

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Report of the Constitution Review Working Group - Changes to the Constitution
Meeting date	1 December 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> <p>This report is to be considered by a special virtual non-decision making meeting on 1 December 2021 which shall be live-streamed for the public viewing, and subsequently at the ordinary meeting of the committee on 2 December 2021. The outcome of the virtual meeting shall form the basis of the recommendations on 2 December.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none">(a) the views and recommendations of the Constitution Review Working Group, as set out in this report at paragraphs 19, 25, 36, 44, 60, 67, be supported;(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.
Reason for recommendations	To make appropriate updates and revisions to the constitution following consideration by the Working Group.

Portfolio Holder(s):	Councillor Drew Mellor (Leader of the Council and Portfolio Holder for Finance and Transformation)
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	Not applicable
Classification	For Recommendation

Background and Method of Working

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. Since its establishment, the Working Group has continued to meet on a regular scheduled basis. The Group receives advice from the Monitoring Officer.
3. From time to time, as required, Officers and Members with specialist responsibility such as the Chairs of the Planning Board and the Licensing Committee, for example, have been invited to have an involvement.
4. The Working Group has considered suggestions received from a wide variety and range of sources including input from Councillors and from Officers. Prior to commencement of its work, the Chairman of the Audit and Governance Committee wrote to all members of Council asking them to submit items for discussion and consideration.
5. In order to provide independent challenge and to draw on best practice, the Monitoring Officer engaged Weightmans Law Firm to undertake a comprehensive review. The feedback and suggestions from this independent review have been incorporated into the proposed changes.

Format

6. Many of the requests from councillors and officers have been previously considered by the Working Group, referenced to the Audit and Governance Committee and, where appropriate, debated and approved by Council. These are included within the current published version of the Constitution available on the Council website.
7. The current version of the Constitution was last updated to reflect the changes agreed by the Council on 22 June 2021.

8. Since June, a number of other proposed changes, though carefully considered, have not yet been approved by the Audit and Governance Committee. These are set out within this report.
9. Subject to these matters, a copy of the revised Constitution is enclosed with this report and, once considered by the Audit and Governance Committee will be submitted to Council for adoption.
10. The Constitution will include a number of formatting and presentation changes which will improve the way it is used and applied, including the introduction of indexing, although this will be applied following final adoption.
11. Two versions of the new proposed Constitution are being made available. The version appended within the agenda is a clean version which is easier to read. An additional version has also been published as a supplement which shows the proposed changes using the 'track changes' feature. For ease of reading typographical corrections and changes which simply involve the movement of specific provision elsewhere within the Constitution are not necessarily shown. Members should rest assured that where provisions have been moved and not highlighted the content has not been altered.
12. The remainder of this report makes specific references to key changes considered by the Constitution Review Working Group. The following section references Constitution-wide changes with subsequent sections referencing changes by the relevant parts of the Constitution.

Constitution-wide Changes and Principles

13. The structure and content of the existing Constitution was developed at significant pace in the months leading to Local Government Review in early 2019 and whilst it was functionally complete, it was necessary at the time to develop specific provisions and rules in isolation and often referenced as appendices.
14. This has made the operational use of the Constitution confusing at times, necessitating cross-referencing of various document parts to fully interpret and draw a conclusion on specific issues. As a consequence, the content of individual appendices has been reviewed and incorporated within the core document to ease reference.
15. The revised Constitution remains a complex document, however, the changes are considered to be an improvement.
16. Furthermore, the Constitution refers to various protocols adopted by individual committees, etc., however, these have not previously formed part of the Constitution document. It is not proposed to change the delegation to adopt these protocols, however, for completeness and ease of reference, these have now been incorporated into the new version.
17. It was previously acknowledged that gender-specific pronouns would be replaced during the fundamental review of the Constitution. These have been removed in this version together with the replacement of Chairman and Vice-Chairman with Chair and Vice-Chair.

Part 1 – Constitution Summary and Explanation

18. There are no significant changes proposed to this part of the Constitution. This part is an introduction to the Constitution and acts as a guide to readers navigate the

component parts. The changes marked provide clarity and correct anomalous references.

19. RECOMMENDATION

It is RECOMMENDED that the proposed changes to Part 1 (Constitution Summary and Explanation) be adopted.

