

**SOUTHEND ON SEA BOROUGH COUNCIL**  
**Constitution Review Report**  
**20 April 2021**

## 1 ADVICE REQUESTED

- 1.1 Southend-on-Sea Borough Council (“the Council”) has commissioned Bevan Brittan LLP to carry out a review of its Constitution. The Council wishes to understand where its Constitution may be improved and better reflect how the Council wishes to operate.
- 1.2 In reviewing Constitutions, we regularly find a number of issues that need to be addressed, including:
- 1.2.1 Documents that have grown over a number of years and are not internally consistent;
  - 1.2.2 Desire to have a more easily understandable document that meets the needs of Members, Officers, other stakeholders and the public;
  - 1.2.3 Concern about legal compliance and extensive statutory references;
  - 1.2.4 An unwieldy document that could be simplified (the Council’s Constitution is currently 376 pages – well over 100 more pages than most Constitutions);
  - 1.2.5 Reduced duplication, “cleaning up” and “slimming down” the Constitution;
  - 1.2.6 Opportunities to reduce bureaucracy; and
  - 1.2.7 A structure which requires significant maintenance and is not future proof, particularly where most changes need to be approved by Council.
- 1.3 Constitutions that are succinct and focus on the core framework are often much more effective and accessible, as well as being more likely to be understood by Members, Officers and the public, than those that are lengthy and include significant amounts of information that arguably does not need to be in the Constitution, but can instead be made accessible elsewhere.

## 2 BACKGROUND/CONTEXT

- 2.1 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.
- 2.2 Section 9P of the LGA 2000 states that the Constitution must contain:
- 2.2.1 The standing orders/procedure rules;
  - 2.2.2 The Members’ Code of Conduct;
  - 2.2.3 Such information as the Secretary of State may direct;
  - 2.2.4 Such other information (if any) as the Council considers appropriate.
- 2.3 It is further stated that Constitutions must be available for public inspection at all reasonable hours and supplied to anyone who requests a copy on payment of a reasonable fee.
- 2.4 In December 2000 the Secretary of State issued a Constitution Direction that required around 80 matters to be included within Constitutions, covering Members’ allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities, and a description of the rights of inhabitants of the area amongst other things. The list of requirements is included as **Schedule 1** to this report, together with details as to where these requirements are presently reflected in the Constitution, and any comments where relevant.
- 2.5 A Model Constitution was also issued in 2000 (Modular Constitutions for English Local Authorities) which most Councils adopted and which continues to form the basis of many local authority Constitutions.

### 3 SUMMARY

The Council's Constitution currently comprises seven parts, many divided into a number of sections, with various schedules throughout those parts. The Council's Constitution can be found at the following address:

<https://democracy.southend.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13129&path=0>

- 3.1 There have been changes to the Constitution over the last year which have been taken into account in this review, such as the update to the Protocol on Councillor/Officer Relations.
- 3.2 The Constitution is based upon the Modular Constitution and has of course 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, web links and better presentation in a revised structure. More modern constitutions tend not to have Articles. The Summary and Explanation would benefit from some more information about how the Council works. This could be drawn from the Articles to give a more comprehensive picture.
- 3.3 By having a general summary in the Summary and Explanation, then the Articles, then 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.
- 3.4 There is also an amount of repetition within certain other areas of the document, in particular between the Articles and other parts, as well as within the Financial Procedure Rules. There is also a lot of cross referencing – for example the functions of the Council are set out in Article 4, and there is a section Part 3 Schedule 2 which refers the reader to Article 4. It might be more helpful to set the functions of the Council out in Part 3 instead (with a view to removing the Articles).
- 3.5 We note that executive decision making by executive Members is by Cabinet only, or in other words no executive Member is able to take decisions as an individual. Whilst this is not unheard of, it is unusual, and will undoubtedly have the effect of slowing down the executive decision making process and therefore the Council's ability to act quickly and effectively. We would suggest that, although ultimately of course a matter for the Leader of the Council, it may be more efficient for the Leader and authorised individual executive members to take decisions in line with their portfolios and within thresholds where appropriate.
- 3.6 The Council also has in place a rather unusual standing order in the form of standing order 39, which allows Members to 'refer up' functions delegated by Council to Committees for reconsideration/determination.
- 3.7 In essence, where a Committee to which standing order 39 applies has taken a decision, and not fewer than the number of voting members as represents the smallest political group on the Committee, immediately after the vote ask that the standing order be applied, the decision has no effect but instead stands as a recommendation to full Council.
- 3.8 We would advise against the retention of standing order 39 for a number of reasons, not least that it causes significant delay in the Council's decision making processes and undermines the work of Committees. We have particular concerns that this process can also be used in relation to the Scrutiny function, as this effectively means that there can be 2 instances of call in of the same executive decision before it can go back to the executive for consideration.
- 3.9 Another practice currently operated by the Council and which in our view is unnecessary, resource heavy, and which delays effective decision making, is the process of referring all Committee and executive minutes to full Council for approval. Of greater concern is that the provisions go further and allow for any Member to reserve any minute for debate at full Council. 'Black-lined minutes' do not require reservation and are available for debate automatically – those minutes are any minute relating to Council functions as defined in Part 2, Article 4 (therefore anything that is the responsibility of full Council), as well as any minutes referred to full Council under standing order 39.

