

CHESHIRE EAST COUNCIL

Constitution Sub-Committee

Date of Meeting:	23 rd August 2017
Report of:	Acting Director of Legal Services & Monitoring Officer
Subject/Title:	Review of the Constitution

1.0 Report Summary

- 1.1 At a meeting on 4th August 2017, the Constitution Committee approved the appointment of a Sub-Committee to take forward a full review of the constitution. With the involvement of relevant stakeholders, the objective agreed was to present a proposed new constitution to the Constitution Committee, which will in turn be asked to recommend the same for adoption by full Council.
- 1.2 This report proposes a work programme and timetable for the Sub-Committee to consider and endorse in order to achieve the timely adoption of a new constitution. This report also sets out a proposed outline format and general principles for a new constitution to guide the proposed work programmes.

2.0 Recommendations

- 2.1 That the Constitution Sub-Committee agree:
- 2.1.1 The overall style and presentation of the constitution set out in Work Package 1 below.
 - 2.1.2 The proposed work packages 2 to 5
 - 2.1.3 The appointment of joint Member and Officer Working groups to deliver each work package to a September or October Constitution Committee
 - 2.1.4 That the Working Groups reviewing Member and Officer decision making are to commence with a joint meeting/workshop, facilitated by Bevan Brittan, in order to ensure a coordinated approach is then taken to reviewing Member and Officer decision-making.

3.0 Reasons for Recommendations

- 3.1 To implement the decision of the Constitution Committee on 4 August 2017.

4.0 Detailed Proposals

4.1 In order to take forward the 4 August decision of Constitution Committee, it is proposed that the review work is split into 5 discrete work packages, in line with the approach suggested by Bevan Brittan. The 5 discrete work packages are as follows:-

Work Package 1 - The overall style and presentation of the Constitution

4.1.1 Work Package 1 relates to the overall style and presentation of the constitution. The Sub-Committee is asked to agree the approach to be taken to Work Package 1.

4.1.2 Appendix 1 to this report is the table of contents for the current constitution showing how its content is currently arranged. Appendix 2 sets out a proposed table of contents reflecting a proposed new arrangement of its content.

4.1.3 The approach proposed in Appendix 2 follows that agreed by Constitution Committee, to keep the constitution focused, clear and future-proofed as far as possible. It will contain only what it is required to contain. It is set out in logical sections mirroring the main decision making “components” of the Council.

4.1.4 Appendix 2 currently shows rules of debate at meetings, access to documents and information, and employment rules as separate procedure rules in a distinct section. However, in keeping with the ethos of “everything that relates in one place”, Members are asked to consider the alternative option below:

- In respect of the employment rules, these relate to the employment of certain specified officers. Those rules are applied by the Staffing Committee, the Investigation and Disciplinary Committee, the Disciplinary Appeals Committee, and the Independent Persons Panel. All of the materials that relate to those committees (terms of reference, composition etc.) would be found in the “Committees” section of the constitution. It would be in keeping with the “everything in one place” approach to have the employment procedure rules in the same place as the provisions that constitute and govern the operation of the committees that apply those rules.
- Similarly, the rules in relation to debate at meetings (often referred to as Council or Committee Procedure Rules) may be better placed along side the sections of the constitution that relate to the workings of the council and the workings of committees, so that someone wanting to understand the council or its committees could find everything they need to

know (what the committee is, what it does and how it does it) in a single place.

- Finally, Members might take the view that the rules about accessing documents and information would be better placed in the section of the constitution which deals with the rights members of the public have. After all, those rules are primarily intended to ensure that the public have access to the materials they are entitled to access in order to facilitate and enable better engagement with the democratic process. Thus, Members may take the view that setting out those rules in that section better accords with the “everything that relates in one place” approach.

4.1.5 In terms of style and presentation, it is proposed to observe plain English principles when drafting and to adopt a clear, modern approach to layout including utilising hyperlinking where possible. Early re-drafts of sections where substantive changes to content are not required would be brought to the Sub-Committee to model and seek approval to the proposed approach.

4.1.6 Members are asked to consider and agree the approach to these matters so that the working groups can begin to generate product to populate the proposed new constitution on this basis and in line with the agreed vision and seven guiding principles.

Work Package 2 - Decision Making – Terms of Reference of Member Bodies

4.1.7 Work Package 2 is proposed to be a review and refresh of the provisions of the constitution relating to Member decision making. Principally, this would cover the terms of reference for the work of the Cabinet and Committees.

