

## Shadow Authority

### Bournemouth, Christchurch and Poole Shadow Executive Committee

10

Report Subject	<b>Constitution for BCP Council</b>
Meeting date	12 February 2019
Report Author	Tanya Coulter, Interim Monitoring Officer
Consultees	Governance Task & Finish Group Overview & Scrutiny Design Working Group Shadow Overview & Scrutiny Committee All members of the preceding councils Delivery Boards and work streams within the Programme Interim Section 151 Officer Chief Executive of BCP Council
Status	Public
Classification	For Consultation and recommendation to Shadow Authority
Key Decision	Non-Key Decision – Report for Consultation
Executive summary	<p>This Report sets out the steps taken to develop the proposed Constitution for BCP Council and summarises the key parts of the Constitution.</p> <p>The Shadow Executive Committee established a Governance Task and Finish Group to provide detailed Member engagement with the work being undertaken by Officers to prepare a Constitution for BCP Council.</p> <p>In addition the Executive Committee made it clear that the</p>

work to develop and agree an Overview and Scrutiny Function would be led by the Shadow Overview & Scrutiny Committee. This Committee established a Design Working Group which undertook detailed work to prepare the Overview & Scrutiny framework contained within the proposed Constitution.

Considerable engagement has taken place with Members and Officers of the preceding councils, and the detail is set out in this Report.

The Shadow Authority is required to adopt a Constitution to be effective from 1 April 2019.

The Constitution is structured into six Parts as follows:

Part 1: Summary and Explanation as to how the Council works

Part 2: Articles of the Constitution

Part 3: The bodies and individuals that can take decisions for the various functions the Council exercises

Part 4: Procedure Rules – detailed procedures, including the Financial Regulations, setting out how the Council's various bodies operate and how the public can engage with decision-making

Part 5: Councillor Code of Conduct

Part 6: Scheme of Councillors' Allowances

Part 6 – the Scheme of Councillors' Allowances, will be the subject of a separate report to the Shadow Authority by the appointed Independent Remuneration Panel. The Scheme adopted by the Shadow Authority at its meeting upon consideration of the IRP report will be incorporated into the Constitution at Part 6.

The aim of the Officers and Task & Finish Group has been to prepare a new Constitution which is fit for purpose, provides the foundation for good, effective and transparent decision-making and enables the public to understand how decisions are made, who makes them, and how they can get involved. The Overview & Scrutiny work in particular has developed a proposed function based upon an agreed set of principles and good practice, and enable all councillors and the public to engage in the decision-making and work of the new Council.

As this is a new Council will new councillors to be elected in May, Officers and the Task & Finish Group are keen to ensure that the Constitution provides a framework which

	can be developed and built upon by the new Council, and that it should be subject to detailed monitoring, evaluation and review during the first 12 – 18 months of the new Council.
<b>Recommendations</b>	<b>That the Shadow Executive Committee endorses and recommends to the Shadow Authority the Constitution for BCP Council as appended to this Report.</b>
Reason for Recommendations	To ensure that BCP Council has a Constitution adopted and effective from 1 April 2019 to enable the Council to operate lawfully, effectively and transparently in its decision-making and governance arrangements.

### **Background detail**

1. The Shadow Authority must adopt a Constitution before 1 April 2019 to enable it to operate lawfully. The proposed Constitution for the BCP Council is appended at **Appendix A**.
2. The Interim Monitoring Officer has worked with a team of Democratic Services Officers to develop the proposed Constitution. The Governance Task and Finish Group has led this process from a member perspective, and the Shadow Overview & Scrutiny Committee established an Overview & Scrutiny Design Working Group to undertake detailed work on the development of the Overview & Scrutiny Function contained within the proposed Constitution.
3. The Task and Finish Group and Overview & Scrutiny Design Working Group have been keen to ensure that all members have been engaged and had an opportunity to comment and provide input to the process and this has taken place in a number of ways, which are set out below.

