

TITLE	Constitution Update
FOR CONSIDERATION BY	Council on 21 March 2024
WARD	(None Specific);
LEAD OFFICER	Monitoring Officer - Andrew Moulton

OUTCOME / BENEFITS TO THE COMMUNITY

Reviewing the Council's Constitution on a regular basis ensures that it is relevant and fit for purpose.

RECOMMENDATIONS

That Council:-

1. **Notes** the progress towards completing a fundamental review of the Constitution.
2. **Agrees** the following changes to the Constitution, as recommended by the Monitoring Officer via the Constitution Review Working Group that:
 - 2.1 Anti-Fraud Policies update, as recommended by Audit Committee on 29 November 2023 (see section 4 of report)
 - 2.2 Shareholder Committee (see section 5)
 - 2.3 Key decisions (see section 6)
 - 2.4 Planning Committee – terms of reference and terminology (see section 7)
 - 2.5 Changes to Directors' job titles (see section 8)

SUMMARY OF REPORT

1. Council Constitutions provide a framework within which people can understand their own responsibilities, and the responsibilities of others. They allow decision-making, within a democratically elected body, to be consistent, accountable and transparent. They facilitate strong, effective relationships. Good constitutions also provide an anchor for strong organisational and political cultures in which people work well together, and in which decision-making is well-understood by (and visible to) the public.
2. Constitutions are also rulebooks. They set out much, but not all, of the technical detail of how a council's main decision-making systems operate.
3. Historically, the Council has adopted an incremental approach to maintaining its Constitution with regular reports to Council (via the member Constitution Review Working Group (CRWG)). Whilst this served the purpose of reflecting evolving practice and responding to changes in the law, it is good practice to undertake a comprehensive review of the Constitution every five years.

4. At its meeting of 19 January 2023, Council resolved to “review the Council’s Constitution with the aim of making it fit for the 21st century by attempting to reflect the needs of Councillors, Officers, and Residents. To achieve that aim we ask the LGA to work with us in putting into place a modern, fit for purpose, new Constitution.”
5. During 2023/24, CRWG has met on seven occasions to undertake comprehensive reviews of each section of the Constitution. The first part of the report provides an overview of this ongoing work which is expected to be complete in autumn 2024.
6. CRWG is being supported by the Centre for Governance & Scrutiny (as recommended by the LGA) who are providing expert input including advice on best practice based on their experience of supporting other authorities in constitution reviews.
7. The second part of the report proposes amendments to the existing constitution which are considered by CRWG as essential to have in place before the start of the new municipal year, or have been recommended to Council by other committees e.g. Audit Committee.
8. The report contains revisions to several areas in the Constitution which were agreed by the CRWG for recommendation to Council at its meeting on 4 March 2024.

1. PART 1 – UPDATE ON CONSTITUTION REVIEW

Background and Context

- 1.1 Under section 9P of the Local Government Act 2000 (LGA 2000) the Council is under a duty to prepare and keep up to date a Constitution.
- 1.2 Section 9P of the LGA 2000 states that the Constitution must contain:
 - The standing orders/procedure rules;
 - The Members’ Code of Conduct;
 - Such information as the Secretary of State may direct; and
 - Such other information (if any) as the Council considers appropriate.
- 1.3 It is recommended good practice to undertake a full review of the Constitution every 5 years. At its meeting of 19 January 2023, Council resolved to “review the Council’s Constitution with the aim of making it fit for the 21st century by attempting to reflect the needs of Councillors, Officers, and Residents. To achieve that aim we ask the LGA to work with us in putting into place a modern, fit for purpose, new Constitution.”

The Approach

- 1.4 The Constitution Review Working Group (CRWG) has met on seven occasions during 2023/24 to lead the review of the Constitution.
- 1.5 CRWG is being supported by expert, independent advice and guidance from the Centre for Governance & Scrutiny (CfG&S). CfG&S was recommended to the Council by the Local Government Association (LGA) and already has extensive knowledge of the Council through the previous work it undertook in 2022 in the review of the Council’s scrutiny arrangements.

Assessment of Current Constitution

- 1.6 The Council’s Constitution currently comprises thirteen parts, many divided into a number of sections, with various schedules and appendices throughout those parts.
- 1.5 The Constitution is based upon the Modular Constitution and has developed through amendment over a number of years. Although the Constitution is generally comprehensive it could be improved significantly through the use of more modern language (including gender neutral language), web links, and better presentation in a revised structure. The “Introduction and Summary” would benefit from some more information about how the Council works. This could be drawn

from the existing information held elsewhere to give a more comprehensive picture.

