

TITLE	Changes to the Constitution
FOR CONSIDERATION BY	Council on 17 February 2022
WARD	None Specific
LEAD OFFICER	Andrew Moulton, Assistant Director, Governance

OUTCOME / BENEFITS TO THE COMMUNITY

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

RECOMMENDATION

That Council agree the following changes to the Constitution, as recommended by the Monitoring Officer via the Constitution Review Working Group that:

- 1) the deadline for public and Member questions, that relate to items on the agenda or urgent matters, be amended, as set out in Paragraph 1 of the report;
- 2) Section Rule 4.2.9.9 Written Answers, be amended as set out in Paragraph 2 of the report;
- 3) Section 4.2.8.1 Consideration of motions and Section 4.2.11.3 Motion set out in Agenda be amended as set out in Paragraph 3 of the report;
- 4) Section 4.2.11.3 Motion set out in Agenda, be amended as set out in Paragraph 4 of the report;
- 5) Section 4.2.13.1 No Speeches Until Motion Seconded, be amended as set out in Paragraph 5 of the report;
- 6) Section 4.2.13.13 Motions on Expenditure or Revenue, as set out in Paragraph 6 of the report, be added to the Constitution;
- 7) Section 8.1 Planning Committee Terms of Reference be amended as set out in Paragraph 7 of the report;
- 8) Sections 8.7.1 Function and Composition of School Transport Appeals Panel and 8.7.2 Meetings of the School Transport Appeals Panel, be amended as set out in Paragraph 8 of the report;
- 9) Section 9.1.12 Process for Dealing with Misconduct Complaints be amended as set out in Appendix 1 to the report;
- 10) amendments to various sections of the Constitution, put forward by the Head of Legal Services, and as set out in Paragraph 10 of the report be agreed.

SUMMARY OF REPORT

Chapter 1.1.4 of the Council's Constitution states that the Monitoring Officer will monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

The report contains revisions to several areas in the Constitution which were agreed by the Constitution Review Working Group (CRWG) for recommendation to the Monitoring Officer, at their meeting on 4 February 2022.

Background

SECTION 4 – THE COUNCIL MEETING

Public and Member Questions – deadline

1. At its meeting on 4 February 2022, the Constitution Review Working Group considered proposals around the deadline for public and Member questions, that relate to items on the agenda or urgent matters.

Currently the deadline for public and Member questions, that relate to items on the agenda or urgent matters, is 10.00am on the working day before the relevant meeting. This deadline is the same for Council, the Executive and other committee meetings. Executive Members and Officers have stated that it is often difficult to provide full and detailed answers within this short timescale, particularly when the matter is technical or requires a large amount of research.

The Working Group agreed to recommend that that the deadline for public and Member questions that relate to agenda items or urgent matters be changed to 10.00am two working days before the relevant meeting and the various sections of the Constitution be amended accordingly.

Supplementary Questions – written answers

2. A member of the public recently asked a question at Council about the interpretation of Rule 4.2.9.9 Written Answers and whether it covered supplementary questions that could not be answered at a meeting.

In the past, and in line with other local authorities, the practice has been that this rule only related to questions that have been submitted in advance of the meeting and not supplementary questions. The reason for this is that the draft minutes are usually published within five working days and often supplementary questions can take longer to respond to. Also on some occasions, because of the nature of the supplementary question, the Executive Member will contact the questioner direct to discuss the matter and therefore there is no written record of the response.

The Working Group agreed to recommend that Section 4.2.9.9 Written Answers be amended as follows to state that it only relates to questions submitted in advance of the relevant meeting. It is proposed to amend this rule, and other rules in the Constitution that relate to public and Member questions:

Section 4.2.9.9 Written Answers

*Any question which cannot be dealt with during public question time, either because of lack of time, because of the non-attendance of the Member to whom it was to be put or because the Member answering the Question requires further information not available at the time, will be deemed to have been put, and shall be the subject of a written reply within seven working days to the person asking the question. The answer shall also be recorded in the Minutes of the meeting. Please note **this that the written reply** deadline does not apply to supplementary questions, which can take longer to respond to, due to the often,*

complex nature of the subject matter and such replies will not be recorded in the Minutes of the meeting.

Consideration of Motions when the Time Limit is Reached

3. At the November Council meeting there were two motions which reached their time limit whilst an amendment was being considered. One motion was timed out because it had reached the 30-minute time limit and the other because the meeting had reached its time limit of 10.30pm.

On both occasions the amendment was voted on and as they were agreed, and therefore became the substantive motion (as amended), a second vote was not taken as it would have been very unlikely for someone to vote “for” an amendment, and if accepted, then vote “against” the same wording when it became the substantive motion. The Mayor did offer Members the opportunity for a second vote, but this offer was not taken up.

