

# AUDIT AND GOVERNANCE COMMITTEE



Report subject	<b>Report of the Constitution Review Working Group - Changes to the Constitution</b>
Meeting date	11 March 2021
Status	Public Report
Executive summary	<p>The report summarises the issues considered by the Constitution Review Working Group and sets out a series of recommendations arising from the Working Group for consideration by the Committee.</p> <p>Any recommendations arising from the Committee shall be referred to full Council for adoption.</p>
Recommendations	<p><b>It is RECOMMENDED that:</b></p> <ul style="list-style-type: none"><li><b>(a) the views and recommendations of the Constitution Review Working Group, as set out in this report at paragraphs 8, 10, 13, 17 and 25, be supported;</b></li><li><b>(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.</b></li></ul>
Reason for recommendations	<p>To make appropriate updates and revisions to the constitution following consideration by the Working Group.</p>

Portfolio Holder(s):	Councillor Drew Mellor (Leader of the Council)
Corporate Director	Graham Farrant (Chief Executive)
Report Authors	Richard Jones, Head of Democratic Services Susan Zeiss, Director of Law and Governance and Monitoring Officer
Wards	Council-wide
Classification	For Recommendation

## 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 Constitution Review Working Group of five of its Councillors. The current members of the Working Group are Councillor Williams (Chairman), Councillor D Butt (Vice-Chairman) and Councillors Beesley, Brooke and Trent.
3. Since its establishment, the Working Group has continued to meet on a regular scheduled basis.

## Code of Conduct for Councillors – Process for consideration of complaints

4. The Working Group considered the arrangements for the initial assessment of allegations of breach of the Code of Conduct. The Chairman of the Standards Committee also attended the meeting. The Working Group was presented with a form of re-wording, for discussion, that would introduce into the arrangements a process empowering the Monitoring Officer to filter complaints at a stage before Councillors on the Standards Committee become involved. The circumstances under which the Monitoring Officer could potentially exercise this are set out within the proposed draft. This would be in contrast to the current process where all complaints are considered by Councillors.
5. The opportunity was also highlighted for consideration of whether the current process generally should be included and set out within the Constitution rather than, as it is now, contained within a process protocol agreed by the Standards Committee.
6. For the avoidance of doubt, the role of the Standards Committee in reviewing the Code of Conduct is confined to the Code itself, whilst the provisions relating to the arrangements for assessing complaints sits with the Audit and Governance Committee.
7. The Working Group were in support of the proposal presented as well as the inclusion of the whole process of complaints determination within the Constitution and there was agreement that this should be recommended to Audit and

Governance Committee. A copy of the revised arrangements are appended to this report as Appendix 1.

- 8. The Working Group recommended that the revised arrangements for the consideration of complaints submitted in accordance with the Council Code of Conduct, including a process of filtering complaints by the Monitoring Officer, as set out in Appendix 1 to this report, be approved and that the whole process be set out within the Constitution.**

#### **Procedural – Public Statements to Committees**

9. The Working Group considered a suggestion that the maximum number of words permitted within a formal question submitted by the public should be increased from the existing 100 word limit.
- 10. The Working Group recommended that the current 100 word limit on public Statements be retained.**

#### **Welfare payments for Councillors**

11. There is no provision to compensate Councillors (whether or not they are in receipt of Special Responsibility Allowances) for absence from their roles, due, for example, to sickness or maternity. It was confirmed that Councillors were not employees and therefore not covered by employment protection legislation and that the allowances paid to councillors was compensation for loss of earnings and for expenses.
12. It was, however confirmed, that the BCP Council 'Employee Assistance Programme' ('EAP') was available to Councillors in the same way that it was to employees. This was not something that all Councils were able to make available to Councillors and there was support for advertising this more widely.
- 13. The Working Group recommended that the current Member Allowances be retained, confirming no provision for sick pay or maternity pay for Councillors, but that availability of the BCP Employment Assistance Programme be advertised more actively to entitled Councillors.**

#### **Covid-19 Response Period – Constitution Article 15**

14. The Working Group considered suggestions from the Monitoring Officer for consolidation of the governance issues necessitated in response to the COVID-19 pandemic situation and contained within Article 15. This Article of the Constitution would be retitled 'Covid-19 Response Period Arrangements'.
15. The Working Group agreed that the amendments to Article 15 as proposed be submitted to the Audit and Governance Committee on 11 March 2021 and that, if adopted, should subsequently go straight to consideration at the following meeting of the full Council.
16. The key changes to the Article were revising references to the Covid-19 'Interim Period' to 'Response Period'; the inclusion of a new Procedure Rule and appendix for the operation of virtual meetings; the removal of urgent decision making provisions; and provisions to respond to changes in legislation for virtual meetings.
- 17. The Working Group recommended that:-**
  - (a) the revised Article 15 (Covid-19 Response Period Decision Making Arrangements), as set out at Appendix 2 to this report be approved;**

- (b) a new Procedure Rule 40 and associated appendix be established which reads “40. Protocol for the establishment and running of virtual meetings during the Covid-19 Response Period. The protocol is set out in Appendix 7”. A copy of the proposed protocol is set out in Appendix 3 to this report.**

