

REVIEW OF THE AMENDED CONSTITUTION

Executive Summary

This report seeks comments on the attached draft Constitution approval for the adoption of a revised Constitution for Woking Borough Council.

The overall objectives of the recommended changes to the Constitution are to:

- streamline and improve efficiency of decision-making;
- simplify the Constitution;
- make the Constitution simple and easy to navigate; and
- make the decision-making process easier to understand for officers, Councillors and members of the public.

The recommended Constitution is attached as an appendix for consideration and approval and consists of the following:

- Part 1 – Summary and Explanation
- Part 2 – Articles of the Constitution
- Part 3 – Responsibility for Functions
- Part 4 – Rules of Procedure
- Part 5 – Codes and Protocols
- Part 6 – Group Company

The Constitution has been updated to reflect the objectives above as well as other more routine changes, such as updating officer titles and removing duplication.

The Standards and Audit Committee is asked to review the draft Constitution as pre-scrutiny and provide any comments and feedback. The Overview and Scrutiny Committee received the paper at its meeting on 20 February 2023. Comments shall be considered before the matter is reported to the Executive, prior to adoption at Full Council.

Recommendations

The Committee is requested to:

RESOLVE That the report be noted.

The Committee has the authority to determine the recommendation set out above.

Background Papers: None

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1.0 Introduction

- 1.1 The Council is required to maintain and publish a Constitution, in accordance with Section 9P of the Local Government Act 2000, setting out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.
- 1.2 The Constitution Review is addressing concerns that the Council's governance and decision-making processes are not easily understandable to officers, councillors and members of the public.
- 1.3 The revised Constitution will be critical to ensuring that Council policies and procedures are consistent with delivering good governance.

2.0 Review

- 2.1 In practice, the review would seek to make changes in the interests of simplification and improving understanding of the Constitution.
- 2.2 To assist, these changes have been made to the current Constitution using tracked changes. A copy of which can be found at Appendix 1 to this report. Due to the extent of the drafting, at times these have become unwieldy and as such a clean copy has also been appended to this report at Appendix 2. It should be noted that form and design of Appendix 2 is still under review and there may be some stylist changes prior to adoption.

3.0 Part 1 – Introduction

- 3.1 The introduction has been updated and modernised to provide a more user-friendly overview of the Council and how it works. There are no substantial changes in law or practice.

4.0 Part 2 – Articles of the Constitution

- 4.1 The Articles of the Constitution have been updated and expanded upon. Parts have been changed to represent a more modern, simplified style of drafting. The Articles have also re-ordered to place them in a more logical order.
- 4.2 Article 10 has been updated to include a provision in respect of a four-year term of office (followed by one further four year period) for the Independent Chair of Standards and Audit. This shall ensure that the Chair remains independent. I am sure all Councillors shall agree that our current Independent Member, Claire Storey, has been a real asset to the Council and has served as an excellent Chair of the Standards and Audit Committee. She has been consulted in respect of the review of the Constitution and is supportive of this proposal. She has agreed to continue in her role for the time being to support a smooth transition.
- 4.3 The Terms of Reference for the Council's existing working/task groups are currently being formatted into a template document. Once this has been completed (prior to adoption at Full Council) they shall be inserted into the Part of the Constitution.

5.0 Part 3 – Responsibility for Functions, Management Arrangements and Scheme of Delegations.

- 5.1 This section now includes an introduction which explains in general legal terms responsibility of functions.
- 5.2 The existing table outlining responsibility is to remain the same however be landscape rather than portrait.

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- 5.3 The current Joint Committee section is due to cease in April and be replaced with Partnership Boards. As such this section shall be removed from the Constitution and ultimately replaced.
- 5.4 The management arrangements section remains as drafted save as for a structure chart to be inserted to aid understanding.
- 5.5 The explanation of the operation of the scheme of delegations has been redrafted in a more modern and simplistic manner. The principles however remain the same. Notably, reference to ostensible authority has been removed and replaced with the ability to act in an emergency “to take all necessary actions including incurring expenditure with regards to any emergency involving serious danger to life, property and public welfare”.
- 5.6 This part shall also include a Proper Officer section. Proper officers carry out functions in relation to statutory provisions. It is commonplace to have such a section in the Constitution.