4.1.8 It is suggested that a joint Member and Officer work group be established to undertake this work seeking input from appropriate Officers and Members with responsibility and experience of operating the relevant functions. For example, committee chairs and vice chairs and the officer leads in each area. The review could encompass and reflect on any changes suggested to deliver the agreed vision and seven guiding principles.

4.1.9 As part of this work package, the work group should specifically consider the governance arrangements for the council’s Shared Services Committee, Local Area Partnerships and its ASDVs.

Work package 3 - Decision Making – Officer Scheme of Delegation

4.1.10 Work Package 3 is proposed to be a review and refresh of officer delegations. This is the area of the constitution which, in Bevan Brittan’s view, requires most focus and detailed work.

4.1.11 In accordance with the vision and seven principles agreed by Constitution Committee, Bevan Brittan have suggested that a revised officer scheme of delegation could be set out as follows:-

- Introduction - purpose of scheme and overall explanation of its structure and how it works
- General principles of delegated decision making including consultation, taking required advice, record keeping, ability to delegate on to other officers (through chains of sub-delegation)
- Functions delegated to the Chief Executive as the statutory “Head of Paid Service” (HoPS) and all Chief Offices who would then determine whether and how functions should be sub-delegated.
- Live links through to the local schemes of delegation recording sub-delegations which would be produced and maintained in each directorate.

4.1.12 Underpinning this approach will be:-

- Clarity on which type of decisions require prior consultation with members and other stakeholders and which do not.
- An agreed template for local schemes of delegation which each directorate would create and keep updated. These would be lodged centrally and accessible through live links from the constitution
- Avoiding duplication of other parts of the constitution e.g. officer code of conduct, financial regulations etc. If necessary a link will cross refer readers to the relevant other part.

4.1.13 This approach lends itself to setting the delegations out by reference to the three directorate groupings of People, Corporate and Place. The approach taken would be to refer to the area of activity or service covered in the delegation and to avoid (except where necessary in law) references to specific legislative provisions to make the document more future-proof.

4.1.14 In addition to future-proofing the constitution, the approach suggested allows the council to be more fleet of foot in how it configures itself to respond to changes in legislation and opportunities to improve service delivery and drive business efficiencies.

4.1.15 This area of the constitution has attracted significant comment. It is suggested that the work group for this work package draws in officers from key service areas as and when needed, and builds on

the body of detailed review work which has already been undertaken.

4.1.16 It is suggested that work group should work through a number of typical decision and transaction types so that these can be captured as flow charts and used as an efficiency check as the new constitution emerges. This will ensure that any proposed new approach is assisting (and not hindering) the clarity and robustness of decision making. The agreed final flow charts will not be part of the constitution but will be a practical tool for officers and members to use.

4.1.17 Because a considerable number of officer decisions are taken under specific delegations from Cabinet and Portfolio Holders there would be merit in having joint meetings of the task groups covering work packages 2 and 3 to work through decisions flow charts and to ensure the necessary linkages are made to deliver an “end to end” approach to decision making that requires involvement from both Member and Officer decision takers.

Work Package 4 – Procedure Rules

4.1.18 This would involve a task group of Members and Officers reviewing the Procedure Rules (Council, Cabinet, Committee, Budget and Policy Framework and Scrutiny), Access to Information Rules, Finance Procedure Rules, Contract Procedure Rules and the Staff Employment Rules.

Work package 5 – Codes/Protocols and Members' Allowances

4.1.19 This would involve a similar approach to work package 4. It may be that some of these items can be refined, reduced, removed, combined with or moved to other sections of the constitution. The codes and protocols which need to be reviewed are:-

- Member Code of Conduct
- Officer Code of Conduct
- Member/Officer Relations Protocol
- Whistleblowing Policy
- Planning Protocol
- Public Speaking Protocol
- Local Ward Member Protocol
- Call for Action protocol
- Mayoralty Code of Practice

5.0 Reporting

5.1 It is proposed that the Sub-Committee would be kept apprised of progress through verbal updates from each work group as standing agenda items on its meeting agenda. Action logs from the work groups could also be

circulated and presented regularly and made available to Committee members through a secure SharePoint site. Substantive product (redrafted sections) would be brought to Sub-committee meetings for approval as and when completed.

6.0 Wards Affected and Local Ward Members

6.1 All wards are affected.

7.0 Policy Implications

7.1 Policy Implications are unchanged from the position set out in the report to Constitution Committee on 4 August 2017.

8.0 Access to Information

8.1 The Constitution Committee papers of 4 August 2017 relate.

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