- 3.10 We would also highlight that the call-in provisions in Part 4(e) are not subject to any limitation. Call-in should be the exception rather than the rule. We understand that it is commonplace for the majority of decisions taken at each Cabinet meeting to be called-in. This overuse of the scrutiny process weakens and devalues the process, and suggests that it is being used in a political fashion, whereas it is important that scrutiny is (as far as possible) apolitical and impartial. Earlier involvement of scrutiny, perhaps in the development of policy or in relation to consultation or difficult local issues on which the executive need to make decisions, could also reduce the frequency of call-ins and assist in building stronger relationships between the executive and the rest of the Council.
- 3.11 Overall there are some modern and positive provisions within the Constitution, however the length of the document (376 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.
- 3.12 The Council's Constitution is generally legally compliant, although there are some areas where the legislation has moved on and statutory references are not up-to-date.
- 3.13 It is also important as a general principle that Members of the Council should avoid becoming involved in matters of detail and operational decisions, which are the remit of Officers. This then frees Members to focus on setting policies, budgets, and the strategic framework for decisions, where their input is most important and effective..
- 3.14 We also note that the Council's current financial limit for Key Decisions is £250k. Our experience is that local authorities of a similar type have higher Key Decision thresholds, and in that respect we would suggest that the Council's threshold be amended to £500k.
- 3.15 We are also aware that the Council recently underwent a process of revising its constitution so that it used gender-neutral language. Whilst most references have been changed to "he or she", there are a handful of references to "he" left in the text, which is of course understandable given the size of the document and the amount of information contained within it.

#### **4 FORM AND PRESENTATION OF THE CONSTITUTION**

- 4.1 Although not in as traditional a form as many local authority constitutions, the Constitution does not read as a truly modern document and could be improved through the use of more modern language, web links, graphics and better presentation in a revised structure. The Introduction would benefit from some more information about how the Council works being drawn from the Articles to give a more comprehensive picture.
- 4.2 By having a general summary in the Introduction, then the Articles, then substantive sections, things are often stated multiple 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. This could all be cut down and assimilated into a much clearer document.
- 4.3 We note the current constitution is 378 pages long and would be far more accessible and understandable if shortened. As part of this exercise the Constitution should be rigorously edited to remove repetition and to make it more user friendly. We would recommend that the Council removes the Articles (30 pages) from the Constitution. This will reduce repetition from the Constitution since much of the Articles are in fact replicated elsewhere. Some of the content of the Articles will need to be moved to other parts of the Constitution (for example Article 4 would appear within Part 3 Responsibility for Functions).
- 4.4 There is much in the Constitution that it is important for the Council to have somewhere, but need not be contained in this document. Policies/procedures etc. can be referenced through web links which makes the whole document less daunting and unwieldy and, if they are not a formal part of the Constitution, allows them more easily to be updated/refreshed without having to take a report to Council.
- 4.5 This will all make it more accessible to its users who include:

- The public;
- Members;
- Officers; and
- Partners and stakeholders of the Council

## 5 ACCURACY, UPDATING AND FUTURE PROOFING

- 5.1 Local authority arrangements do of course change and whilst this means constitutions have to be updated, this should not be a constant exercise. The drafting should be future proofed so changes in post holders, legislation etc. should not, of themselves, ordinarily trigger a redraft.
- 5.2 Whilst the current Constitution is largely up to date, a number of statutory and legislative references need to be updated throughout the document. For example in a number of places reference is made to legislation that has been replaced or repealed. An example of this are the references to Part II of the Local Government Act 2000 and the sections within that Part. Following the Localism Act 2011, a new Part 1A was inserted into the LGA 2000 which specifically relates to governance arrangements in England only. The provisions in Part II were amended and now only apply to governance arrangements in Wales.
- 5.3 There are also references to the Data Protection Act 1998 (and the Data Protection Act without reference to the year). These should be changed to refer to 'data protection legislation' which would cover off the current data protection legislation as it applies in the UK (presently the UK GDPR and the Data Protection Act 2018), whilst also providing a degree of future proofing by not referring to specific pieces of legislation.
- 5.4 There are references at Article 7.03(b) and (d), and 7.04 to the Leader, Deputy Leader and Members of the Executive being potentially "*suspended from being a Councillor under Part III of the Local Government Act 2000*" which of course is now not applicable following the changes pursuant to the Localism Act 2011.
- 5.5 There appears to be some inconsistency in relation to the local choice functions. Article 4.01 states that the Council will be responsible for carrying out the local choice functions, however:
- 5.5.1 Article 4.03(3)(e) states that with reference to the appointment to outside bodies, this shall be the responsibility of the Council unless the appointment is an executive matter; and
- 5.5.2 Article 4.02(3)(l) states that the Council will be responsible for all local choice functions set out in Part 3 which the Council decides should be undertaken by itself rather than the executive.
- 5.6 Terms of Reference of Committees are split between the Articles and the Responsibility for Functions sections, which would be confusing to the reader who might expect all Terms of Reference for member bodies to be in one place.
- 5.7 Following on from the above, Section 1 of Part 3 sets out a table containing the local choice functions. This table states that the only local choice function to be the responsibility of the executive (and the relevant scrutiny committee) is the conduct of best value reviews (at row 7). The requirement to undertake best value reviews was repealed in 2008, and row 18 (which relates to the appointment to outside bodies) needs to be amended to reflect that as per Article 4.03(3)(e) this is the responsibility of the executive where it concerns an executive matter (if this is correct).
- 5.8 Paragraph 3.1 of Part 3 also states that all functions of the Council not allocated above (being a reference to the tables preceding paragraph 3) are the responsibility of the Executive, however the tables do not contain all of the Council's functions such as Scrutiny, and although details about the Scrutiny Committees are set out in the Schedules to Part 3, this could cause confusion.