The current wording of the Constitution is silent about the scenario where you are debating an amendment and time runs out. It does not state whether one or two votes should be taken.

The following amendments are therefore proposed:

Motions – running out of time but not at the end of the meeting

Section 4.2.11.3 Motion set out in Agenda

A maximum period of 30 minutes will be allowed for each Motion to be moved, seconded and debated, including dealing with any amendments. At the expiry of the 30-minute period debate will cease immediately, the mover of the Motion or amendment will have the right of reply before the Motion or amendment is put to the vote.

If an amendment is being considered at the expiry of the 30-minute period and the vote for the amendment is agreed it will automatically become the substantive motion (as amended) and the resolution of Council, without the need for a further vote. If the amendment is not agreed, then a further vote will be taken on the substantive motion.

Motions – running out of time simultaneously with the end of meeting

Section 4.2.8.1 Consideration of motions

A motion cannot be moved if there is only 15 minutes remaining before the meeting is due to conclude, be it 10.15pm or 10.45pm. If at the time the meeting is due to conclude, be it 10.30pm or 11.00pm, a Motion is under discussion, the debate on that Motion will cease immediately and the Mayor will put the Motion to the vote without further discussion.

If an amendment is being considered at the time the meeting is due to conclude the debate on the amendment will cease immediately and the Mayor will put the amendment to the vote without further discussion. If the amendment is agreed it will automatically become the substantive motion (as amended) and the resolution of Council, without the need for a further

vote. If the amendment is not agreed, then a further vote will be taken on the substantive motion.

Section 4.2.11.3 Motion set out in the Agenda

4. Section 4.2.11.3 Motion set out in Agenda, contains the following paragraph:

A maximum period of 30 minutes will be allowed for each Motion to be moved, seconded, and debated, including dealing with any amendments. At the expiry of the 30-minute period debate will cease immediately, the mover of the Motion or amendment will have the right of reply before the Motion or amendment is put to the vote.

This rule does not include any mention of how adjournments should be dealt with, therefore the following amendment is proposed:

*A maximum period of 30 minutes will be allowed for each Motion to be moved, seconded and debated, including dealing with any amendments. **Any adjournment agreed under Rule 4.2.12k) will not be counted in the 30-minute period.** At the expiry of the 30-minute period debate will cease immediately, the mover of the Motion or amendment will have the right of reply before the Motion or amendment is put to the vote.*

Section 4.2.13.1 No Speeches Until Motion Seconded

5. Section 4.2.13.1 No Speeches Until Motion Seconded contains the following paragraph:

After a Motion has been proposed, seconded and the proposer has made his/her speech the Mayor will ask if any Member wishes to speak against the Motion. If no one wishes to speak against the Motion, then the Mayor will put the matter to the vote.

To provide clarity between motions and business items it is proposed to add the following sentence to this rule:

This rule also applies to business items on the agenda i.e., those items considered under Rule 4.2.2.1 j)-m).

Section 4.2.13.13 Motions on Expenditure or Revenue

6. The Working Group noted that concerns have been raised by Officers that motions, which could have significant impact on the Council's finances, are often debated and approved at Council without any relevant information being available or consideration of these financial impacts. It is therefore proposed that the following new rule be added to the Constitution and the subsequent rules in that section renumbered accordingly:

4.2.13.13 Motions on Expenditure or Revenue

Any Motion which would result in a significant increase in capital or revenue expenditure, a significant reduction in the revenue of the Council,

or involves the disposal of a significant asset, shall when seconded stand adjourned without discussion to the next meeting of the Executive, with a report back to the next ordinary meeting of the Council. This Rule does not apply to any Motion proposed at the Budget meeting of the Council. A significant decision is one that involves spending or receiving £1,000 or more.

7. SECTION 8 – REGULATORY AND OTHER COMMITTEES

Section 8.1 Planning Committee Terms of Reference

The Working Group considered a proposal around the Planning Committee terms of reference. On occasions, the Planning Committee debate an item on the Agenda which they wish to refuse against officer recommendation to approve a planning application. The debate, which includes ensuring that reasons for refusal are robust for any appeal, often becomes protracted and difficult. In that process, a standard reason for refusal for infrastructure and affordable housing, which is supported by planning policies, is occasionally forgotten. Having that reason included with other reasons is important for any appeal; without it the Council is at risk of not having infrastructure and affordable housing provided to mitigate the effect of the development on the area. Without the proposed delegation added to the Planning Committee's terms of reference, officers would need to take the matter back to the Planning Committee to add the reason on, which causes delay.

