

Council

Date of Meeting: 19 April 2021

Report Title: Constitutional Update to Implement the Committee System

Senior Officer: Director of Governance and Compliance

1. Report Summary

- 1.1. The report asks Council to agree those matters referred by the Constitution Committee and to note the committee's deferral of the consideration of the Constitution.
- 1.2. The revised Constitution is not referred to Council by the Constitution Committee, but separate parts of the Constitution are recommended by the Constitution Committee and have been incorporated into the draft Constitution as set out below.
- 1.3. Mayoralty Code is referenced in Chapter One paragraphs 24 to 33 and the Code is to be hyperlinked at paragraph 31 (full text set out in the Appendix at page 317).
- 1.4. Audit and Governance Committee terms of reference are to be included in Chapter Two part 4 at page 31 (full text set out in the Appendix at page 323).
- 1.5. The Health and Wellbeing Board terms of reference are set out in Chapter Two part 4 at page 36 (full text set out in the Appendix at page 329).
- 1.6. The revised Constitution is not intended to be a 'perfected' document at this stage, but a working document that will be subject to significant ongoing revision and change over the coming months and years.
- 1.7. The approach to the committee system, as set out in the attached draft, reflects the design principles confirmed at the 19 November 2020 Council meeting and these principles can be found at appendix G of the November 2020 report (the November report). The five design principles are in summary:

- Openness: The new form of governance (committee system) will be easy to understand. There will be the opportunity for Councillors and Members of the public to ask questions at committee.
- Quick Decision Making: The new arrangements will ensure that decisions are made quickly, the number of committees and number of meetings will be kept to a minimum, and technology will be used to avoid unnecessary paperwork. Paper copies will be provided upon request by members.
- Affordability: The cost of a committee system will be kept to a minimum.
- Legal Requirements: The council must comply with all legal requirements and legal advice will be available to all meetings.
- A Modern Committee System: The Committee system will be modern, open and transparent. Public participation will be encouraged. There will be a separate Scrutiny Committee to look at health partners, crime and disorder, and flood risk management.

- 1.8. Since November 2020 and allowing for the ongoing pandemic, key staff changes, Christmas and Easter holidays, it was necessary to phase the approach to drafting the new constitution into the 'must haves' (phase 1) and the consequential changes (phase 2). Where possible and appropriate, obvious inconsistencies and anomalies which would ordinarily be in phase 2 have been rectified at this earlier stage.
- 1.9. The phased approach to implementation ensures the necessary changes are in place for the commencement of the committee system. The committee system will start at the next Annual General Meeting currently the 12 May 2021. (AGM). The AGM must occur by the end of May 2021.
- 1.10. The previous proposal was for version one to be considered at Constitution Committee on 6 April 2021. Version two of the constitution to be produced following that meeting (reflected in the appended copy) and provided to Council. Council was to consider if the proposed constitution met the design principles set by full council, decide if it reflected the democratic will of the council in the November 2020 decision and approve the Constitution. Any minor amendments following full Council recommendation would be incorporated into a third version which would be considered at Constitution Committee on the 29 April 2021. The Constitution Committee would undertake any fine tuning and any changes incorporated into the Constitution (version 4). If necessary, Council may note any amendments on 12 May 2021.

1.11. On the 6 April Constitution Committee deferred consideration of the Constitution to a future date. The next date for a Constitution Committee is the 29 April 2021.

1.12. The key considerations/risks are:

- Cheshire East Council must have a Constitution that supports the Committee system
- The draft Constitution provides a working committee system.
- The Council has a planned review in November 2021 to further update the Constitution following implementation of the committee system and may undertake further reviews as required.
- An early focus of the review via the Constitution Committee and/or Corporate Policy Committee is suggested in the section 5 Areas for further development.
- Delay in pursuit of perfection creates uncertainty. The adoption of a solid and robust Constitution facilitates the transition to a committee system.
- Delivery of the Council's medium-term Financial Strategy is at risk in the absence of a clear budget process.
- Delivery of the Council's Corporate Plan is at risk in the absence of a clear decision-making process.

2. Recommendations

2.1. That Council is recommended to agree the matters referred by Constitution Committee for inclusion in the constitution:

2.1.1 Agree the Mayoralty Protocol.

2.1.2 Agree the revised terms of reference and composition of 9 elected members for Audit and Governance Committee.

2.1.3 Agree the revised terms of reference for the Health and Wellbeing Board.

2.1.4 Note the Constitution Committee decision to defer the referral of the draft Constitution (as set out in appendix 1) to Council.

3. Background

3.1. At its Annual Council meeting on 22 May 2019, Council stated its commitment to implementing a change in its decision-making governance arrangements to a committee system of governance. On 19 November 2020, Council resolved to cease operating the existing Leader and Cabinet model of governance and to implement a committee system of governance from the

Annual Council meeting in May 2021. That decision is legally binding on the Council and cannot be changed for five years.