### **Consultation and Engagement**

4. A Member Briefing took place on 20 November 2018 to which all members of the Bournemouth, Christchurch and Poole Councils were invited. This two hour session enabled the Interim Monitoring Officer to outline the proposed initial governance and committee structure and initial thoughts of the Task and Finish Group. The Chair of the Overview and Scrutiny Design Working Group presented the output from the Group's work to date and a representative from the Centre for Public Scrutiny attended to provide additional information and background to the proposals put forward by the Group. This Briefing was well attended and members present put questions and provided thoughts and

feedback on the night. In addition, they were encouraged to provide feedback in writing, and many did. These comments have been fully considered during the process to develop the proposal. This report provides the opportunity for consultation with the Shadow Executive Committee on decisions of the preceding authorities in Bournemouth, Christchurch and Poole.

5. Prior to this Briefing all members were sent information about the proposed governance and committee structure and Overview & Scrutiny function and were given an opportunity to ask questions and make comments in writing if they could not attend the Briefing.
6. Following further work on the draft and having considered the feedback from members a draft Constitution was considered by the Shadow Overview and Scrutiny Committee at its meeting on the 10 December 2018. Members were invited to attend and the draft Constitution was publicly available appended to a Report setting out the proposals. Members of the Committee, and members not on the Committee, were invited to comment and make proposals during the debate. The Task and Finish Group have considered the feedback from this meeting, and further feedback has been provided by some members since the meeting which has been helpful and incorporated into the proposal.

### **Summary and Purpose**

7. The Constitution is in a familiar format and contains six Parts as set out above in the Executive Summary. The purpose of the Constitution is to ensure that there is a clear governance framework and effective and accountable decision-making; clarity as to the procedures to be followed in respect of meetings and decisions; provisions to enable members and the public to engage and hold decision makers to account; and ensure financial management and probity, and ethical standards are promoted and maintained. There are numerous legal requirements as to procedure rules and provisions, which must be included, and the proposal complies with these requirements. Some of the key points to note are set out below.

### **Overview and Scrutiny Function**

8. The proposed Overview and Scrutiny arrangements are the result of lengthy and detailed work undertaken by the Overview and Scrutiny Design Working Group with the support of the Centre for Public Scrutiny. Papers which have been previously circulated to members, and which provide background to the principles agreed and the rationale for the proposed arrangements are appended to this Report at **Appendix B**.
9. The proposal of the Design Working Group was for four Committees within the structure, with an emphasis on commissioned focused work which adds

value and responds to needs and risks as they arise. The four Committees suggest by the Working Group were the Overview and Scrutiny Board; Health and Adult Social Care Overview and Scrutiny Committee; Children's Services Overview and Scrutiny Committee and Listening Committee.

10. The Governance Task and Finish Group considered this proposal and welcomed the nature and extent of work undertaken by the Design Group and Overview and Scrutiny Committee. It reflected on the options and is supportive of the objectives and principles set out, and the overall structure and ways of working suggested, to enable added value and focus to Overview and Scrutiny work in the future BCP Council.
11. The Task and Finish Group is supportive of the need to ensure the new Council has a mechanism or mechanisms in place to listen, engage and consult with its residents and businesses. It takes the view however that there are a number of different ways in which the new Council can do this, including by way of a formal Committee as proposed; by way of more locally based mechanisms; or through function-based groups or Committees. As this is such a crucial issue to get right in the future, it considers that this needs to be fully considered early in the new Council so that effective public engagement mechanisms are established within the structure. The Task and Finish Group has reflected and recognises that public engagement is an important aspect for the Council and therefore recommend that the new Council should be asked to take forward the recommendations from O&S to design the most appropriate mechanism that will deliver the desired outcomes.
12. Article 6 of the Constitution summarises the arrangements, and the detailed terms of reference for each of the three proposed Committees are contained within Part 3 of the Constitution.

