

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Review of the Council's Constitution - Recommendations of the Constitution Review Working Group
Meeting date	7 September 2023
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 including proposed changes to the overview and scrutiny arrangements.</p> <p>Any recommendations arising from the Committee shall be referred to full Council for adoption.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none"> (a) in relation to Issue 1 (Overview and Scrutiny Structure and Arrangements) the proposed amendments to Parts 2, 3, 4 and 7, as set out in Appendix 3 to this report, be approved with an implementation date of 29 September 2023; (b) in relation to Issue 2 (salary Sacrifice Scheme for Councillors):- <ul style="list-style-type: none"> (i) the proposed amendment to insert a new Section 8 into Part 7 (Scheme of Members' Allowances), as set out in paragraph 35 to this report, be approved; (ii) the Chief Executive be delegated authority to determine from time-to-time which benefit schemes are to be made available to councillors; (c) in relation to Issue 3 (Schedule of Council Meetings – Change of Date, Time and Venue), the amendment to Part 4D, Procedure Rule 1, as set out in paragraph 39 to this report, be approved; (d) any 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:	Councillor Vikki Slade (Leader of the Council and Portfolio Holder for Dynamic Places)
Corporate Director	Ian O'Donnell (Director of Resources)
Report Authors	Richard Jones (Head of Democratic Services)
Wards	Not applicable
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 Phipps (Chair) and Councillors Andrews, Beesley, Castle and Connolly. Since its establishment in July 2020, the Working Group has continued to meet on a regular basis to consider requests for change. The Group receives advice from various officers including the Monitoring Officer and Head of Democratic Services. From time to time, as required, Officers and Councillors with specialist responsibility have been invited to have an involvement.
3. Since its establishment, the Working Group has continued to meet on a regular basis and completed various phases of its work. Recommendations that were agreed by Council have been implemented and incorporated into a revised and updated version of the Constitution and published on the Council's web site.
4. The Working Group has considers suggestions received from a wide variety and range of sources including input from Councillors and Officers.

Format

5. Throughout the work of the Group a 'Forward Plan' of issues has been maintained and added to as additional issues have arisen. This approach will continue to be adopted for capturing future issues.
6. Any proposed changes to the Constitution are shown with track changes in the appendices to this report (and where changes are proposed to individual paragraphs these are embedded into the body of this report in red outline boxes) to assist members identifying the proposed changes. Page number references are to pages within the current Constitution.

Options Appraisal

7. The Working Group considers carefully whether or not changes are necessary on each issue raised. If supported the Working Group determines the proposed alterations to the wording which forms the basis of the recommendations to the Audit and Governance Committee. This report sets out the proposed changes following those deliberations.
8. For ease of reference, each matter considered will be referred to as an Issue with a corresponding number which will be referenced through the report and recommendations.

ISSUE 1 – OVERVIEW AND SCRUTINY STRUCTURE AND ARRANGEMENTS

9. The existing arrangements for Overview and Scrutiny were introduced in May 2022 following discussions held over several meetings with a final decision being taken at a reconvened meeting of Council on 10 May 2022.
10. The structure in place at the current time is set out in Appendix 1 detailing the areas of responsibility of each committee, which moved from a three board/committee structure to four committees.
11. Following the elections in May 2023, the new administration indicated a desire to review the arrangements for Overview and Scrutiny, Planning Committee, Traffic Regulation Order decision-making, models of governance and community engagement. This paper focuses on the Overview and Scrutiny Committee arrangements which was indicated as a priority but it is recognised that these other ambitions are still to be reviewed in the current municipal year and will have potential resource implications.