- 5.9 Paragraph 2.6(a) of Schedule 2 of Part 3 of the Constitution (Responsibility for Functions) contains a few issues, and states:

*The Scheme of Delegation of executive functions to any Committee of the Executive or to an officer (including delegation of some functions to officers to be exercised in consultation with the appropriate Cabinet Members) will be determined by the Council, and will be contained in the Constitution. If and to the extent that any executive functions are not included in the delegation scheme then in cases of urgency the Leader may arrange for the discharge of those functions by delegating them to the Chief Executive or the appropriate Deputy Chief Executive to act in consultation with the Leader under Section 15 (3) and (4) of the 2000 Act, subject to review by the Council at the next Annual Council meeting.*

- 5.10 The first point here is that it is not a matter for Council to determine the delegation of executive powers – this is purely a matter for the Leader and the executive. Secondly, the reference to section 15 of the LGA 2000 is out of date (and should now read section 9E). Thirdly, any delegation that the Leader makes to the Chief Executive (or any other Officer) in cases of urgency cannot be subject to review by the Council as it involves executive matters (unless the exercise of those powers has resulted in a decision contrary to the budget or policy framework).
- 5.11 The terms of reference for the Licensing Committee set out at section 6.2.3(b) of Schedule 2 of Part 3 state that the Licensing Committee hear appeals against decisions made by officers carrying out delegated licensing functions. We would urge caution here because the statutory timeframe for appeal (21 days from the date of the decision for taxi licensing matters for example) runs from the date of the Officer decision, and not from the date of the decision of the Licensing Committee acting as an appeal panel. This may prejudice appellants.
- 5.12 The details regarding the Joint Independent Remuneration Panel at section 9.4 of Schedule 2 of Part 3 require amendment. Section 9.4.3(a) correctly states that Members of the Councils covered by the Panel cannot be members of the Panel, however the quorum provisions at 9.4.4 refer to a requirement to have at least 1 Council Member from each Council present. This should instead read “Council Appointee” which will then properly reflect the arrangements that the Council does have in place.
- 5.13 The list of local choice functions at Section 2 of Schedule 3 to Part 3 also appears to be missing the following paragraphs from Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000:
- 5.13.1 Paragraph 3 – the appointment of review boards under regulations under subsection (4) of section 34 (determination and review of claims and reviews) of the Social Security Act 1998 – although this provision and the regulations have been repealed, they remain in force for any matters concerning council tax benefit from before 1 April 2013;
- 5.13.2 Paragraph 8 – although the provisions referred to have been repealed (being appointment to police authorities), the replacement provisions, namely those in the Police Reform and Social Responsibility Act 2011, instead require appointment to a Police and Crime Panel. Those provisions state that it is for the local authority to appoint, and there is an argument that the appointment may be considered to be a local choice function notwithstanding that the paragraph has not been repealed or replaced; and
- 5.13.3 Paragraph 20 – the making of arrangements with other local authorities for the placing of staff at the disposal of those other authorities (see section 113 of the LGA 1972) – this is missing.
- 5.14 We consider that the Schemes of Delegation in the Constitutions could also be made clearer by avoiding setting out specific and special delegations. With reference to the specific delegations, there is a degree of repetition from the table of proper officers, and much of what is set out would naturally fall within the functions allocated to the Chief Officers in any case (due to the general delegations in line with functions).

- 5.15 Keeping the scheme more generic and wide-ranging would also make the document more manageable and future-proof as it should cover future changes to service specific legislation. A more practical way of delegation might be to have the scheme based on exceptions, or in other words only those powers excepted as being reserved for Council, other Committees, the Executive or other Officers are not delegated under more generic delegations in line with functions. The 'special delegations' section could be used for this purpose and include those delegations already set out within it. There would however need to be a record of those delegations to ensure proper oversight and governance.
- 5.16 A shorter, more accessible document will make it easier for any changes to be considered carefully, implemented clearly and for there to be a robust system of version control and explanation to all users of what changes have been made and why.
- 5.17 We also note that the Monitoring Officer is responsible for maintaining an up to date version of the Constitution (see Article 12.03 and section 4.2 of Schedule 3 of Part 3) however the power to make minor amendments is stated to be granted to the Chief Executive in consultation with the Monitoring Officer (see Article 15.02(b)). Ordinarily this delegation is made to the Monitoring Officer who is often better placed to make such amendments on account of their area of expertise and in line with their duty to maintain an up to date version of the Constitution.
- 5.18 Further, the references in the Financial Procedure Rules to the OJEU will need to be changed to instead refer to the "Find a Tender Service" or "FTS", as well as any other amendments necessary to reflect the post Brexit position around procurement.

## 6 DECISION MAKING

- 6.1 A key part of the Constitution (and which sets the tone for the culture the Council wishes to operate) is how decisions are taken. This includes the balance between:
- Cabinet collective decision making or powers of the Leader; and
  - Member decision making or officer delegation.
- 6.2 The right balance must also be struck in the Constitution to ensure:
- Recognition that the Council is a member-led authority;
  - Appropriate transparency and involvement in decision making;
  - Efficiency of business; and
  - The ability to respond swiftly to events (whilst ensuring probity and checks and balances).
- 6.3 Many provisions cross refer to other Parts of the Constitution (including the Articles) and are not therefore standalone sections, meaning there is a need to go in and out of documents to be sure of compliance with all requirements of the Constitution.
- 6.4 We note that although the Council has an executive system of governance, the Constitution makes it clear that decisions are made by the executive as a whole, rather than on an individual basis (by either the Leader or an individual portfolio holder). Although this is certainly not unheard of, it is not a common way of operating executive arrangements.
- 6.5 As the Council will be aware, the intention behind executive arrangements (which were brought into being under the Local Government Act 2000), was to enable decisions to be made quickly and effectively, removing levels bureaucracy and red tape, through clear leadership and identifiable decision-makers and with the intention of moving away from the previous committee system of governance that was perceived to be overly burdensome and very slow in dealing with decisions.