### **Regulatory Committees**

13. The Constitution establishes a Planning Committee and Licensing Committee for the new Council each consisting of 15 Councillors. The Task and Finish Group considered the various and different views of members in regard to the proposal to establish one Planning Committee. It considered whether to opt for two or more Committees, however it decided that there are key benefits to one Committee. These include the need for consistent decision-making on development control matters; development of expertise and knowledge of the whole BCP area by members of the Committee; the need to ensure that applicants and the public know who is responsible in all cases for planning decisions. The Constitution provides a key role for Ward Councillors to raise matters to be considered by the Committee if certain criteria are met, and specific detailed provisions in respect of public and applicant engagement in

the Committee will be produced and agreed by the Committee once established to ensure it is facilitated in an open and fair manner.

14. The Licensing Committee is established and will operate within a strict statutory framework pursuant to the Licensing Act and other legislation. It will consist of 15 Councillors and will establish sub-committees to manage the regular consideration of applications which come for consideration. This system already operates effectively in each of the preceding Councils.

### **Leader/Cabinet**

15. The Structural Changes Order states that the Council must establish a Leader and Cabinet model of governance. There is no discretion at this point in its inception for BCP Council to consider alternative arrangements. It can do so at a later date pursuant to the legislation should it so wish.

16. The Constitution sets out the role of the Leader and Cabinet, and role of each Cabinet Member who will be given a Portfolio – area of responsibility and accountability - by the Leader. Cabinet Members can in certain circumstances make individual decisions. The Leader and Cabinet are responsible for all Executive Functions and the Constitution in Part 3 sets out how this will operate.

17. Part 3 of the Constitution sets out some key delegations to Officers and the framework within which the Leaders and Chief Executives Scheme of Delegations will operate.

### **Other Committees**

18. Other Committees are established by the Constitution. These are the Audit & Governance Committee; Appeals Committee and Standards Committee.
19. The Articles in Part 2 of the Constitution set out the purpose of each, and Part 3 provides the detailed terms of reference and delegated authority of each Committee.

### **Procedure Rules and Financial Regulations**

20. The Procedure Rules at Part 4 of the Constitution set out some key statutory requirements, including the Access to Information Procedure Rules at A. The Rules state how each Committee will run its business, and the rules of debate. They set out the rights of the public to make statements, ask questions and submit petitions, and the rights of Councillors to ask questions and add items to agendas. It details the Call-In rights of Councillors where decisions of the Leader, Cabinet and Individual Cabinet Members have not

been taken in accordance with the relevant rules and/or decision-making principles and the way in which Overview and Scrutiny Committees will undertake their work.

21. The Financial Regulations are contained within the Constitution as Part 4A and appended to this Report at **Appendix C**. They have been developed by the Finance, Audit, Procurement and Legal Officers from all three preceding Councils and will be regularly reviewed and monitored by the Sections 151 Officer.

### **Code of Conduct**

22. The Council is obliged pursuant to the Localism Act 2011 to adopt a Code of Conduct relating to standards of behaviour of Councillors and adopt arrangements by which complaints about the behaviour of Councillors can be made and dealt with.

23. Part 5 of the Constitution sets out the proposed Code of Conduct for Councillors which incorporates the current content of Codes within the preceding Councils. It also includes a Code of Officer/Councillor relations, and arrangements for consideration of complaints. It is suggested that these arrangements are reviewed, and that further Guidance is issued by the new Standards Committee when it is established rather than pre-empting the views of the Committee at this stage in respect of the way in which it considers the new Council should proceed in future.

24. Article 15 of the Constitution sets out the slightly different arrangements for the Interim Period. This is the Period between 1 April 2019 and 6 May 2019. The 120 Councillors who are currently members of the Shadow Authority will be members of the BCP Council until 6 May 2019. Annual Council for the BCP Council will take place in the period following 6 May 2019 – likely to be 21 May 2019 – and this is when the Leader, Cabinet and members of Committees structure will be formally appointed.