Existing Overview and Scrutiny Arrangements

12. The principal headline components of the existing arrangements for overview and scrutiny committees are as follows:-
 - there are four overview and scrutiny committees;
 - each committee has equal status with no overarching responsibility for cross-cutting issues;
 - each committee shall hold five ordinary meetings per municipal year; and
 - each committee may commission two concurrent working groups.
13. It was suggested that the benefits of these arrangements were to move away from a focus on pre-cabinet report scrutiny and to increase the ability of each committee to undertake topic-based commissioned scrutiny through task and finish and working groups.
14. However, as a consequence of these arrangements, chairs of committees have felt it necessary to convene additional special meetings to consider priority matters. These unscheduled meetings place additional pressures on the limited resources available. It is fortunate that the committees have not seen it necessary to utilise the additional task and finish and working group facilities as resources do not exist to support eight concurrent scrutiny groups.
15. Best practice for scrutiny recommends that arrangements should be in place to deal with cross-cutting business. This is currently delivered by discussion and negotiation between respective chairs which could be time-consuming and has the potential to introduce inconsistencies.

Proposed Model for Overview and Scrutiny

16. As indicated in paragraph 3, the new administration has indicated a desire to review the arrangements seeking to strengthen the Overview and Scrutiny function. To achieve this it is proposed to:-
 - rename the Corporate and Community Overview and Scrutiny Committee to the Overview and Scrutiny Board;
 - the Board to have overall responsibility for Overview and Scrutiny function oversight, development and reporting;
 - the schedule of meetings for the Board be increased to ten meetings per municipal year to shadow meetings of Cabinet;
 - the frequency of meetings for other committee remaining at five per municipal year;

- the remit of the Place Overview and Scrutiny Committee be narrowed slightly, thus increasing the ability of the committee to examine issues in greater detail from a sustainability perspective;
 - the Place Overview and Scrutiny Committee being permitted to appoint two independent co-opted non-voting members to the committee. The selection and recruitment process to be presented and approved by the committee, if approved by Council.
17. The Working Group considered these principles, discussed the name and remit of each committee and determined that of the existing functions, those falling under the portfolio for Dynamic Places should transfer from the existing Place O&S Committee to the Board. Appendix 2 to this paper sets out a revised structure which reflects the Working Group deliberations and recommendations, including the change of name of the Place Overview and Scrutiny Committee to the Environment and Place Overview and Scrutiny Committee.
 18. Under the revised model, cross-cutting business and call-in arrangements would fall within the remit of the Overview and Scrutiny Board. This was considered to provide both clarity and reduce the risk of inconsistency but also allow for more timely consideration of business with frequent meetings and develop specialist knowledge of call-ins at the Board.
 19. It is proposed that the new arrangements are implemented from 29 September 2023 to allow the meeting of the Corporate and Community Overview and Scrutiny Committee scheduled for 20 September 2023 to proceed under existing arrangements.

Resources

20. The Democratic Services structure was designed to support the service approved by the Shadow Authority. In 2021 the service budget was reduced by 14.9% to support the corporate budget pressures. There have been many changes to the decision-making arrangements since 2019 which have had little or no regard of the wider impact on available resources and the service is now considered to be at maximum capacity.
21. The service is seeking to drive improvements, support recommendations arising from the DLUHC assurance review and implement the Overview and Scrutiny Action Plan considered by the respective committees over recent months.
22. An increase in meeting numbers without a match in the level of officer resource will require that support is diverted from these activities and other proactive planning of effective scrutiny sessions to the core business of only servicing meetings, agendas and minute production. There is a risk that the value of Overview and Scrutiny outputs will be limited as a result.
23. Delays in the delivery of the Overview and Scrutiny Action Plan will impact on improvements and upholding the associated statutory guidance.
24. The Department for Levelling Up, Housing and Overview and Scrutiny state in their statutory guidance for councils and combined authorities that

“The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority. Ultimately it is up to each authority to decide on the resource it provides, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it.”
25. It is estimated that the additional full-year resource requirements to support the increased Overview and Scrutiny Board meetings will be £14,700. In addition, it is likely that the Special Responsibility Allowance for the Chair of the Board will need to be increased following a review by the Independent Remuneration Panel. The full-year

additional cost, based on previous allowances, will be £2,700. These costs will both be subject to National Pay Award increases.