- 6.6 Although the Council's current system is not the same as the committee system, it retains a number of the same issues underpinning the reasons for the government creating the executive form of governance. Certainly requiring decisions to be made by the Cabinet acting in essence as a whole committee will have the effect of slowing down the executive decision making process and therefore the Council's ability to act quickly and effectively. It will also increase the amount of matters that are taken to Cabinet for decision where this may not be necessary.
- 6.7 Where Cabinet Members have delegated powers in line with their respective portfolios, this allows executive decisions to be more efficiently made without the requirement to hold a Cabinet meeting, or overburdening the Leader with requests to make decisions.
- 6.8 It should also be noted that all executive power vests in the Leader of the Council pursuant to section 9E of the LGA 2000. It is for the Leader to determine how the executive system operates, and whether and to whom executive powers shall be delegated. The Leader can change this scheme at any time, and does not require the approval of full Council to do so, however the Constitutional framework will need to ensure that appropriate checks and balances are in place.
- 6.9 We would suggest that, although ultimately of course a matter for the Leader of the Council, it may be more efficient for the Leader and authorised individual executive members to take decisions in line with their portfolios and within thresholds where appropriate.
- 6.10 Whilst Article 11 summarises the Councils' ability to enter into joint arrangements, Schedule 1(b) of Part 3 (Responsibility for Functions) only provides a list of the joint arrangements that the Council has in place. It might be useful to set out what procedure rules apply or what the terms of reference are, for those joint committees. These could either be set out in the Constitution or a hyper-link provided to where they may be found on the Council's or another website.
- 6.11 We note paragraph 1.3.3 of Schedule 3 of Part 3 states that:
- S.101 of the Local Government Act 1972 prohibits onward delegation from one officer to another. However the law permits administrative decisions to be taken by an officer in a Chief Officer's name, but not fundamental "threshold decisions"*
- 6.12 There are 2 points to make in relation to this. The first is that section 101 LGA 1972 only applies to non-executive powers. The provisions in Part 1A of the LGA 2000 contain provision in relation to executive powers (see section 9E). The second point is that we do not agree that section 101 LGA 1972 prohibits onward delegation from one Officer to another. Of course an Officer to whom delegations have been made will remain responsible should they delegate those powers further, but they are able to delegate to other Officers (both non-executive and executive powers) provided the delegation to them expressly states that this is permitted. We often therefore refer to the "cascade principle" where functions may be delegated to an officer and then onward delegated, provided the delegator is satisfied that the delegatee has the requisite skills and capability to take the decisions and the delegation is evidenced in writing.
- 6.13 Within the table of proper officers at section 2.2 of Schedule 3 of Part 3 of the Constitution there is reference to the Local Authorities (Members' Interests) Regulations 1992, which no longer apply in consequence of the Localism Act 2011. The reference to the Local Authorities (Executive Arrangements) Access to Information (England) Regulations 2000, and the various individual regulations set out, also need to be replaced with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (which repealed the 2000 Regulations).
- 6.14 Section 4 of Schedule 3 Part 3 (the Scheme of Delegation – specific delegations to Chief Officers) is perhaps unnecessary, as it repeats parts of the proper officer and statutory officer lists, and reliance could instead be placed on the general delegations in line with responsibility for functions. Section 5 of Schedule 3 of Part 3 (the Scheme of Delegation – special schemes of delegation) contains a number of references to specific legislation, and we would suggest that removing those references may assist in reducing the need to amend should there be any changes to the specific legislative provisions. Further, some of the special delegations could be set out elsewhere, such as those relating to RIPA.



Ordinarily the details as to who is appointed as the Senior Responsible Officer, the Coordinating Officer, and the Authorising Officer are set out in the Council's policy and procedure, rather than the Constitution.