The following addition is proposed to the Planning Committee terms of reference:

n) Where an application is refused by the Planning Committee which is subject to reasons for refusal based on Affordable Housing and/or Infrastructure policies, but those reasons were omitted at the time of the decision, the addition of those reasons are delegated to the Director Place and Growth in consultation with the Chairman of the Planning Committee on condition that the delegation is exercised before the issue of the planning decision.

Section 8.7 School Transport Appeals

8. Currently the School Transport Appeals Panel is made up of a pool of six Members, drawn from the Licensing and Appeals Committee, from which three are selected to consider individual transport appeals. With only six Members to choose from it is often difficult to set up Panels and therefore this can cause delays for parents who are waiting to have their transport appeal heard. The Working Group considered a proposal that all members of the Licensing and Appeals Committee be able to hear School Transport Appeals.

The following change to the wording of the Constitution is proposed (bold/italics):

8.7.1 Function and Composition of School Transport Appeals Panel

The School Transport Appeals Panel shall comprise of a pool of six Members ***which will be the same Members as are appointed to the Licensing and Appeals Committee.*** ~~of the Authority, appointed by the Council in accordance with the rules of political balance. A Chairman and a Vice Chairman will be appointed.~~ The Executive Member with responsibility for School Transport shall

not be a member of this Panel ***even if they are a member of the Licensing and Appeals Committee***. ~~Members of the School Transport Appeals Panel will be drawn from the Licensing and Appeals Committee.~~ Three Members from this pool will be selected to hear each appeal.”

A Chairman will be appointed at the Panel meeting.

As the Chairman is only appointed at the Panel meeting there is also a need to change the wording of Rule 8.7.2 to reflect this:

8.7.2 Meetings of the School Transport Appeals Panel

The School Transport Appeals Panel shall meet as and when required. Meetings will be convened by Democratic Services ~~as and when required in consultation with the Chairman.~~ These meetings will not be open to the public.

9. SECTION 9 ETHICS AND CORPORATE GOVERNANCE

Section 9.1.12 – Process for Dealing with Misconduct Complaints

The Standards Committee, at its meeting held on 11 October 2021, had considered an item which included the findings of a review of the Council’s current arrangements for handling Member code of conduct complaints, which was undertaken by Hoey Ainscough Associates Ltd. Whilst the review concluded that “the Wokingham process is broadly in line with processes in most authorities and represents good practice in many aspects” it also put forward several comments on some of the detail within the process which the Standards Committee considered. The Standards Committee agreed with all the comments made in relation to the current arrangements for handling Member code of conduct complaints and provided the Monitoring Officer with delegated authority, in consultation with the Chairman of the Standards Committee, to draft the changes to the Constitution in line with the recommendations in the Hoey Ainscough report.

The proposed amendments are set out in Appendix 1 of the report.

Changes proposed by the Head of Legal Services

10. The Working Group considered and agreed to recommend, proposed amendments put forward by the Head of Legal Services, to several areas of the Constitution. The proposed amendments are set out below.

Sealing and Signing of Documents by electronic means	
Change Requested	To allow the Council to seal and sign documents by electronic means
Current drafting in Constitution	There is no current drafting, but this proposal supplements the definition of how a document is sealed or signed.
Replacement drafting in Constitution	The addition of the following as a new part 1.6.6 <i>1.6.6 Signing or Sealing on behalf of the Council</i>

	<u><i>Any references in this Constitution of a person signing or affixing a seal on behalf of the Council will include both (i) by physical means or (ii) by electronic means. Any electronic means shall only be that approved by the Monitoring Officer or Head of Legal and will in all circumstances only be used where permitted by law, be secure and maintains an electronic audit record of the signatories and the signing process.</i></u>
Reason for Request	<p>1.1 There been an increasing trend towards developing a paperless working environment by making more use of electronic means of communication and document retention. As a result, the use of electronic signatures became more common. The Electronic Communication Act 2000 and the Electronic Signature Regulations 2002 deal with the admissibility and authenticity of electronic signatures.</p> <p>1.2 The current pandemic has led to further changes in working practices with a significant increase in remote working with an even greater reliance on electronic practices. In consequence it is necessary to accept and formally recognise the validity of electronic signatures on documents such as contracts, agreements, leases, deeds, minutes, and resolutions when used by both the Council and those with whom it enters into a contract or other legally binding deeds and documents. HM Land Registry does not accept for the purposes of registration certain deeds that have been electronically signed in accordance with Land Registry requirements.</p> <p>1.3 Although the Constitution does not specify exactly how sealing or signing a document occurs, it is becoming customary practice that signing is performed electronically.</p> <p>1.4 The Council has been using a software package called DocuSign to execute certain documents since October 2020. This was chosen as it is new software are that it is secure, reputable, and effective in allowing both the Council and other parties to easily sign documents with a strong audit trail to confirm who has performed the signature.</p> <p>1.5 The reason for the change is to formally document that electronic signing is acceptable but also to ensure that if is done electronically then it can only be done in a pre-approved way that are secure, documented and audited.</p>
Minor Changes to the Constitution	
Change Requested	To provide a delegation to the Monitoring Officer to make minor changes to the Constitution in certain circumstances
Current drafting in Constitution	The ability for the Monitoring Officer to make changes only exists in two parts of the Constitution.