26. The proposal is to implement the changes from 19 September 2023 and as a consequence, it may be necessary to incur additional expenditure in 2023/24 to support the additional meetings of the Board. The service will look to absorb any additional 2023/24 costs within available resources.
27. It should be noted that if the wider changes to committees are introduced, it is estimated that the full-year additional manpower costs will be in the region of £56,000 (including the £14,700) referred to above. These additional costs only include the impact upon Democratic Services. Additional meetings of Overview and Scrutiny Board will have implications council-wide for officer attendance, and changes to other decision-making arrangements may have additional impacts on other services including planning, legal and highways. These will be incorporated into future papers on these respective areas.

Constitution Changes

28. The proposed changes to the Overview and Scrutiny arrangements require alterations to various parts of the Constitution. These are too numerous to embed within this report and have therefore been appended to this report at Appendix 3. The changes are shown in red and include changes to the following Parts.
 - Part 2, Article 6 (Overview and Scrutiny), [Pages 2-13 to 2-16]
 - Part 3A (Responsibility for Functions), [Pages 3-5 to 3-17] (Function of Overview and Scrutiny), and consequential changes to [3-24 to 3-27 (Functions of the Cabinet and Cabinet Members)
 - Part 4A (Access to Information Procedure Rules, [Page 4-6 only] (Interpretation)
 - Part 4C (Overview and Scrutiny Procedure Rules, [Pages 4-25 to 4-34]
 - Part 7 (Scheme of Members' Allowances), [Pages 7-2 to 7-3]

29. RECOMMENDATION

It is RECOMMENDED that in relation to Issue 1 (Overview and Scrutiny Structure and Arrangements) the proposed amendments to Parts 2, 3, 4 and 7, as set out in Appendix 3 to this report, be approved with an implementation date of 29 September 2023.

ISSUE 2 - SALARY SACRIFICE SCHEME FOR COUNCILLORS

30. The Council currently offers a range of salary sacrifice schemes for its staff, including a cycle to work scheme. Currently the schemes are only available to BCP Council employees. Consideration therefore needs to be given to whether to extend the Schemes to Councillors and how to give effect to this.
31. After enquires with HMRC and legal advice, it has been determined that whilst Councillors are eligible to participate in salary sacrifice schemes, there needs to be some form of contractual entitlement permitting them to do so.
32. BCP's contractual arrangement with its Councillors and, more specifically, the arrangement around remuneration is set out in Part 7 of the Constitution, the Members' Allowances Scheme. If a decision is reached to extend the salary sacrifice schemes to include councillors, it would be necessary to amend Part 7 of the Constitution to establish the contractual entitlement.
33. The proposed changes seek to insert a new section 8 into Part 7 (Scheme of Members' Allowances) setting out councillors entitlements, eligibility requirements and arrangements to recover any outstanding payments should a councillor vacate their office.

34. The individual eligible benefit schemes for councillors may change over time or new schemes may become available. As a consequence it would not be appropriate to specify this level of detail in the Constitution. It is proposed to delegate authority to the Chief Executive to determine the relevant benefit schemes for councillors.
35. The proposed changes to Part 7 (Scheme of Members' Allowances), inserting a new Section 8 (Salary Sacrifice) are set out below.

8. Salary Sacrifice

- 8.1. HMRC's view is that the same tax rules apply to elected members who hold office as a local councillor as they do for employees. Councillors are therefore permitted to give up part of their Basic Allowance and/or Special Responsibility Allowance in exchange for certain salary sacrifice schemes available at BCP Council.
- 8.2. Provided Councillors satisfy the various qualifying conditions, they may be entitled to access some of the various salary sacrifice schemes offered by BCP Council. Not all schemes will be available for Councillors to participate in.
- 8.3. In order to access salary sacrifice schemes, Councillors will be required to meet qualifying and affordability criteria in line with legislation and detailed by BCP Council. These criteria may be subject to change without notice.
- 8.4. Applications made by Councillors will be considered on a case-by-case basis, and BCP Council retains full authority in deciding whether to accept any requests.
- 8.5. In the event a Councillor is approved for any salary sacrifice scheme, this is strictly on condition that if they later leave their role as a Councillor, they will reimburse BCP Council any and all outstanding payments or early termination charges incurred in connection with their particular salary sacrifice scheme benefit. This includes authorising BCP Council to deduct any outstanding amounts from the Councillor's Basic and/or Special Responsibility Allowance before paying them the balance.