- 6.15 We note that the Monitoring Officer is responsible for maintaining an up to date version of the Constitution (see Article 12.03 and section 4.2 of Schedule 3 of Part 3) however the power to make minor amendments is stated to be granted to the Chief Executive in consultation with the Monitoring Officer (see Article 15.02(b)). Ordinarily this delegation is made to the Monitoring Officer who is often better placed to make such amendments on account of their area of expertise and in line with their duty to maintain an up to date version of the Constitution.
- 6.16 We would also make the following suggestions in relation to the Council Procedure Rules ("Standing Orders") as set out at Part 4(a) of the Constitution:
- 6.16.1 With reference to 'Question Time' set out at Standing Order 6, we would suggest that in relation to both questions from the public and questions on notice from Members, the Chief Executive should be granted express powers to reject questions where those questions are considered to be out of order, illegal, irregular or improper;
- 6.16.2 Standing order 6 also sets out rules in relation to questions and public participation in relation to other Committees. We would suggest that these should be moved to a separate part of the standing orders that relates specifically to those Committees, and that the first part of the standing orders should relate to full Council procedure only. This should assist in locating standing orders relevant to a particular Committee rather than having to read through the standing orders as a whole to locate particular parts that are relevant;
- 6.16.3 We note that the Council has a process by which it refers all Committee minutes to full Council. Of greater concern is that the provisions go further – standing order 7 allows for any Member to reserve any minute for debate at full Council. Further, 'black-lined minutes' do not require reservation and are available for debate automatically – those minutes are any minute relating to Council functions as defined in Part 2, Article 4 (therefore anything that is the responsibility of full Council), as well as any minutes referred to full Council under standing order 39. We would suggest that this practice should be discontinued (unless those minutes are being reported to full Council by way of recommendation for a decision that must be taken by full Council), as it is unnecessary, resource heavy, and something that delays effective decision making. It also undermines the work of Committees to which powers have been delegated, as well as the executive;
- 6.16.4 Standing order 8 concerns notices of motion. Presently under this standing order any individual Member can submit a motion on notice to be considered at full Council. Most other Councils require such a motion to be signed by at least 5 Members to be valid. This is a sensible restriction as it regulates volume, as well as ensuring that any motion brought forward has been discussed by and has support from a group of Members. However, care needs to be taken where a Group has fewer members than the number of members chosen, to ensure balance so that a given number does not restrict a particular group's ability to get motions on the Council's summons. We would also advise that the provisions regarding motions on notice expressly provide the Chief Executive with powers to reject motions that are out of order, illegal, irregular or improper (therefore reflecting the common law position);
- 6.16.5 Standing order 20 repeats parts of the Members' Code of Conduct and can be removed;
- 6.16.6 Standing orders 25 to 27 concern matters related to contracts, signing and sealing and can be moved to the Contract Procedure Rules or the Responsibility for Functions section;
- 6.16.7 Standing order 28 could be redrafted to properly reflect the statutory and common law rights of Members of the Council to access information. For example Members should have access to documents where this is necessary in relation to their role, such as where the

documents relate to a Committee on which that Member sits, or where there is a genuine 'need to know' as provided by common law.;

- 6.16.8 Standing order 34(a)(ii) states that no Committee is able to establish a Sub-Committee. Although this is not uncommon, the Council may wish to review this restriction as it may result in delay to effective decision making;
- 6.16.9 Standing order 35.1(d) permits any Member of the Council to place an item of business on the agenda of any Committee, Sub-Committee or Working Party. We would suggest that this should be qualified so that at least 5 Members are required to support such a requisition, and that the Chief Executive has express power to reject that requisition where it is out of order, illegal, irregular or improper (so as to reflect the implied common law position);
- 6.16.10 Standing order 36.3 relates to the establishment of working parties, and states that any Cabinet working party shall be appointed by Council. On the basis that all executive powers vest in the Leader, the Council has no powers to appoint executive working parties. This should therefore be amended;
- 6.16.11 Standing order 37 could also be redrafted to reflect the statutory and common law position, for example Members can be permitted to attend at meetings of Committees on which they do not have seat subject to the agreement of the Chair of the relevant Committee, or the Leader in relation to Cabinet, where the meetings are in exempt session;
- 6.16.12 Standing Order 39 states that where a Committee to which it applies has taken a decision, and not fewer than the number of voting members as represents the smallest political group on the Committee immediately after the vote, ask that the standing order be applied, the decision has no effect but instead stands as a recommendation to full Council; and
- 6.16.13 We would advise against the retention of standing order 39 for a number of reasons, not least that it causes significant delay in the Council's decision making processes and undermines the work of Committees. We have particular concerns that this process can also be used in relation to the Scrutiny function, as this effectively means that there can be 2 instances of call in of the same executive decision before it can go back to the executive for consideration. This will significantly delay executive decision making and impact upon the Council's ability to operate effectively. We are also aware that presently the majority of Cabinet decisions are subject to call in and that this standing order is also frequently used, meaning that the impact of these provisions is even more pronounced.

## **7 OTHER PROCEDURES, CODES AND PROTOCOLS**

- 7.1 The Access to Information Procedure Rules at Part 4(b) of the Constitution are generally compliant, although we would make the following comments:
  - 7.1.1 Rule 7(a) refers only to access to minutes of the executive following a meeting, therefore an amendment is required to make it clear that minutes of all meetings (subject to being exempt/confidential) will be available;
  - 7.1.2 Rule 15 sets out the general exception to the requirement to give at least 28 days' notice of a key decision. Rule 15(b) states that the Monitoring Officer must give notice to the Chair of the relevant Scrutiny Committee, as well as all Members of that Committee. The requirement in regulation 10 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 is stated in the alternative – to give notice to the Chair, or if there is no Chair all of the members of the Committee;
  - 7.1.3 The Rules do not set out the additional rights of access to Members of the Council (other than for members of Scrutiny Committees) as set out in regulation 16 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; and

