

Southend-on-Sea Borough Council

Report of Chief Executive
to
General Purposes Committee (GPC)
on
14 July 2021

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Review of the Council's Constitution

1. Purpose of Report

- 1.1 To outline a review of the Council's Constitution to help improve the effectiveness of the Council's decision making processes.

2. Recommendations

- 2.1 That General Purposes Committee consider the report from Bevan Brittan reviewing the Council's Constitution (Appendix 1).
- 2.2 That General Purposes Committee recommend to Council (a) their suggested key areas of change to the Council's Constitution, with a view to improving the effectiveness of the Council's decision making processes and b) how councillors could be engaged in the process.
- 2.3 That after consideration of the General Purposes Committee recommendations to Council, and engagement by councillors, a revised Constitution is drafted for consideration by General Purposes Committee, prior to final agreement by Council.
- 2.4 That General Purposes Committee note that the review of the Constitution is one element of improving the Council's culture, including enhancing the support provided to councillors; enhancing officer/councillor relations and enhancing the political awareness and practice of officers.
- 2.5 To note that revisions to the officer delegation scheme in Part 3, Schedule 3 of the Constitution be undertaken immediately to reflect the Council's senior management structures.

3. Background

- 3.1 The Council's current Constitution stems from the Modular Constitution developed to meet the requirements of the Local Government Act 2000, which saw the introduction of new executive and scrutiny arrangements for local authorities. While the Constitution has been amended over the years, its overall structure and key features have remained largely the same, and is, therefore,

overdue for review.

Key features of the current system include:

- All Cabinet decisions are made collectively at Cabinet meetings.
- Full Council sets the budget and agrees the Policy Framework and certain other functions prescribed by legislation.
- All Scrutiny Committees must be politically proportional and chaired by an opposition councillor.
- All decisions of Cabinet can be called-in to Scrutiny Committees, by two councillors, before taking effect, resulting in a relatively large number of call-ins.
- As few as one or two councillors can refer a matter up to Council for further scrutiny (Standing Order 39);
- All committee and executive minutes are referred to full Council for consideration.
- Minutes of committee meetings can be reserved for debate at full Council.
- Individual councillors can submit a motion to full Council.
- Senior officers can take decisions on matters of urgency or routine business between Cabinet meetings, in consultation with the relevant Cabinet Member/s.

3.2 The need for a review of these arrangements has been highlighted for some time and has gained traction in the light of arrangements put in place for Covid, review of the councillor/officer protocol and feedback from councillors and community. For example:

- The 2015 Local Government Association's Corporate Peer Challenge, included the recommendation to: *'consider reviewing your governance structures to ensure they are fit for purpose to deliver expectations in the changing devolution landscape and tougher economic climate'*.
- The need for 'simple and effective governance' was identified as one of the conditions necessary for the transformation of the Council to deliver Southend 2050.
- Issues relating to the Council's decision making processes were a continuing theme of the LGA's recent 'Health Check' of the organisation, with the length of time to take decisions, a lack of clarity in processes and the need to ensure constructive officer/councillor relations, featuring in particular.
- The impact of Covid has, arguably, heightened the need for agile and effective decision making, further making the case for a review.
- A review of the Council's decision making processes has been identified by Group Leaders as a priority.
- The councillor/officer protocol review highlighted the need to enhance councillor/officer relations and identified actions to address this.

- Concerns have been expressed by councillors and officers informally, in terms of the Constitution:
 - Being convoluted and difficult to understand
 - Not being conducive to agile and effective decision making
 - Hindering the democratic process – including frustration with the referral up procedure under Standing Order 39, and the repetition of business at, and length of, Council meetings.
 - The Council has faced criticism from external partners and residents for certain decision making processes and the conduct at certain Council meetings.
- 3.4 As experts in the field Bevan Brittan has been, asked to undertake a review of the Constitution, so that it would better reflect how the Council wants to operate.
- 3.5 Their findings are attached at **Appendix 1** and can broadly be divided between a number of significant recommendations and other changes on points of detail. Overall, however, their report finds that the Constitution is currently difficult to follow, that it needs modernising, that it needs to be shortened and streamlined and that the level of duplication should be reduced
- 3.6 It also highlights that the Council’s current constitutional arrangements do not follow the approach of most other local authorities in many important aspects.