Part 2 - Articles of the Constitution

20. The articles now include an improved content schedule to ease reference and navigation to individual component articles.
21. A number of changes throughout the articles and other parts have been drawn from Weightmans drawing on best practice. These are shown within the document.

Order of business at Council

22. It was noted that the order of business at the Council meeting was not something that was currently prescribed in the Constitution. Although there was the opportunity to canvass the views of members and particularly the Chairman of the Council. The majority view of the Working Group was that the 'Questions from Members' item should be at the end of the meeting.
23. It was agreed by the Working Group that this matter should go forward to the A&G Committee. Article 4 (Full Council), paragraph 4.3, includes draft wording which seeks to reflect the ambition of the proposal.

Article 15 (Covid-19 Response Period)

24. Article 15, which was introduced in response to the Covid-19 pandemic and subsequent temporary legislation, made specific decision-making provisions to permit decision-making arrangements to continue, in the main without in-person meetings. The temporary legislation has now expired and this Article is no longer required. There were some provisions within the temporary Article relating to the publication and access to information and notices principally by electronic means, which the Constitution Review Working Group wished to be maintained and these have been incorporated in the Constitution accordingly.

25. RECOMMENDATION

It is RECOMMENDED that the proposed changes to Part 2 (Articles of the Constitution) be adopted.

Part 3 - Responsibility for Functions

26. The structure of this Part of the Constitution has been remodelled taking into consider best practice guidelines and incorporates, in particular, a more detailed scheme of delegation to officers.

Overview and Scrutiny Development

27. The Working Group considered a paper which set out options to establish an additional Overview and Scrutiny Committee focussed on environmental matters and which would be known as the 'Place Overview and Scrutiny Committee'.

28. Informal discussions with all Overview and Scrutiny Chairs identified an appetite to establish an additional Overview and Scrutiny Committee, transferring some of the responsibilities from the Board's remit.
29. Effective Governance workshops were held in November 2020 and April 2021 for all councillors, with support provided by the LGA. A general theme in the comments made by councillors was the need for non-executive councillors to be more engaged in decision making, and importantly at an earlier stage.
30. Engagement has also been undertaken with political group leaders and non-aligned councillors on potential changes to the O&S Structure, from which there was general support. The proposed remit of an additional committee is set out in Part 3, paragraphs 4.7 and 4.8. The committee would meet and operate on the same basis as the two existing Overview and Scrutiny Committees.
31. The establishment of a more focussed scrutiny committee on place related and climate change issues, and in turn a more defined remit for the O&S Board, should give rise to greater development of councillors' knowledge as they focus on a smaller collection of topics. A natural consequence of this should be more targeted work planning, which may enable the committees to focus on their own work suggestions, rather than predominantly Cabinet related scrutiny. Improved agenda capacity would also provide potential for greater and more effective space for community insight to play a bigger role in scrutiny. This has often been the first element to be lost from the scrutiny process when agendas are regularly too full.
32. The Authority originally agreed a total of 22 scheduled O&S meetings per year, plus one working group per committee at any one time. This was based on the resources available from Democratic Services and other officers in the wider council to provide support.
33. Since 2019, the Council has absorbed 10 additional ordinary O&S Board meetings per year, whilst ongoing organisational review of staffing structures and budget constraints has resulted in an overall reduction in staffing levels within the team. The introduction of a new O&S committee comprising 11 members, meeting 6 times per annum, would be offset by a reduction of Board meetings returning to 10 per annum. The net result would be a total of 28 meetings per year, not including special meetings. Whilst this is still a net increase of six above the number originally agreed for O&S in 2019, it is considered to be more sustainable for officers to support than the current arrangements.

Financial implications of Additional Committee

34. If an additional Committee is established within the Overview and Scrutiny structure, there will be an additional Special Responsibility Allowance for the Chair of that Committee. The current SRA paid to the Chair of the Health and ASC Committee and the Children's Services Overview and Scrutiny Committee is £7,706. Whilst the payment for Chair of the O&S Board is £10,275. A review of the remunerations may be required through the independent remuneration panel, however, it is likely that the new Committee Chair will attract the same SRA as the existing committee Chairs of £7,706. This is not budgeted and would be a growth in the Members Allowances' budget.
35. If supported by the Council, it is suggested that the new Committee should be established from the Annual Meeting of Council in May 2022. This will not only allow for budget provision to be agreed, but would also provide an opportunity for the Overview and Scrutiny Board to review its Work Plan over the next few months.