6.0 Part 4 – Council Procedure Rules

- 6.1 Council Standing Orders have been redrafted; the use of track changes makes the changes appear more significant than they actually are. The sections have been placed into a more logic order.
- 6.2 The provisions in respect of Notices of Motion have been redrafted. These propose that Notice of Motions shall now be dealt with at the first meeting of Full Council and only go to the Executive if the legal director or the finance director considers it appropriate i.e. there are legal, policy and/or budgetary reasons which need to be addressed in an officers report to enable the Council to make an informed decision.
- 6.3 The process for dealing with amendments has been updated and to avoid confusion has been depicted in a flowchart which is to be appended to the Constitution. It is intended that this clarification shall ensure that the debate is concise and focused upon the topic at hand. The flowchart shall ensure that officers, members and residents understand the process of the meeting.
- 6.4 A mater which arose in the feedback sessions was the length of meetings. Historically, some meetings have continued for several hours. A 3.5 hour optional cut off point to the meeting has now been included.
- 6.5 Following significant feedback in respect of this area of consideration. The new Constitution provides for Members to remain seated to speak and to continue to wear business dress (dress code shall be managed by group leaders).
- 6.6 It is proposed that all speeches are to be no more than five minutes long (at the Mayors discretion). This would make managing the meeting easier for officers but would also focus debate. It is rare that moving a motion/amendment or a right of reply extends longer than five minutes.
- 6.7 There are also a number of drafting/modernising changes which have been included. One of which is to simply state which provisions of Full Council apply to its Committee and which do not.
- 6.8 The conventions section has been removed from the Constitution. These sections can now be found in other areas of the Constitution. It is considered that having conventions which are not rules provides a level of uncertainty and as such they should be avoided.
- 6.9 The Budget and Policy Framework document has been reviewed and minor amendments proposed.

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- 6.10 The Council is currently considering the development of its procurement service, it is proposed that the Council's contract standing orders are reviewed as part of the service redesign to ensure they remain fit for purpose.
- 6.11 The Executive Procedure Rules and Access to Information Rules have been reviewed and minor changes have been made.
- 6.12 The Council's Scrutiny Officer and Kuldip Channa, Legal Adviser to the Overview and Scrutiny Committee, have reviewed the OSC Procedures Rules. The proposed changes are marked as tracked changes.

7.0 Part 5 – Codes of Protocols

- 7.1 The Members Code of Conduct, Standards Protocols, and Arrangements for Dealing with Allegations of Misconduct have not been considered as part of this review as these have been recently updated and remain consistent with best practice.
- 7.2 It is proposed that the Members Allowance Scheme is considered separately and the Financial Regulations be reviewed once the new s151 officer has been appointed.
- 7.3 The Code of Corporate Governance which accompanied the Annual Governance Statement shall be inserted into this section.
- 7.4 It is commonplace to have an agreed protocol in respect of councillor and officer relations. As such a protocol has been drafted to be adopted and included as part of the Constitution.
- 7.5 The employment procedures and code of conduct for employees have been reviewed with HR colleagues. There are no significant changes however they propose the establishment of an Appointments Committee to recruitment of Members of the Corporate Leadership Team, referring appointments of Statutory Officers to Full Council for ratification. The Terms of Reference can be found at Appendix 4.
- 7.6 The confidentiality protocol shall be removed from the Constitution. On an operational level the protocol is impractical and overly burdensome. It also stipulates the duties of the Monitoring Officer. It is proposed to introduce a Monitoring Officer Protocol to explain the role of the Monitoring Officer which would provide some clarity of the role but be less restrictive than the protocol. It is commonplace to have a Monitoring Officer protocol included in the Constitution.

8.0 Part 6 – Group Company

- 8.1 This section was recently introduced following the review of Company Governance and as such I have not revisited it.

9.0 Conclusion

- 9.1 The attached draft Constitution has been developed with Member and Officer feedback. Councillors are requested to scrutinise the new Constitution and provide constructive feedback which shall be considered as part of the review process.
- 9.2 A copy of the Constitution can be found at Appendix 2. Councillor's should note that it is intended that the substantive content shall remain the same however stylistic changes may be made to the Constitution prior to its adoption such as the inclusion of further flowcharts and visual aids.

10.0 Corporate Strategy

10.1 The revised Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Therefore, the Constitution supports delivery of all the priorities described in the Corporate Strategy.

11.0 Implications

Finance and Risk

11.1 Nothing arising specifically from the body of this report save as for robust governance arrangements ensure that the Council is making informed and documented decision reducing risk to the Council.

Equalities and Human Resources

11.2 Nothing arising specifically from the body of this report.

Legal

11.3 Under Section 9P of the Local Government Act 2000 (the 2000 Act), local authorities must prepare and keep up to date a Constitution, which must also be made available to the public.

11.4 The Council's Constitution follows a standard format as recommended by the former Department of the Environment, Transport and the Regions (DETR) in 2001, as part of the implementation of the 2000 Act.

11.5 Changes to the Constitution are matters reserved to the Council to determine. As a result, the adoption of a new Constitution must be agreed by Council.

12.0 Engagement and Consultation

12.1 This report contributes by improving clarity to the Council's decision-making processes. This will enable councillors to fulfil their roles more effectively and make procedures and processes more transparent.

REPORT ENDS