- 7.1.4 The limit on rights of access to executive documents set out at Rule 19.2 does not fully reflect regulation 17 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. Further, the Rule states that Scrutiny Members are not entitled to any document that is in draft form – this is not one of the limits in regulation 17.
- 7.2 Rule 1.2 of the Executive Procedure Rules at Part 4(d) of the Constitution states “*The Council’s scheme of delegation will be subject to adoption by the Council and may only be amended by the Council...*” Although this is correct, the fact that it is contained within the Executive Procedure Rules suggests that it relates to the executive scheme of delegation, in which case it would be incorrect as it is a matter for the Leader to determine what scheme is in place for executive decisions.
- 7.3 Rule 15 of the Scrutiny Procedure Rules (set out at Part 4(e) of the Constitution) contains rules regarding call-in. The first paragraph of the Rule states “*Call-in should only be used where really necessary and the right should not be abused...*” however we understand that calling-in executive decisions is a regular occurrence, with most executive decisions of Cabinet being called-in. This overuse of the call-in mechanism arguably weakens and devalues the process, and suggests that it is being used in a political fashion, whereas it is important that scrutiny is (as far as possible) apolitical and impartial.
- 7.4 We refer to the “good scrutiny guide” published by the Centre for Public Scrutiny (now the Centre for Governance and Scrutiny) in June 2019, which can be accessed here:  
<https://www.cfgs.org.uk/?publication=the-good-scrutiny-guide>
- 7.5 Paragraph 3.4.2 contains the following useful commentary and guidance:  
*3.4.2.1 Call-in provides a mechanism for councillors to intervene when they feel that a decision being made by the executive needs to be revisited (or possibly changed). It should, however, be regarded as a measure that is only needed in exceptional circumstances, rather than day-to-day. It sits in the context of a range of other tools at scrutiny’s disposal to influence decision making.*  
*3.4.2.3 Generally only “key decisions” made by the authority are subject to call-in, although councils may decide in their constitutions to expand the scope of their call-in powers to allow other decisions to be scrutinised.*
- 7.6 We also refer to the MHCLG document “Overview and scrutiny: statutory guidance for councils and combined authorities” published in May 2019 and which can be accessed at the following address:  
<https://www.gov.uk/government/publications/overview-and-scrutiny-statutory-guidance-for-councils-and-combined-authorities/overview-and-scrutiny-statutory-guidance-for-councils-and-combined-authorities>
- 7.7 Local authorities are required to have regard to the statutory guidance when exercising their functions. Paragraph 11 of the statutory guidance states:  
*Scrutiny committees do have the power to ‘call in’ decisions, i.e. ask the executive to reconsider them before they are implemented, but should not view it as a substitute for early involvement in the decision-making process or as a party-political tool.*
- 7.8 We would suggest that the Council considers amending the Scrutiny Procedure Rules to increase the number of Members required to call in a decision from 2, and/or placing some form of limit on the number of call-ins that can be made per municipal year by each member, as well as requiring reasons to be given for call-in. The Council could also limit call-ins to key decisions, being the most significant.
- 7.9 We also note that where a call-in is exercised, this has the effect of calling in the whole minute of the decision. This is unnecessary and we would suggest that it may be appropriate to allow for parts of minutes to be called in where they are easily separable and divisible.

- 7.10 Earlier involvement of scrutiny, perhaps in the development of policy or in relation to difficult local issues on which the executive need to make decisions, could also reduce the frequency of call-ins and assist in building stronger relationships between the executive and the rest of the Council.
- 7.11 The Financial Procedure Rules at Part 4(f) of the Constitution are lengthy and contain a number of repetitions, particularly in the various appendices which set out guidance and explanations. We suggest that these Rules could be shortened, which should help make them more understandable and accessible.
- 7.12 The Contracts Procedure Rules at Part 4(g) of the Constitution will need to be updated to reflect the post Brexit legislative landscape, for example the references to the OJEU should be replaced with reference to the “Find a Tender Service” or “FTS”. Some Councils now prefer to refer to the “Public Contracts Regulations Thresholds” or “Public Procurement Thresholds” rather than EU Thresholds, for example.
- 7.13 The Council may wish to reconsider its members Code in light of the new LGA “model Code”, unless this has already been reviewed.
- 7.14 The “Probity in Planning – Guidance to Councillors and Officers” set out at Part 5(b) of the Constitution is based on the Local Government Association publication of 2009. This has since been updated and the current version was issued in 2019 and can be accessed at the following address:  
[https://www.local.gov.uk/sites/default/files/documents/34.2\\_Probity\\_in\\_Planning\\_04.pdf](https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf)
- 7.15 Additionally Lawyers in Local Government produced a more recent Planning Code that may be of interest, available at:  
[Microsoft Word - LLG Planning Code or Protocol 2014.doc](#)
- 7.16 The Employment Procedure Rules at 8(a) refer to the suspension of the statutory officers for a period of up to two months. This may be a hang over from the previous version of the Local Authorities (Standing Orders) (England) Regulations 2001 where further suspension had to be authorised by a designated Independent Person. We would suggest that this is now removed as investigations and disciplinary action are rarely in our experience dealt with within two months. We would normally also expect to see the mandatory Standing Orders regarding the appointment of political assistants in sections 8 and 9 Local Government and Housing Act 1989 in the Constitution even if a local authority does not have any at present , because members may choose to appoint them.
- 7.17 The Employee Code of Conduct at Part 5(c) may benefit from a reference to the provisions in section 117 of the Local Government Act 1972 which state that it is a criminal offence for an officer to fail to give notice in writing of a direct or indirect pecuniary interest in a contract that has been or is proposed to be entered into by the Council, or to accept any fee or reward other than their proper remuneration.
- 7.18 We would suggest that the Council’s ‘Local Code of Governance’ as set out at Part 5(e) of the Constitution could be removed and hyperlinked to reduce the length of the Constitution, along with the Local Protocol on the Councillor call for Action.

**Bevan Brittan LLP**  
**20 April 2021**

**SCHEDULE 1 – CONSTITUTION DIRECTION**

**THE LOCAL GOVERNMENT ACT 2000 (CONSTITUTIONS) (ENGLAND) DIRECTION 2000**

The Secretary of State for the Environment, Transport and the Regions, in the exercise of his powers under section 37(1)(a) (now s.9P) and 48(7) (now s.9R) of the Local Government Act 2000 (c.22) (the Act) and all other powers enabling him in that behalf, hereby directs all local authorities in England to which Part II (now Part 1A) of the Act applies as follows:

**Miscellaneous and interpretation**

In the direction:

“constitution” has the meaning given by section 9P of the Act,

“overview and scrutiny committee”...in the case of a local authority which is operating executive arrangements has the meaning given by section 21(1) (now s.9F(1)) of the Act...