36. RECOMMENDATION

It is RECOMMENDED that a Place Overview and Scrutiny Committee comprising 11 members, meeting six times per annum be established from the Annual Meeting of Council in May 2022 with the remit as outlined in Part 3, paragraphs 4.7 and 4.8 of the proposed Constitution.

Appeals Committee - Employee Appeals - member involvement in Employee appeals against dismissal

37. The Constitution Working Group were invited to consider a change in the Council's Constitution in relation to employment appeals against dismissals. The report, which was presented by the Head of Human Resources and Organisational Development, provided background to a proposal that staffing appeals against dismissal should be heard by an independent senior BCP Council Officer at tier 3 level supported by an HR professional advisor, rather than the Member Appeals Committee.
38. The report included reference to legal and best practice advice and it was confirmed that there was no legal requirement for Councillors to be involved. Results of a survey undertaken by SW Councils demonstrated that only 4 out of the 10 respondent Local Authorities had appeals that were led solely by Councillors.
39. There was a unanimous view within the Working Group that elected Members brought an essential independence to the process which often included the benefit of their own personal experience and background.
40. The Working Group agreed that the present system of appeals involving Councillors through the Appeals Committee should be retained, however, it was considered that the Audit and Governance Committee should consider the matter further and determine whether to recommend a change to Council.
41. The Committee is therefore requested to consider whether the existing arrangements for employment appeals against dismissals should be changed.

Scheme of Delegation to Officers

42. The existing scheme has been updated to capture greater detail of specific delegations to officers to provide greater transparency and accountability. This change is a significant change from the current arrangements and may require further revision to reflect operational requirements.
43. The scheme also includes additional references and appendices relating to RIPA, the designation of proper officer and councillor and officer indemnities.

44. RECOMMENDATION

It is RECOMMENDED that the proposed changes to Part 3 (Responsibility for Function and Officer Scheme of Delegation) be adopted.

Part 4 Procedure Rules

45. The existing Constitution contains 14 parts, sub-parts and appendices to the Procedure Rules. These are:-

Part A – Access to Information Procedure Rules

Part B – Cabinet Procedure Rules

Part C – Overview and Scrutiny Procedure Rules

Part D – Meeting Procedure Rules

Sub-Part A – Council Meetings

Sub-Part B – Committee and Sub-Committee Meetings

Sub-Part C – General Provisions

Plus a series of 7 separate appendices relating back to one of the Sections or Sub-Parts listed above.

46. This structure has proved to be unnecessarily complex and increased the risk of incorrect rules being applied. The fundamental review of this structure has been a key focus of the work of the Working Group and resulted in a significantly simplified product.
47. It has still been necessary to maintain the four component sections to the Procedure Rules, however, incorporating all the sub-parts and appendices within the core suite of rules has proved significantly advantageous. References to applicable legislative provisions and constraints of procedure rules in the margins will also assist with interpretation and application.

Specific Changes to Procedure Rules

48. The procedure rules relating to the behaviour of councillors in meetings has been revised to explicitly provide for an initial warning to a councillor who is perceived to be misconducting themselves, before proceeding to a formal motion to silence or remove the councillor. This is consistent with the procedures for disruptive behaviour by the public.
49. The procedure rules relating to voting have also been altered to require the person presiding at the meeting to invite any councillor who may wish to vote against or abstain from a vote to so indicate where there is clear majority in favour of a proposal.

August Recess

50. Councillor J Butt had been invited to the Working Group to outline her proposals for the Constitution to prescribe a period of annual recess during the month of August and although recognising the need to retain essential meetings such as Planning and Licensing, outlined the benefits for Councillors and staff of the proposal. The Working Group considered the practical implementation issues including the need to allow for preparation and pre-scrutiny of matters being considered by scheduled Committee in September.
51. It was agreed by the Working Group that this matter should go forward to the Committee for consideration. Part 4D (Meeting Procedure Rules), paragraph 1.1 includes draft wording which seeks to reflect the ambition of the proposal.

Member Questions at Council

52. The Working Group reviewed the current practice and the impact that this part of the agenda was having upon the effective conduct of Council business. There was agreement about maintaining the important opportunity for Councillors to raise questions themselves or to highlight specific issues on behalf of their constituents. The current practice needed to be carefully managed to prevent a negative impact.