### **Interim Period**

25. It is a requirement to have arrangements in place during the Interim Period. These proposals are that the Shadow Executive Committee will become the Cabinet of the new BCP Council in accordance with the Structural Changes Order provisions. The Shadow Overview and Scrutiny Committee will continue as it currently exists losing the Shadow status. This is also the proposal in respect of the Shadow Standards Committee.

26. There needs to be for legal purposes Committees to deal with Planning, Audit and Licensing. It is proposed that for Planning purposes there will be three committees consisting of the current members of those committees within the preceding councils – which are not expected to have to meet during this period. The Audit and Governance Committee is also not expected to have to meet and would consist of those members of the current three preceding Councils Audit/Audit and Governance Committees. There is required to be one Licensing Committee and the proposal is that this interim Committee consists of 15 Councillors currently members of Licencing Committees in the preceding Councils to be nominated at the Shadow Authority meeting. It is likely that Sub-Committees of this Committee will need to meet and provision is made for the appointment of these Sub-Committees. This is very much an interim position to ensure lawfulness during this period.

### **Ongoing Evaluation and Review**

27. As already referred to above, the Task and Finish Group and Officers engaged in the development of the Constitution are clear that this proposal will ensure the Council will be operating within an effective and clear governance framework. They also agree that there are some aspects in particular which would benefit from review during the first 12-18 months of the new Council's existence. These are:

- a. The Officer Employment Rules and whether a Committee of the Council should be established to consider disciplinary and dismissal matters affecting Senior Officers. The current position remains that Full Council would need to establish a Committee should the need arise. Some Councils have established Committees to undertake this role and other work within the staffing arena. This review could be undertaken alongside other HR work to develop policies and procedures for the new Council over this period.
- b. The Code of Conduct and arrangements for considering complaints. There is learning to be considered from cases dealt with locally and nationally, and recent consultation nationally in respect of these matters. It is suggested that the new Standards Committee consider this issue and review the arrangements and undertake work to bring recommendations back to Full Council within this initial 18 month period.
- c. The role of Councillors in respect of personnel appeals. This is something undertaken differently in each preceding Council. In Christchurch there is no Councillor involvement in personnel appeals; in Bournemouth Councillors are involved in all appeals about personnel

matters brought by Officers; and in Poole Councillors are involved in appeals where the decision appealed against has resulted in dismissal of some kind (including conduct and redundancy dismissals). The proposal within the Constitution is to retain an Appeals Committee to consider appeals where the decision results in a dismissal – as in Borough of Poole. It is suggested that this is reviewed and Councillors and others are consulted as it is recognised that there is a divergence of views and differing practice nationally.

### **Summary of Finance and Resourcing Implications**

28. There are no direct financial implications arising from this Report. The implications of the proposed Scheme of Allowances are set out in a separate Report to the Shadow Authority and in the Budget Report.

### **Summary of Legal Implications**

29. The Shadow Authority must adopt a Constitution for the 1 April 2019. The Constitution appended to this Report complies with legal requirements.

### **Summary of Human Resources Implications**

30. There are no specific Human Resources implications arising from the Report. In general terms, the Head of Paid Service and his Management Team will be responsible for ensuring that sufficient resources are in place to enable the governance arrangements set out in the attached documents to operate effectively.

### **Summary of Environmental Impact**

31. There are no specific issues arising in respect of this Report.

### **Summary of Equalities and Diversity Impact**

32. The Constitution provides a facility for public questions and engagement and the new Council will be recommended to promote engagement from all sections of the public and enable protected groups to engage with the Council and its decision-making process in a positive and accessible way.

33. Provisions for public and Councillor access to information and meetings have taken account of the need to mitigate the impact of processes and procedures on particular groups within the community. The impact will be kept under review as part of the Democratic Services function's Equality and Diversity action plan.

### **Background Papers**

None

**Appendices**

Appendix A – Constitution

Appendix B – Overview and Scrutiny Design Papers

Appendix C – Financial Regulations