme

Appendix D - Proposed Terms of Reference of Audit and Governance Committee

Joint Negotiating Committee for Local Authority Chief Executives Handbook at <https://www.local.gov.uk/sites/default/files/documents/Chf%20Exec%20Handbook%2013Oct16.pdf>