4.0 Changes of significance

Bevan Brittan recommendations of significance include:

- 4.1 To re-write the Constitution in a modern style, to make it more transparent to a wider audience and to be ‘future proofed’ as much as possible.
- 4.2 The Leader and authorised individual executive members be enabled to take decisions in line with their portfolios and with appropriate thresholds. This is the practice of many other local authorities (of 43 councils reviewed previously, 33 enabled individual cabinet members to take decisions). The report also highlights that, in accordance with the Local Government Act 2000, the nature of delegation of executive powers is determined by the Leader of the Council and the executive, rather than full Council. It does not, however, suggest specific parameters of how this would work in practice. Arrangements vary, but typically these can include:
- An executive member cannot use delegated powers to make a ‘key decision’ as defined by legislation and a council’s constitution (essentially decisions of ‘significance’ relating to spend, savings, impacting impact on communities of more than two or more wards).
 - Significant cross cutting issues may have to be determined by the whole executive.
 - All decisions must abide by the law, the Constitution and relevant codes of practice.
 - Executive members can only make decisions in the presence of an officer and those decisions must be recorded in an approved format and made publicly available for scrutiny

- Where officer and executive councillors' powers coincide, day to day managerial decisions are taken by officers and strategic decisions taken by councillors.

The nature of the Council's arrangements in this regard could, therefore, be included in a revised Constitution.

- 4.3 That there should be a reform of the call-in process, with more pre-Cabinet scrutiny, more than two members required to support a call-in, a limit on the number of call ins by one member and some restrictions around the type of decisions which can be called in. The report also recommends requiring a justification for a call in, which can help provide focus for any discussion, or potentially help resolve an issue, so that it does not need to be taken to committee.
- 4.4 The removal of SO 39, so that councillors could no longer refer matters up to full Council.
- 4.5 Reform of the format for full Council meetings, including a summary of how they will operate, and ending the referral of minutes of all committee meetings to full Council and the ability of councillors to reserve minutes (an example agenda is attached at **Appendix 2**).
- 4.6 **Motions** to Council should require the support of more than one councillor (5 is highlighted as common practice elsewhere) while taking care to not exclude members of groups smaller than the number chosen. The provisions relating to motions should expressly give the Chief Executive the power to reject motions that are out of order, illegal, irregular, or improper. It should be noted that motions are currently referred to the relevant Cabinet Working Parties to make recommendations to Cabinet rather than debated at full Council. This is not the practice at many councils where motions are debated at the Council meeting they are submitted to.
- 4.7 Making the Schemes of Delegation more generic and wide ranging, with specific delegations falling within the functions allocated to the chief officers, rather than these being specified in detail.
- 4.8 The report highlights that there are areas of practice where the roles of councillors and officers is somewhat unclear. For example, councillors sometimes get involved in matters of detail that would better be the responsibility of officers operating within a clear policy framework. There is also an acknowledged need to widen officer delegation, to give more responsibility to officers closer to decisions (such as in Planning). A review of the Constitution will, therefore, complement the current on-going revision of highways and parking policies and incorporate recommended changes to decision making processes in this area.

5.0 Other Changes

- 5.1 There are a series of other recommended changes on points of detail, which need to be addressed at the same time, for example, ensuring the latest legislation is referenced.

6.0 Areas that are not addressed by Bevan Brittan:

- 6.1 The report does not address the issue of the electoral cycle used for Council elections, and the widely held view that it is a hindrance to effective decision making, with frequent pre-election periods and perceived electoral risks in a hung Council leading to delays in progressing key issues.
- 6.2 It may also be helpful to consider the current structure and arrangements for Scrutiny Committees. For example:
- Whether the framework is still appropriate, given the scrutiny committees reflect previous departmental arrangements?
 - Whether the size of committees is right to enable effective scrutiny and encourage considered discussion?
 - Whether, and how, more use could be made of pre-Cabinet scrutiny, possibly involving more use of the Overview & Scrutiny Committee?
- 6.3 Delegations to officers in Part 3, Schedule 3, of the Constitution need to be updated to reflect the Council's senior management structures. It is proposed that this work is undertaken in advance of the general review.

