

STRATEGY AND RESOURCES COMMITTEE

17 DECEMBER 2019

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Report Title	REVIEW OF THE COUNCIL'S CONSTITUTION
Purpose of Report	To request authority to be given to the Monitoring Officer to carry out a review of the Constitution and to re-establish the Constitution Working Group.
Decision(s)	The Committee RESOLVES: <ol style="list-style-type: none"> 1. To re-establish the cross party Constitution Working Group to oversee a review of the Constitution; and 2. To authorise the Monitoring Officer to carry out a review of the Constitution on an incremental basis in consultation with the Constitution Working Group and to bring reports proposing amendments to this Committee to consider from time to time.
Consultation and Feedback	Consultation has taken place with the Alliance Group Leaders and a member event was held by the Local Government Association with senior members regarding the roles of members and officers.
Financial Implications and Risk Assessment	There are no financial implications arising from this report. Andrew Cummings, Strategic Director of Resources Tel: 01453 754115 Email: andrew.cummings@stroud.gov.uk
Legal Implications	Save that any amendments to the Constitution have to be agreed by Council, there are no legal implications arising from this report. Patrick Arran, Interim Head of Legal Services & Monitoring Officer Tel: 01453 754369 Email: patrick.arran@stroud.gov.uk
Report Author	As above
Options	The Committee can decide not to follow the recommendations, but this would risk the Constitution not being up to date
Performance Management Follow Up	This will be an ongoing process and no changes may be made to the Constitution without Council approval.

1. Background - duty to have a constitution

Under s.9P Local Government Act 2000 (as amended), a local authority is under a duty to prepare and keep up to date its constitution. The Constitution must contain:

- The standing orders/procedure rules;
- The members' code of conduct;
- Such information as the Secretary of State may direct;
- Such other information (if any) as the authority considers appropriate.

- 1.1 A Constitution Direction was issued by the Secretary of State in December 2000 that required certain matters to be included within constitutions relating to Councils operating executive or alternative arrangements and a modular constitution was

developed as a result of that which a lot of Councils have followed. The types of matters included members' allowances schemes, details of procedures for meetings, details of joint arrangements amongst other things. The guidance does not bind this Council given that we operate a committee system, and as such, there is a degree of latitude as to what may be included, but elements of the Direction will be useful e.g. setting out the information relating to how the Council works in Articles at the beginning of the Constitution

- 1.2 In the case of a committee system local authority, the constitution must also contain a statement as to whether the authority has resolved to have an overview and scrutiny committee.
- 1.3 Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee. The Constitution is available on the Council's website.
- 1.4 In addition to the legal requirement to keep the constitution up to date, local authorities have faced a significant amount of change over the past few years and it is likely that there will have been legislative changes, organisational changes that may mean that the Constitution requires updating. There is no doubt that Stroud's constitution needs to be reviewed as certain elements e.g. the Scheme of Delegation no longer reflects the managerial make up of the Council.
- 1.5 The constitution for a Council operating a committee structure such as Stroud may by its nature, be shorter (as it will not cover executive matters) but essentially, the constitution should contain all of the rules and procedures required by the Council.
- 1.6 Whilst precedent from elsewhere may be helpful, a constitution should primarily be a locally driven document which reflects the character and culture of the organisation and facilitates Council business and priorities, speeding up decision making and processes, rather than something that creates bureaucracy. There is therefore the opportunity to review the Council's constitution and to consider the processes and procedures to ensure that they are fit for purpose.
- 1.7 Discussions have been had with the Alliance Group Leaders and it has been suggested that this report should be brought to the Strategy and Resources Committee to consider the following principles and to re-establish the Constitution Working Group to oversee and be consulted upon the work which will be carried out by the Monitoring Officer. Likewise, officers will have views of what works well and what might need to be changed, consultation can be carried out via Senior Leadership Team and the Operational Managers network.
- 1.8 There has been a cross party Constitution Working Group (CWG) established in the past, but it will need to be re-established and it is suggested that, for the sake of continuity, the Committee agrees to retain the previous membership and ask Group Leaders to nominate replacement members to the group in the event that an original member is no longer able to participate. The members on the CWG will be familiar with the document and will consider the following types of questions:
 - What works well?
 - What could be improved?
 - Is the structure right and does it work (length/articles/summary etc)?
 - Is it sufficiently "public facing" - can people express their views at meetings adequately?

- Are complaints and other processes (e.g. FoIA) clear?
- New legislation - has it been picked up?
- Are the schemes of delegation up to date, understandable and all encompassing?
- Are Proper Officer functions up to date?
- Are appeals at the right level, only involving members where appropriate?

1.9 As stated above, the Scheme of Delegation needs to be updated to reflect the new senior management structure; there is an opportunity to consider the following types of questions:

- Should more functions be delegated to Officers to speed up decision making?
- Are the Councils financial limits meaningful, realistic and specified?
- Do the standing orders and delegations facilitate shared services and reflect delegations from or to officers of other authorities (for example), where appropriate?
- Is the senior management structure up to date?
- The Council will need to create an Independent Person Panel as a standing body?
- Could scrutiny in committees be more effective?
- Does the Council consider the interaction of the Pay Policy Statement requirements with the Council's Constitution with, in particular, the requirement to regularly review any policies allowing for voluntary severance, early retirement or redundancy and access to pensions as well as disciplinary and grievance policies, etc?
- Consultation approach and protocol for stakeholder engagement.