	<p>1.1.6 Changes to the Constitution - Review and Approval <i>The Council will be responsible for carrying out the on-going review of the Constitution, and may establish a politically balanced working group for this purpose. Changes to the Constitution will only be approved by the Council after consideration of a proposal by the Monitoring Officer and on his/her report to the Council, subject to amendments being made to Chapter 1.3 by the Democratic Services Manager as a result of changes being made to the Council's Management Structure.</i></p> <p>Part 11.3.10 b) grants the Assistant Director Governance to:</p> <p><i>to amend the Scheme of Delegation to Officers to reflect any changes to the Council's Officer Management Structure and to update the list of relevant Act/Regulations as detailed in Section 11 Officers Appendix A and other references to legislation within the Constitution as appropriate;</i></p>
<p>Replacement drafting in Constitution</p>	<p>The changes proposed are:</p> <p>Part 1.1.6</p> <p>1.1.6 Changes to the Constitution - Review and Approval <i>The Council will be responsible for carrying out the on-going review of the Constitution and may establish a politically balanced working group for this purpose. Changes to the Constitution will only be <u>made</u> approved by <u>approval</u> of the Council after consideration of a proposal by the Monitoring Officer</i></p> <p>and on his/her report to the Council, subject to amendments being made to Chapter 1.3 <i>The Democratic Services Manager may make changes to (i) Chapter 1.3 as a result of changes being made to the Council's Management Structure <u>(ii) Appendix A of Chapter 11 in relation to maintaining a list of relevant legislation (iii) the Scheme of Delegation on request by the Chief Executive (under part 5.4.6 a)) and (iv) on request of the Leader of the Council, the membership of the Executive (part 5.2.1) and deputy Executive Members (part 5.3.1) and the Specific Responsibilities of Executive Members (part 5.2.6 to 5.2.16) under part 5.4.6 b.</u></i></p> <p><u><i>The Monitoring Officer may make changes of an editorial nature as appropriate to make the Constitution internally consistent, up to date and understandable or such consequential to give effect to a decision of Council (in respect to Council functions) or Executive (in respect to Executive functions) provided always that the Monitoring Officer shall consult first in writing with the members of the politically balanced working group (if such has been established) and no Member has raised objection within 5 working days. Where an objection is maintained then the Monitoring Officer will refer the proposal to Full Council for approval for the change. All changes will be documented in the 'Revisions' part of this Constitution.</i></u></p>

	<p>Part 11.3.10 b)</p> <p><i>to amend the <u>Constitution in accordance with part 1.1.6 of Chapter 1 Scheme of Delegation to Officers to reflect any changes to the Council's Officer Management Structure and to update the list of relevant Act/Regulations as detailed in Section 11 Officers Appendix A and other references to legislation within the Constitution as appropriate;</u></i></p>
Reason for Request	<p>The Council has only granted a delegation to the Monitoring Officer the ability to change two parts of the Constitution. The first relates to the details of the Officer Management Structure in part 1.3 (under part 1.1.6) and the second the list of relevant legislation in Appendix A of Part 11 (officer delegations) using the power in part 11.3.10 (delegation to AD Governance).</p> <p>This is considered an inadequate delegation as it means that consequential changes to the Constitution required due to legislative changes or due to a decision of Council or Executive are not reflected in the Constitution. The result is that a paper is required for full Council to approve and that there is a delay where the Constitution does not align to the law or a decision of Council. Many of these changes are minor, technical or the Council has no discretion, and the result is that valuable full Council meeting time is taken up for relatively inconsequential matters.</p> <p>The change requested is to grant to the Monitoring Officer the delegation to make such minor changes without the need for full Council approval. The process includes a consultation step with CRWG (using written means) and should any member of CRWG object then the change will be referred to full Council.</p> <p>Many Councils have a similar delegation. RBWM granted such a delegation to the Monitoring Officer in 2012.</p>

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe funding pressures, particularly in the face of the COVID-19 crisis. It is therefore imperative that Council resources 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
There are no financial implications associated with this report.

Cross-Council Implications
None

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.

List of Background Papers
Council's Constitution

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