36. RECOMMENDATION

It is **RECOMMENDED** that in relation to Issue 2 (salary Sacrifice Scheme for Councillors):-

- (i) the proposed amendment to insert a new Section 8 into Part 7 (Scheme of Members' Allowances), as set out in paragraph 35 to this report, be approved;
- (ii) the Chief Executive be delegated authority to determine from time to time which benefit schemes are to be made available to councillors.

ISSUE 3 - SCHEDULE OF COUNCIL MEETINGS – CHANGE OF DATE, TIME AND VENUE

37. Procedure Rule 1 (Schedule of Meetings) to Part 4D of the Constitution [page 4-36] sets out the provisions relating to the scheduling of meetings of the council, the abilities of the Chair to convene extraordinary meetings for specific business and includes provisions permitting chairs of committees and cabinet to alter dates, times and locations of their respective meetings.
38. However, in respect of the later, there is a general presumption against altering the date, time and venue of council meetings but the Constitution is silent on the circumstances when this general presumption may not apply.
39. Although the general presumption against altering meetings will still remain, the proposal below seeks to clarify when it may be appropriate to alter the date, time or venue of a meeting of council and the process to be followed.

1. Schedule of meetings

- 1.1. Full Council will determine the annual schedule of meetings for the Council, Cabinet, Committees and Sub-Committees, including the date, time and location. Where practicably possible, the month of August should be avoided when scheduling meetings, briefings, workshops, training and extraordinary meetings. There will be a general presumption against alterations to the date, time and venue for meetings.
- 1.2. In the event of exceptional circumstances beyond the control of the council or where it would be detrimental to the effective delivery of council business to proceed with a scheduled meeting, the Chair, in consultation with the political group leaders, may alter the date, time and/or location of a meeting of council.
- 1.3. An Extraordinary Meeting of the Council can be called by the Chair, or five Councillors can ask the Chair, in writing, to call an Extraordinary Meeting. If the Chair does not agree, then those Councillors can call the meeting by giving written notice to the Monitoring Officer. The Monitoring Officer, in consultation with the Chair, may also call an Extraordinary Meeting.
- 1.4. When it is necessary to alter the date, time and/or location of the Cabinet, a Committee or Sub-Committee meeting, or to arrange a special meeting of the Cabinet, a Committee or Sub-Committee, the Monitoring Officer or appropriate Democratic Services Officer will consult the Leader/Chair of the relevant Cabinet, Committee or Sub-Committee before any action is taken. The Leader/Chair of the Cabinet, Committee or Sub-Committee will then determine the matter.

40. RECOMMENDATION

It is RECOMMENDED that in relation to Issue 3 (Schedule of Council Meetings – Change of Date, Time and Venue), the amendment to Part 4D, Procedure Rule 1, as set out in paragraph 39 to this report, be approved.

Summary of financial implications

41. The report details the additional cost of changing the Overview and Scrutiny structure with a full year cost estimated at £14,700 for direct manpower plus £2,700 for additional special responsibility allowances for the Chair of Overview and Scrutiny Board. The in-year cost for the remainder of 2023/24 are likely to be met from existing resources.

Summary of legal implications

42. The Constitution of the BCP Council complies with relevant legislation. Where appropriate, the Constitution references relevant legislation which underpins specific procedure rules.

Summary of human resources implications

43. The report highlights the additional manpower requirements to support the additional meetings resulting from the changes to the Overview and Scrutiny arrangements. The service will seek to absorb the additional in-year costs in 2023/24 but there will be additional resources required for 2024/25.

Summary of sustainability impact

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

Summary of public health implications

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

Summary of equality implications

46. The Constitution of the BCP Council sets out the rights of public access to the democratic process. Where appropriate the Equality Officer is engaged on relevant issues.
47. The proposed Constitution changes contained within this report do not impact directly or indirectly impact upon service users and as a consequence there are no equality implications arising from this report.