- 1.6 By having a general summary in the “Introduction and Summary,” and then in the substantive sections, things are often stated several times, often in slightly different ways and it can be difficult to be certain that the full picture is being presented on any issue without exhaustive searching. The Constitution could be cut down and assimilated into a much shorter, clearer document.
- 1.7 There is also an amount of repetition within certain other areas of the document There is also a lot of cross referencing – some of which has got out of sync through the incremental approach to updates.
- 1.8 Overall, there are some modern and positive provisions within the Constitution, however the length of the document (594 pages) and some of the more prescriptive provisions mean that, in parts, the document is difficult to follow, and where possible it should be shortened and streamlined reducing duplication.
- 1.9 The Council’s Constitution is legally compliant, although there are some areas where the legislation has moved on and statutory references need updating.

2. New Structure of Constitution

- 2.1 CRWG has carefully considered the question of structure to ensure the new constitution is accessible, easy to read, avoids duplication, and follows a natural flow:-

Chapter headings

1. Introduction
2. Structure and Decision Making
3. Public Participation and Rights
4. Role and Functions of Full Council
5. Rules of Procedure for Council and Committees
6. The Executive
7. Overview and Scrutiny
8. Committees
9. Other Bodies
10. Councillors
11. Officers
12. Corporate Governance

3. Progress to date and next steps

- 3.1 Chapters 1 to 6 have been drafted and subject to detailed review by CRWG and independent assessment by CRWG. Subject to fine tuning, these chapters are ready once the new Constitution is presented to full Council for approval later in the year.
- 3.2 The remaining chapters will be completed in the period May to September 2024.

PART 2 – CHANGES TO CONSTITUTION

4. Anti-Fraud and Anti-Corruption Policies

- 4.1 These policies are found in section 9 of the Constitution and are subject to regular review by the Audit Committee. At its meeting of 29 November 2023, the Audit Committee resolved that, “subject to the amendments discussed at the meeting, the revised Anti Fraud and Anti Corruption policies be recommended to Council, via the Constitution Review Working Group.”
- 4.2 The Chair of Audit Committee has agreed the amendments requested by the Committee and these are provided at Appendix 1 for Council’s information.

5. Shareholder Committee

- 5.1 At its meeting of 14 March 2024, the Executive is scheduled to consider the establishment of a Shareholder Committee (as a Committee of Executive). The Committee would be responsible for the shareholder governance and oversight of the Council’s housing companies.
- 5.2 Subject to Executive’s approval, the Constitutional changes required to section 5.7 (Committees and Sub Committees of the Executive) are shown at Appendix 2.

6. Definition of “Key Decisions”

- 6.1 CRWG has noted that the Council does not currently specify the financial limit for “Key Decisions.” This is not in line with best practice. The Constitution uses the word “significant” which can be open to interpretation.
- 6.2 The legal term, “key decisions” directs which decisions need to be made by Executive – setting a clear threshold is an important part of good decision-making. Benchmarking with other local authorities of a similar type suggest a key decision threshold of at least £500k would be appropriate.
- 6.3 The Constitutional changes to enact this provision are shown at Appendix 3.

7. Planning Committee

- 7.1 Officers have requested that a number of changes be made to the Planning Committee terms of reference for clarification purposes and to update terminology. Details can be found at Appendix 4.

8. Directors’ Job Titles

- 8.1 The current Constitution requires updating to reflect the following senior officer posts:-

- Executive Director of Children, Adults and Health
- Chief Operating Officer
- Director of Public Health

8.2 The Head of Democratic & Electoral Services may make changes to Chapter 1.3 as a result of changes being made to the Council's Management Structure – these changes are shown at Appendix 5.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces unprecedented financial pressures as a result of; the longer term impact of the COVID-19 crisis, Brexit, the war in Ukraine and the general economic climate of rising prices and the increasing cost of debt. It is therefore imperative that Council resources are optimised and are focused on the vulnerable and on its highest priorities.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0	Yes	Revenue
Next Financial Year (Year 2)	£0	Yes	Revenue
Following Financial Year (Year 3)	£0	Yes	Revenue

Other financial information relevant to the Recommendation/Decision

One of the drivers of the Constitution review is ensure efficiency of decision-making as far as possible balanced against the need for transparency, consultation and openness.

Cross-Council Implications (how does this decision impact on other Council services, including properties and priorities?)

Impacts all areas and services of the Council.

Public Sector Equality Duty

This report has had due regard to the public sector equality duty and where applicable and available has included information relating to impacts upon people with protected characteristics and inequality.

Climate Emergency – This Council has declared a climate emergency and is committed to playing as full a role as possible – leading by example as well as by exhortation – in achieving a carbon neutral Wokingham Borough by 2030

There are no direct impacts of the decision in relation to achieving the Council's carbon neutral objective.

Reasons for considering the report in Part 2

Not applicable.

List of Background Papers

Council's Constitution

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