

Meeting: Council
Date: 13 June 2024
Classification: Part 1
Key Decision: N/A
Title of Report: **Report of Monitoring Officer requesting a Review of the Constitution**

Executive Director: Claire Shuter (Executive Director – Strategy & Change)
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Executive Councillor: Cllr Ian Gilbert, Cabinet Member for Regeneration, Major Projects and Regulatory Services

1. Executive Summary

- 1.1 This report asks Council to agree to the commissioning of a complete review of the Council's constitution and the proposed scope of that review.
- 1.2 It also sets out a proposal that cross-party Member engagement with the progress of the review should be by Standards Committee, which committee will then make recommendations for the adoption of a new constitution, in whole or in part, to Council.
- 1.3 The report furthermore asks Council to amend the delegation of functions to Standards Committee to include the receipt of reports from the Monitoring Officer on any amendments and alterations to the constitution and to make recommendations to Council for decision on such alterations and amendments.
- 1.4 This is a departure from the current custom and practice which is for any changes to the constitution to be considered by the General Purposes Committee before being reported to Council.

2. Recommendations

That Council agrees:

- 2.1 **That authority be delegated to the Monitoring Officer to commence a review of the whole of the Council's constitution and to report on all proposed changes to Standards Committee for recommendation to Council in a future report or series of reports;**
- 2.2 **That future amendments and alterations to the constitution first be considered at Standards Committee through a report or reports from the**

Monitoring Officer and that the Standards Committee makes recommendations on the suggested amendments and alterations to Council for decision and eventual adoption of a new constitution;

- 2.4 That the Monitoring Officer be authorised, in consultation with the Leader, to make all necessary amendments to the Responsibility for Functions (Part 3 Schedule 2 paragraph 7), Terms of Reference for Standards Committee and other relevant parts of the constitution to reflect the Council’s decision (if made) in Recommendation 2.1 above.**

3. Background

- 3.1 The council is required to have a set of Standing Orders (section 9P of the Local Government Act 2000 (“the Act”)) which must include certain mandatory provisions set out in legislation as well as the Council’s Code of Conduct for Councillors. This is known as the Constitution.
- 3.2 Article 1.04 of the Constitution requires that: “The Council will monitor and evaluate the operation of the Constitution with the assistance of its Standards Committee if necessary”.
- 3.3 The Monitoring Officer is tasked with maintaining the Constitution and Articles 4 and 15 respectively provide that Council may adopt and change the Constitution and that (subject to the authority given to the Chief Executive in consultation with the Monitoring Officer and Group Leaders, to make minor amendments in certain circumstances), changes to the Constitution will only be approved by the full Council on a report from the Monitoring Officer.
- 3.4 A good constitution is one that is used and understood by both Members and Officers and not just governance professionals. Everyone has an individual and collective responsibility to understand the principles behind the rules in the constitution, as well as applying them on a day-to-day basis, and therefore it is important that both Members and Officers have a role in reviewing it to ensure successful implementation.
- 3.6 It is important that the Constitution supports and complements the Council’s governance framework and the values of the Council.
- 3.7 It has been recognised for a number of years that Southend City Council’s Constitution requires improvement. Various amendments have been made to individual provisions, but these have not informed the whole, resulting in contradicting and out-of-date content.
- 3.8 The Monitoring Officer, having studied the Constitution herself, taken into account the report of the Peer Review in 2022 and advice prepared by external solicitors on the Constitution in 2021, agrees that it should at the very least undergo a thorough review and positively recommends that it be rewritten.

3.9 The Chief Finance Officer has indicated that there is financial provisions available in the Budget to support the commissioning of external legal support for this work.

4. Member Engagement Through Standards Committee.

4.1 Section 53 of the Act makes it a legal requirement for every council to have Standards Committee and Section 54 stipulates that the responsibility for promoting and maintaining high standards of conduct is a primary function of a Standards Committee.

4.2 Section 54(3) of the Act provides that “A relevant authority may arrange for their standards committee to exercise such other functions as the authority consider appropriate.”

4.3 As this Committee already has the responsibility for upholding the Code of Conduct, which forms part of the Constitution as well as for upholding and maintaining high standards of conduct in the Council, it would seem to be the most appropriate body to monitor the progress of the constitutional review as well as any future proposed changes to the Constitution. This committee will allow for cross-party Member engagement and make recommendations to Council for decision.

5. The Scope of the Review and Next Steps

5.1 Due to the number of contradictions and inconsistencies contained in the Constitution, it is recommended that a complete review is undertaken which may result in the whole of the constitution being re-written in a modern and accessible form, using Plain English where possible.

5.2 The review will be led by the Director Legal Services as the Monitoring Officer, with external legal support and will require a cross-organisation approach for the drafting of technical content by relevant expert officers across the Council.

5.3 In addition, a review of the whole document will also be undertaken to update language and references and the Monitoring Officer will retain oversight of all amendments to ensure consistency throughout.

5.4 We hope to be able to present a new draft constitution for agreement and adoption by Council by the end of 2024.

5.5 We will then roll out a training and familiarisation programme to officers and Members as appropriate.

6. Financial Implications

- 6.1 The external review of the constitution is likely to cost in the region of £15k and this can be funded as a one-off cost from the Council's 2024/25 contingency.
- 6.2 There are no new/additional costs associated with the redirection of constitutional matters from the General Purposes Committee to Standards Committee.

7. Legal Implications

- 7.1 It is a requirement of the Local Government Act that the Council has a constitution, there is a risk that the constitution in its current form may give rise to legal challenges about the Council's governance framework and decision-making procedures.

8. Alternatives Considered

- 8.1 The Council is required in law to have a constitution which must contain certain provisions set out in legislation. The alternatives to the recommended complete re-drafting of the constitution which have been considered are:
- a. Do Nothing and continue with the Constitution in its current form; or
 - b. Undertake an amendment of the constitution in part only.

Neither of the above options will sufficiently mitigate the risk caused to the strength of the Council's governance framework and clarity of decision-making by the Constitution in its current form.

9. Consultation

- 9.1 There will be consultation with Members through the Standards Committee and Council, as well as engagement and training sessions with all councillors. There will be consultation with officers through engagement with the services through the drafting, decision-making and training process.

10. Appendices

None.

11. Report Authorisation

This report has been approved for publication by:		
	Name:	Date:
S151 Officer	Joe Chesterton	3 June 2024
Monitoring Officer	Susan Zeiss	5 June 2024
Executive Director(s)	Claire Shuter	30 May 2024