1.10 Initial work 'packages' have been suggested by members and these are set out below.

1.11 **Scope of Constitution Review (light touch v complete overhaul to modular constitution)**

1.11.1 A Light touch approach was agreed to start with and then a complete review after the next AGM.

1.11.2 It was proposed that Council should set up a formal Constitution Working Group as a permanent committee at the next AGM. If that is something that is agreed, terms of reference will need to be drafted for consideration. In the meantime, it was agreed that the existing CWG would be re-established to deal with issues set out below in the intervening period.

1.12 **Articles of the Constitution need to be considered and added**

1.12.1 It was agreed that the Monitoring Officer would draft Articles for discussion by the CWG

1.13 **The Scheme of Delegation needs to be overhauled and sub-delegations brought up to date.**

1.13.1 This must be a priority piece of work as the current Scheme is out of date which could render the Council open to challenge if not addressed. The Monitoring Officer has suggested that the extent of delegations to officers should be considered with only important / high profile matters going to committee for decision. The CWG

would consider what is proposed in terms of delegations, but it is clear that members require officers to consult on anything which is, or could be, politically sensitive. This has already been picked up in the draft Member / Officer Relations Protocol (referred to below) and the Monitoring Officer is in the process of devising training for officers on political sensitivity.

1.14. A Fit for purpose Member / Officer Relations Protocol needed

1.14.1 This was an action arising out of the Corporate Peer Challenge insofar as it was identified that there should be some work done around clarifying roles. A cross party event facilitated by the LGA was organised for the 21st of November at which it was discussed that the Member / Officer Relations Protocol drafted by the Monitoring Officer should be distributed to the members who were invited to attend that event.

1.14.2 The Member / Officer Protocol was sent to all Group Leaders and deputies and all Committee Chairs and deputies for comment. Any suggested amendments will be considered and applied in time for the next Committee meeting in January.

1.15 Code of Conduct & Investigation Procedure needs to be re-drafted to include the best practice agreed by Audit and Standards Committee

1.15.1 The Monitoring Officer took a report to Audit and Standards Committee on the 7th May 2019 which outlined the (then) recent report of the Committee for Standards in Public Life. The report can be accessed [here](#).

1.15.2 The A&S Committee agreed that the Council should adopt best practice recommended by the Committee for Standards in Public Life and it was also agreed that the Monitoring Officer would review the Code of Conduct and investigation procedure as part of this work. However, given the clear crossover of work between the Strategy & Resources and Audit & Standards in terms of ethical standards, it was considered prudent to ensure that all prospective changes were channelled through the CWG. Members also asked the Monitoring Officer to consider the position on interests given that the current Code does not necessarily capture potential conflicts of interest.

1.16 Substitutes

1.16.1 Members asked the Monitoring Officer to look at the potential for amending Standing Orders to allow for substitutes. This was for balance and consistency in relation to outside bodies and committees. This is recognised as being permissible but good practice dictates that this should be a named substitute who has been appointed by Council.

1.17 Parental Leave

1.17.1 Members asked the Monitoring Officer to look at the issue of parental leave and determine what would be best practice to enable participation. This is something that is permissible, but which is still subject to the 6 month rule for members to attend meetings.

1.18.1 Councillor speaking rights as 'invited guests'– members taking part in other committees

1.18.2 This is a rule that currently exists but causes some confusion and is inconsistent in application. In short, the Chair of a Committee has discretion to allow all members, who are not members of the committee, to speak at a meeting. It has been suggested that this could be retained for other committee but will be excluded for DCC, and, it is suggested, licensing sub-committee. This is something that the CWG can consider.

1.19 Items going to different committees unnecessarily – speed up decision making

1.19.1 Currently, there are some matters which appear on numerous committee agendas and it has been suggested that this needs to be addressed.

1.20 Task & Finish / Working Groups

1.20.1 Despite clear advice that these groups are legally permissible, there are still concerns about the legitimacy of these working arrangements on the basis that there is a perception of a lack of transparency. By their very nature, these groups cannot make decisions and are advisory only. Therefore, any recommendations made will be contained in an open report to Council or Committee thus ensuring that the Council makes decisions in an open and transparent way.

1.20.2 The Monitoring Officer is clear that these groups have their place within the Council and allow matters and policies, which are at a formative stage, to be discussed privately in an uninhibited way. If more formality is required, then sub-committees would have to be set up which would have the same formal requirements as the parent committee – though the advice is that this should be done sparingly.

1.21 Resident Engagement

1.21.1 This point was mentioned above and relates to giving the public the ability to make statements at Council meetings.

1.21.2 Members would also like to give a voice to the Youth Council.

1.22 Protocol for public speaking in DCC to be drafted

1.22.1 A protocol was adopted by DCC at its meeting on the 26th of November.

1.23 There are some other matters which had been suggested previously and which could be considered by the CWG as part of its work plan.

Examples are:

- The budget cycle and consideration of draft budgets by committees
- Task & Finish Group parameters and guidelines
- Strengthening the mechanism which allows an issue to be transferred for consideration by full Council from a committee
- Whether an improved means of dealing with questions from the public might be introduced.
- Whether we need improved means of receiving petitions from the public.

2. CONCLUSION

There is a clear need to ensure that the Constitution is updated regularly and the proposals in this report, if accepted, will ensure that this is done in a consistent way.