In complying with this direction a local authority must have regard to any guidance issued for the time being by the Secretary of State under section 38 (now s.9Q) of the Act

	Requirement of Direction	Council’s Constitution	Comments
a	a summary and explanation of the purpose and content of the constitution;	Part 1 – Summary and Explanation Part 2 – Article 1	<p>We note that the Contents page provides a useful overall picture of the composition of the Constitution. The Summary and Explanation provides useful detail as to the content of the Constitution, but it could be made more user friendly. For example, the "What's in the Constitution" paragraph refers only to the contents of the Articles and not the constitution as a whole and this list reflects the contents pages rather than describing the key elements of each part. It also uses terms such as "Joint Arrangements" which are likely to mean little to members of the public without further explanation.</p> <p>We note that the "Purpose of the Constitution" as set out in Part 2 – Article 1 is based on the Model Constitution, and we consider that this would benefit from being redrafted to reflect how a modern Council</p>

	Requirement of Direction	Council's Constitution	Comments
			operates (e.g. does the constitution provide leadership or is that the Leader and Cabinet?).
b	a description of the composition of the council, the scheme of ordinary elections for members of the council and their terms of office;	Part 1 Part 7	
c	a description of the principal roles and functions of the members of the council under executive arrangements or, as the case may be, alternative arrangements including the rights and duties of those members;	Part 1 Part 2 Part 3	
d	the scheme of allowances for members of the authority drawn up in accordance with regulations made under section 18 of the Local Government and Housing Act 1989 (c.42);	Part 6	
e	a description of the rights and responsibilities of inhabitants of the authority's area including: <ul style="list-style-type: none"> <li>i. their rights to vote in elections for the return of members of the authority;</li> <li>ii. their rights to access to information about the authority's activities;</li> <li>iii. their rights of access to meetings of the council, its committees and sub-committees and any joint committees established with any other authority; and</li> <li>iv. their rights of access to meetings of the executive and committees of the executive,</li> </ul>	Part 1 Part 2 – Article 3 Part 4(b)	
f	a description of the roles of the authority itself under executive arrangements or, as the case may be, alternative arrangements including: <ul style="list-style-type: none"> <li>i. the functions which may be exercised only by the authority itself or which may to some extent be exercised only by the authority itself (including, in the case of a local authority operating executive arrangements any plans and strategies which are subject to approval or adoption by the authority itself by virtue of regulation 5 of, and paragraph 1</li> </ul>	Part 2 Part 3 Part 4	

	Requirement of Direction	Council's Constitution	Comments
	<p>of Schedule 4 to, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853)); and</p> <p>ii. any rules governing the conduct and proceedings of meetings of the authority itself whether specified in the authority's standing orders or otherwise,</p>		
g	a description of the roles and functions of the chairman of the council (including a chairman entitled to the style of mayor);	Part 2 – Article 5 Part 4	
h	a description of the functions of the local authority executive which, for the time being, are exercisable by individual members of the local authority executive stating as respects each function, the name of the member by whom it is exercisable;	N/A	The Council currently does not have a scheme of powers exercisable by individual executive members.
i	a description of the functions of the local authority executive which, for the time being, are exercisable by the executive collectively or a committee of the executive, stating as respects each function, the membership of the body by who it is exercisable	Part 2 – Article 7 Part 3	
j	a description of those powers of the executive which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months	Part 3 – Schedule 3	
k	a description of the arrangements for the operation of overview and scrutiny committees including <p>i. the terms of reference and membership of those committees and any rules governing the exercise of their functions; and</p> <p>ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise'</p>	Part 2 – Article 6 Part 4(e)	
l	in the case of a local authority which is operating executive arrangements, a description of the roles of	Part 2 – Article 7 Part 3 – Schedule 1(a) Part 4(d)	

	Requirement of Direction	Council's Constitution	Comments
	<p>the executive, committees of the executive and members of the executive including:</p> <ul style="list-style-type: none"> <li>i. the roles, functions, rights, responsibilities and duties of members of the executive;</li> <li>ii. in the case of a local authority which is operating executive arrangements which include a leader and cabinet form of executive, any rules governing the election of the executive leader;</li> <li>iii. any rules governing the appointment of members of the executive;</li> <li>iv. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of the executive;</li> <li>v. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of any committees of the executive;</li> <li>vi. any provisions in the local authority's executive arrangements with respect to the appointment of committees of the executive; and</li> <li>vii. in the case of a local authority which is operating executive arrangements which include a mayor and council manager form of executive, any roles of committees appointed by the elected mayor to advise the executive in accordance with paragraphs 3(14) and (15) of Schedule 1 to the Act,</li> </ul>		
m	<p>in the case of a local authority which is operating executive arrangements which include a mayor and council manager form of executive, a description of the roles, functions, rights, responsibilities and duties of the deputy mayor appointed in accordance with paragraph 3(3) of Schedule 1 to the Act;</p>	N/A	
n	<p>a description of the roles of any committees or sub-committees appointed by the authority in accordance with section 101 of the Local Government Act 1972 (c.70) including:</p>	<p>Part 3 – Responsibility for Functions Part 4(a)</p>	