7.0 Culture & Practice

- 7.1 It is worth emphasising that while the suggested changes outlined could help improve the Council's decision making processes, the most important factor in making councils effective, and accountable is the culture and the values and behaviours of those in decision-making positions.
- 7.2 Officers and councillors both have a responsibility to support each other in navigating a council's decision making processes – something that is made easier when these are easily understood and accepted by those involved. Reform of the Constitution should, therefore, be seen in the context of the wider Future Ways of Working programme, including enhancing the support to councillors, enhancing officer/councillor relations, and enhancing the political awareness and practice of officers.

8.0 Next Steps

- 8.1 General Purposes Committee (GPC) is, therefore, asked to consider the suggested changes to the Constitution outlined in paragraph four with a view to making recommendations on the key principles of change to full Council. GPC will want to consider how councillors can be engaged in the review process and any further support that may be helpful. Councillor briefings could as part of this process, as well as looking at examples of how other councils operate. A fully re-drafted Constitution would then be further considered by the GPC and then submitted to full Council for agreement. An outline timetable for this process is

set out below.

8.2 Outline time-table:

General Purposes Committee meets - to agree key principles and process for engaging councillors	Early July
Full Council - to endorse decisions of GPC	15 July
Councillor engagement	July/Aug
GPC meets to make recommendations for change	Aug/Sept
After engagement of councillors and endorsement by GPC that the Constitution would then be re-drafted	September/ October
GPC to review revised draft	September/October
GPC to make final recommendations to Council on revised Constitution.	Autumn
Council agrees new Constitution	21 October/ 9 December

This time-table is the quickest possible, however, it may need to be revised in the light of councillor engagement.

9. Other Options

The General Purposes Committee could recommend that a review of the Constitution is not necessary, however, this would mean losing an opportunity to enable councillors, including those newly elected to the Council, to consider ways to improve the Council's decision making processes.

10. Corporate Implications

10.1 Contribution to the Southend 2050 Road Map

This work supports the Future Ways of Working condition for 'simple and effective governance', as well as to build an agile, collaborative and skilled workforce equipped to deliver Southend 2050. The review complements work to improve effective working relationships between Councillors and Officers, which in turn enables more opportunity for greater understanding of priorities, strengthened collaboration, and better outcomes towards the Southend 2050 roadmap.

10.2 Finance & value for money implications

There are no specific financial implications for this report. Improved decision making process will help enhance the efficiency and effectiveness and, therefore, the value for money achieved by the Council.

10.3 Legal Implications

Any changes made to the Constitution will be completed in line with legislative requirements determining the governance arrangements of English local authorities.

10.4 Equality & diversity implications

Revisions to the Constitution will reflect the Council's approach to equality and inclusivity, including the use of gender neutral language.

10.5 People Implications

This aims to contribute to the effective working relations between Councillors and Officers and to help underpin the work to embed the Council's the values and behaviours. However, no further specific people implications are noted in relation to this report.

10.6 Other corporate implications: (Property; Empowerment, Co-design/production & Consultation; Risk; Community Safety; Green City/Environment/Climate Change; Data Protection; ICT; Health; Health & Safety; Commissioning/ Procurement):- None specific.

11. Background Papers

There are no background papers.

12. Appendices

Appendix 1 - Draft Constitution Review Report - Bevan Brittan, April 2021
Appendix 2 – Example – revised Council meeting agenda

Example - Revised Council Meeting agenda

1. Minutes of previous meeting
2. Declarations of Interest
3. Communications – announcements from the Mayor, Leader, Cabinet members, Chief Executive
4. Questions from members of the public
5. Questions from Councillors
6. Petitions
7. Council businesses - themed debate on matters relating to the Policy or Budget Framework, the Constitution or other matters within the remit of Full Council – (ie. there would be no discussion of the minutes of committee meetings).
8. Motions
9. Any other business that the Mayor considers urgent

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Some options from other local authorities:

- Open Session - During this part of the meeting any Member may make a contribution of up to two minutes primarily on any matter which affects their ward. (There are no pages for this part of the agenda. (Camden).
- Report/update from Cabinet members and Committee Chairs, with a facility for questions (Wigan)
- Include meeting etiquette and behaviour expectations