**Councillor involvement through the Appeals Committee in hearing appeals by staff against dismissal.**

18. A discussion report was presented to the Working Group by the Head of Democratic Services and the Director of Organisational Development outlining existing provisions within the Constitution. Comparative information with other SW Regional Authorities was presented. It appeared that of ten SW Councils questioned, one had Councillor involvement in staff grievance appeals; four in disciplinary appeals and five in capability based appeals.
19. It was agreed that the separate arrangements in place in respect of the Chief Executive and other Statutory Officer roles were excluded from this review which meant that the main focus was upon the level of Councillor involvement in Staff Appeals through the Appeals Committee. The Terms of Reference of the Appeals Committee were set out and the comments of the Chief Executive reported.
20. Since April 2019 the Appeals Committee had met six times and there were currently two appeals in progress. It was noted however that the number of appeals could increase.
21. The Director of HR explained that the nature and level of Councillor involvement in staff appeals was not prescribed by legislation but remained a matter for local choice. Advantages of councillor involvement included a ‘fresh pair of eyes’ on a particular case. By contrast, however, participation in these appeals by Councillors involved a significant amount of work for them and particularly in the level of preparation required. Appeal Committee members would also need to have a role in any subsequent Tribunal Hearing that might result. These were often complex and emotional matters and Councillors involved would need to have significant training.
22. In the wider arena of staff terms and conditions, the Director of Organisational Development explained that a new draft policy was currently in the course of preparation as part of the process of harmonisation of terms and conditions across BCP Council. This was particularly necessary whilst staff from each of the different legacy Councils remained subject to different rules about staffing appeals. It was clear that the Constitution Review Working Group would need to have an input into development of this policy.
23. The views of the Working Group were varied and mixed with expressions of support for continuing and discontinuing Councillor involvement. There was support for the role of Councillors in bringing an additional dimension and ‘fresh eyes’ to the process. By contrast there was a view that employment was a matter for the Chief Executive as Head of Paid Service and not something that members should be involved in.
24. During the discussion the Working Group particularly noted the potential for conflict in timetable terms between the role of the Working Group and the work being undertaken at Officer level for harmonisation of staff terms and conditions and in this case particularly, harmonisation of terms and conditions relating to rights of appeal for staff.

- 25. Members of the Audit and Governance Committee may therefore wish to defer making a recommendation to Council on this matter whilst the harmonisation of terms and conditions process is underway.**

#### **Update on future activity**

26. In addition to the specific issues that it has been asked to consider, the Working Group has developed a forward plan of wider review work. These are set out below for the information of the Committee.

#### **Monitoring Officer review**

27. The Working Group received from the Monitoring Officer the Action Plan for the process of the wider review of the BCP Constitution with areas suggested for the scope of the Review. Members welcomed the submitted timetable.
28. Consideration was given to the most appropriate process for conducting the review to ensure that it was undertaken in a manageable format.
29. The Working Group agreed that the review be presented to the Audit and Governance Committee in sections but brought together as a composite report to Council. The target date for the report to Council to be 14 September 2021. The Working Group agreed that the Financial Regulations (recently reviewed through a parallel process) would be excluded from this review. The Working Group also approved the priority for the wider review which would include Article 15 – Covid-19 Response Period Decision Making; Meeting Procedure Rules; Principles of Decision-making; Codes of Conduct for both Members and Officers; and Delegations.
30. There was recognised need for constructive engagement with all Councillors and Officers who had particular interests would have the opportunity to come forward to the Audit and Governance Committee at the appropriate point. There was also potential for discussion between the Monitoring Officer and the Political Group Leaders about the process.

#### **Chairman of Audit and Governance Request for Items**

31. The Working Group considered the list of items submitted by Councillors in response to the email from the Chairman of the Audit and Governance Committee. It was apparent that the majority of the items submitted would be incorporated into the wider Constitution Review. Individual Councillors who had submitted items would be kept updated on progress. Exceptions to this were the suggested need to review the procedure for Declarations of Interest; the promotion of on-line voting and the operation of the Standards Committee. The need for involvement from the Chairman of the Standards Committee was recognised.

#### **Electronic voting**

32. There was discussion about progress with implementation of electronic voting at meetings particularly at full Council where the currently required roll-call process was causing delay and increasingly unsatisfactory. This facility would be provided through the secure 'Modern Gov' app currently in the course of being rolled out to councillors. All councillors would be provided with training followed by opportunities to practice within a test environment.

**Summary of financial implications**

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

**Summary of legal implications**

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

**Summary of human resources implications**

35. There are no human resource implications arising from this report.

**Summary of sustainability impact**

36. There are no sustainability implications arising from this report.

**Summary of public health implications**

37. here are no public health implications arising from this report.

**Summary of equality implications**

38. The Constitution of the BCP Council sets out the rights of public access to the democratic process. Where appropriate the Equality Officer was engaged on relevant issues.

**Summary of risk assessment**

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

**Background papers**

None

**Appendices**

Appendix 1 – Arrangements for Initial Assessment of Allegations of Breach of the Code of Conduct for Councillors

Appendix 2 - Revised Article 15 (Covid-19 Response Period Decision Making Arrangements)

Appendix 3 - Protocol for the establishment and running of virtual meetings during the Covid-19 Response Period