53. The Working Group considered how questions remaining unanswered at the 30 minute cut-off point should be dealt with. It was noted that to include the responses within the Minutes would require specific provision within the Constitution. There was also the possibility of using the IT system to quickly circulate responses after the meeting
54. The Working Group agreed that
- (a) Subject to retention of Chairman's discretion, 30 minutes was the right length of time within the Council meeting for Councillors questions;
 - (b) No speech, question or answer should exceed 3 minutes (that is, to extend existing 3 minute limit on speeches rule to include questions and answers - maximum 3 minutes each)
 - (c) Further discussion was required around how to deal with questions still remaining unanswered after the 30 minute time cut-off had been applied.
 - (d) And that, subject as set out above, this matter should go forward to the A&G Committee
55. Part 4D (Meeting Procedure Rules), paragraph 13.5 includes draft wording which seeks to reflect the ambition of the proposal.

Voting at Council (where there is consensus)

56. The Working Group supported the proposal to not hold a full count of votes when there was a clear consensus at a council meeting. The proposal "That where there is a clear majority in favour of a proposal the Chairman will ask if any Councillor wishes to vote against or abstain from a proposal" was supported.
57. It was agreed by the Working Group that this matter should go forward to the A&G Committee. Part 4D (Meeting Procedure Rules), paragraph 17.1 includes draft wording which seeks to reflect the ambition of the proposal.

Petitions at Council

58. The Working Group considered a request to refer petitions automatically to another committee or body of the Council. The Working Group reviewed the provisions of the Petition Scheme and considered that there was sufficient scope and flexibility to respond appropriately to petitions received.
59. The Working Group agreed that no changes should be made to the existing Petition Scheme.

60. RECOMMENDATION

It is RECOMMENDED that the proposed changes to Part 4 (Procedure Rules) be adopted.

Part 5 – Financial Regulations

61. Part 5 (Financial Regulations) was not considered as part of this review.

Part 6 - Code of Conduct and Protocols

62. This part of the Constitution has previously only contained the Code of Conduct for Councillors, the Protocol for Councillor / Officer Relations and the Arrangements for dealing with allegations of breach of the Code of Conduct for Councillors.
63. In addition to the above, there are a series of other Protocols which other committees adopt which relate to governance arrangements but are not contained within the Constitution. The Working Group is proposing that these additional protocols are published within this part of the Constitution for ease of reference and completeness, whilst recognising that any review and update should be retained by the respective committee.
64. The additional protocols added to Part 6 includes:-
- Planning Committee - Site Visit Protocol
 - Licensing Committee and Sub-Committee - Protocol for Public Speaking
 - Licensing Committee and Sub-Committee - Protocol for Public Representation at Virtual Meetings
 - Licensing Committee and Sub-Committee - Site Visit Protocol
65. In addition, the Working Group considered a new Local Code of Best Practice relating to Planning Matters applies to every councillor irrespective of whether or not they are a member of the Planning Committee. It also applies to all officers. It is supplemental to, and should be read in conjunction with, the Code of Conduct for Councillors and as such is considered to form an integral part of Part 6. Future iterations of this Code should be considered and recommended by the Audit and Governance Committee for adoption by Council.
66. The Working Group further considered the arrangements for dealing with allegations of breach of the Code of Conduct and considered that the Monitoring Officer should have extended remit in the initial assessment of complaints to reject, dismiss and agree an informal resolution where it is considered appropriate. In addition, the Working Group supported the inclusion of the criteria used when determining that no further action should be taken on a complaint.

67. RECOMMENDATION

It is RECOMMENDED that the proposed changes to Part 6 (Code of Conduct and Protocols) be adopted.

Part 7 - Member Allowances

68. Part 7 (Members Allowances) was not considered as part of this review part of this review

Summary of financial implications

69. Paragraph 34 identifies that the establishment of an additional Overview and Scrutiny Committee will require the payment of an additional Special Responsibility for the appointed Chair. The estimated cost of the SRA is £7,706 per annum. It is proposed that the new committee is established from May 2022 and therefore the

additional amount would required inclusion in the 2022/23 Revenue Budget for Members Allowances.

Summary of legal implications

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

Summary of human resources implications

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

Summary of sustainability impact

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

Summary of public health implications

73. There are no public health implications arising from this report.

Summary of equality implications

74. 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

75. 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

Draft Revisions to Part 1, 2, 3 4 and 6 the Constitution