Summary of risk assessment

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



Background papers

Published works

Appendices

- Appendix 1 – Existing Overview and Scrutiny Arrangements
- Appendix 2 – Proposed Model for Overview and Scrutiny
- Appendix 3 – Proposed Changes to the Constitution in relation to Issue 1 (Overview and Scrutiny Structure and Arrangements)

Appendix 1 – Existing Overview and Scrutiny Arrangements

Corporate and Community Overview and Scrutiny Committee	Place Overview and Scrutiny Committee	Children's Services Overview and Scrutiny Committee	Health and Adult Social Care Overview and Scrutiny Committee
13 Members, 5 meetings per year	11 Members, 5 meetings per year	11 Members, 5 meetings per year	11 Members, 5 meetings per year
			
<p>CALL-IN WITHIN REMIT</p> <hr/> <p>PORTFOLIO AREAS</p> <p>Leader & Dynamic Places (partial) BCP Council Policy, Emergency Planning & Response, Equalities & Diversity, Constitution and Controls</p> <p>Deputy Leader & Connected Communities (partial) Community Involvement, Lived Experience & Engagement, Bereavement & Coroner Services, Relationships with Voluntary Sector, Economic Development & High Streets</p> <p>Customer, Communications & Culture (full) Customer Services & Contact, Websites, Communications, Marketing & Brand, Cultural Services & Cultural Compact, Museums & Libraries</p> <p>Finance (full) MTFP, Budget Setting & Management, Financial Controls, Commercial Operations including Car Parking, Financial Services, Revenue & Benefits, Audit & Management Assurances, Estates</p> <p>Housing & Regulatory (partial) Environmental Health, Community Safety, Trading Standards, Anti-Social Behaviour Enforcement, Liaison with Dorset Police & Fire Services, Licensing Policy</p> <p>Transformation & Resources (full) Transformation Programme, IT, Data & Programmes, People & Culture including HR Policies & Practices, Law & Governance, Elections</p> <hr/> <p>Plus Statutory Crime and Disorder Scrutiny</p>	<p>CALL-IN WITHIN REMIT</p> <hr/> <p>PORTFOLIO AREAS</p> <p>Leader and Dynamic Places (partial) Place Shaping, Strategic Planning & Local Plan, Local Transport Plan, Regeneration & Infrastructure, Relationships with Future Places and Bournemouth Development Company</p> <p>Deputy Leader & Connected Communities (partial) Planning Development Management</p> <p>Climate Response, Environment & Energy (full) Climate Action Plan & Response, Environmental Services, Refuse Collection, Street Cleansing, Waste Disposal, Grounds Maintenance, Parks & Gardens, Flood and Coastal Erosion Risk Management, Highways Maintenance</p> <p>Housing & Regulatory (partial) Housing Management & Landlord Services, Housing Strategy & Standards, Homelessness & Housing Need</p> <hr/> <p>Plus Statutory Flood Risk Management Scrutiny</p>	<p>CALL-IN WITHIN REMIT</p> <hr/> <p>PORTFOLIO AREAS</p> <p>Children and Young People (full) Children's Social Care, Education & SEND Programme, Liaison with Ofsted and DfE, Liaison with Schools, Liaison with Children & Young People, Children's Transformation Programme, Universities & Colleges,</p> <hr/> <p>Plus to act as the Council's Statutory Education Committee</p>	<p>CALL-IN WITHIN REMIT</p> <hr/> <p>PORTFOLIO AREAS</p> <p>Health & Wellbeing (full) Public Health, Adult Social Care, Commissioning & Procurement, Relationship with NHS and ICS</p> <hr/> <p>Plus Statutory Health Scrutiny</p>
CHAIRS AND VICE CHAIRS MEET REGULARLY TO MAINTAIN OVERSIGHT OF THE FUNCTION			

Appendix 2 – Proposed Model for Overview and Scrutiny