	Requirement of Direction	Council's Constitution	Comments
	<p>i. the membership, terms of reference and functions of such committees or sub-committees; and</p> <p>ii. any rules governing the conduct and proceedings of meetings of those committees or sub-committees whether specified in the authority's standing orders or otherwise,</p>		
o	a description of those powers of the council which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months;	Part 2 – Article 12 Part 3 Schedule 3	
p	<p>a description of the roles of the local authority's Standards Committee and any parish council sub-committee of the Standards Committee appointed in accordance with sections 53 or 55 of the Act including:</p> <p>i. the membership, terms of reference and functions of that committee or sub-committee; and</p> <p>ii. any rules governing the conduct and proceedings of meetings of that committee or sub-committee whether specified in the authority's standing orders or otherwise;</p>	Part 3 Part 4(i) Part 5(a)	
q	<p>a description of the roles of any area committees appointed by the authority to exercise functions in accordance with regulations 16A of the Local Government (Committees and Political Groups) Regulations 1990 (SI 1990/1553) or, as the case may be, section 18 of the Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (SI 2000/2851) including:</p> <p>i. the membership, terms of reference and functions of such committees; and</p> <p>ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise</p>	N/A	

	Requirement of Direction	Council's Constitution	Comments
r	a description of any joint arrangements made with any other local authorities under section 101(5) of the Local Government Act 1972 including: <ul style="list-style-type: none"> <li>i. the terms of those arrangements;</li> <li>ii. the membership, terms of reference and functions of any joint committees established under those arrangements; and</li> <li>iii. any rules governing the conduct and proceedings of meetings of those joint committees whether specified in the authority's standing orders or otherwise</li> </ul>	Part 3, Schedule 1(b)	Although the Constitution does contain a list of all of the joint arrangements, there does not appear to be anything that sets out a description of those arrangements as particularised.
s	a description of any arrangements made with another local authority for the discharge of functions by that other local authority or the executive of that other local authority in accordance with section 101(1)(b) of the Local Government Act 1972 or, as the case may be, Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000;	N/A	We are not aware of any arrangements that the Council has in place that would fall into this category
t	a description of the roles of officers of the local authority including: <ul style="list-style-type: none"> <li>i. the management structure for officers of the authority;</li> <li>ii. any arrangements made under section 101 of the Local Government Act 1972 or, as the case may be, section 14, 15 or 16 of the Act for the discharge of functions by officers of the authority;</li> <li>iii. the roles and functions of the head of paid service, monitoring officer and chief finance officer;</li> <li>iv. the code of conduct for local government employees issued by the Secretary of State in accordance with section 82 of the Act;</li> <li>v. any rules governing the recruitment, appointment, dismissal and disciplinary action for officers of the authority;</li> <li>vi. any protocol established by the authority in respect of relationships between members of the authority and officers of the authority;</li> </ul>	Part 7 – Composition of the Council and Management Structure Part 3 Schedule 2 – TORs for Cabinet, Committees etc. Part 3 Schedule 3 – Delegations to Officers Part 5(d) – Protocol on Councillor / Officer Relations	

	Requirement of Direction	Council's Constitution	Comments
u	a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to meetings of the authority, committees and sub-committees of the authority, joint committees established with any other local authority, the executive and committees of the executive	Part 4(a) – S.O 16 Part 4(b) – Access to Information Procedure Rules Part 4(d) – Executive Procedure Rules	We note that the Openness of Local Government Bodies Regulations 2014 are helpfully mentioned at S.O. 16, however we would suggest that S.O. 16 could be moved to the Access to Information Rules
v	a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to information about the decisions made or to be made by in respect of local authority's functions and activities.	Part 4(b) – Access to Information Procedure Rules	We note that the additional rights of access to executive information afforded to Members of Scrutiny are stated, however the full exceptions to that right of access are not set out (including advice from a political advisor – although we are not aware that the Council has political advisors for groups, it is probably sensible to set out the limits in full).
w	a register stating i. the name and address of every member of the local authority executive for the time being and the ward or division (if any) which he represents; and ii. the name of every member of each committee of the local authority's executive for the time being.	Part 7 – Composition of the Council and Management Structure	Although this is contained within the Constitution, we would suggest that this could be replaced with a hyperlink to the Councillor details page on the Council's website on the basis that there may be relatively frequent changes to this information. This will also help reduce the length of the Constitution.
x	a description of the rules and procedures for the management of its financial, contractual and legal affairs including: i. procedures for auditing of the local authority; ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise; iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and iv. rules and procedures in respect of legal proceedings brought by and against the local authority	Part 3 – Responsibility for Functions Part 4(f) – Financial Procedure Rules Part 4(g) Contracts Procedure Rules	
y	a description of the register of interests of members and co-opted members of the authority required under section 81 of the Act, together with the	Part 5(a)	Members are responsible for notifying the MO, who is required to keep a register – the register should be available on the Council's website.

	Requirement of Direction	Council's Constitution	Comments
	procedures for publicising, maintaining and updating that register.		
z	a description of the rules and procedures for review and revision of the authority's constitution and executive arrangements or, as the case may be, alternative arrangements	Part 2 – Article 1.04, Article 12, Article 15 Part 2 – Schedule 1 Paragraph 2.6(a) of Schedule 2 of Part 3 Section 4.2 of Schedule 3 of Part 3	Re Paragraph 2.6(a) of Schedule 2 of Part 3 – this states that executive delegations will be determined by Council. This is incorrect as executive functions (and their delegation) are purely a matter for the Leader and the executive.