- 3.2. Full council represents the overall democratic will of the people of Cheshire East. The residents of Cheshire East through their elected representatives have decided to adopt a committee system of governance from 12 May 2021.
- 3.3. At the November 2020 meeting, Council agreed the five design principles set out at Appendix G of the November 2020 report. Council also agreed the basic committee structure, terms of reference, roles of leader and deputy, decision review process, urgency provisions, role and powers of committee and sub-committee chairs. The majority of the consequential matters remain to be decided and are resolved in the draft constitution and are aligned with the design principles.
- 3.4. Council also resolved to authorise the Director of Governance and Compliance to prepare, in accordance with the principles agreed, the necessary constitutional provisions associated with the new arrangements.
- 3.5. The constitution is broadly structured by reference to the certainty which is found in the model constitution, combined with the updated legislative provisions and modern stylistic approach. For example, the use of masculine words to cover people regardless of gender or sex is generally unnecessary, inaccurate and tends to reinforce historic gender stereotypes. Local Government is obligated to promote fairness and gender-neutral writing is about clarity, inclusion, and equality. This assists the Council in complying with statutory obligations, the design principal of openness, improving accessibility and plain language.
- 3.6. A local authority is a creature of statute. It must, by its very nature be subservient to the statutory regime imposed upon it. This means the Council has no legislative competence to opt out or change how legislation is applied. For example: terms such as openness and transparency may be open to interpretation by Councillors but the Council has a clear legislative framework, both in primary legislation (statute) and regulations on what must be published, when reports and committee meetings are open to the public and what must be disclosed on request. There are additional requirements imposed by legislation impacting upon the Council such as the Freedom of Information Act. All of these requirements *must* be met and the Council is unable to restrict access to information. However, the opposite is also true, the Human Rights Act places restrictions on interference with private and family life, the Data Protection Act and the General Data Protection Regulations, Local Government Act 1972 Schedule 12 and other legislation sets out limitations and restrictions on information that can be disclosed. The

Council must not disclose information without lawful authority. These statutory and regulatory limitations are repeated throughout many parts of the constitution and although the semantics may change, the substance does not. There is often only limited discretion available to Councillors on significant parts of the Constitution.

- 3.7. The key areas where members have greater freedom to adapt existing conventions to provide the best service to the council and residents relates to the structure, and process and procedures which apply the statutory framework to the council.
- 3.8. It is essential the Council has an operational system in place for it to deliver the Corporate Plan as supported by the budget and medium-term financial strategy as agreed by the Council in February 2021. The attached draft constitutional changes set out in the appendices recognises the legislative framework and the need to adapt process and procedures as the Council moves forward with the committee system. The attached draft Constitution is sufficiently robust to implement the committee system.
- 3.9. A rigid or prescriptive approach would frustrate the business of the Council and ambiguity or uncertainty would impede progress. The attached Constitution is not a counsel of perfection but a working document which members must continue to work with over the coming months. Council has already anticipated and provided for the review in November 2021. The associated transitional report highlights some of the additional areas of work that will be required.
- 3.10. Members should note that typographical errors, punctuation, and numbering corrections are addressed at the final stage when the attached document will be proof-read and an index provided. These should be ignored at this stage.

4. Constitution

PART 1

- 4.1 The Index remains indicative until the final pagination is undertaken.
- 4.2 Chapter 1 This chapter sets out an overview of how the Council operates, what key parts of the Constitution cover and what rights members of the public have. It explains how decisions are taken within a committee system and how the Mayor is elected. This part is complete with the inclusion of the Mayoralty Protocol.

PART 2

4.3 Chapter 2 sets out the way in which functions have been allocated and which decision-making body/person within the Council has responsibility for making those decisions:

1. Diagrammatic explanation of Councillor decision-making bodies. This was approved in appendix H of the November 2020 report. Since November the diagram has been updated and where possible simplified. For example, the Public Rights of Way Committee may exist in harmony with the Highways Committee. Alternative diagrammatic representation will also be produced for use in the coming months which include colour coding of committee by function such as regulatory, oversight, or service, and members will be asked if they wish to further update the diagrammatic representation next November.

Further efficiency may be obtained by considering whether the staffing subcommittee appeal function should be the appropriate appeal body for Statutory Officers. This could benefit from renaming to 'employment appeals' or similar. This would help reduce confusion with the appeals subcommittee which deals with a mixture of miscellaneous general appeals which is being renamed. The general appeals committee is aligned with Corporate Committee. These are non-essential changes and may occur after May 2021.

2. This part sets out an introduction as to who makes decisions in the Council and has been redrafted to remove all the reference to executive functions. As Council has already noted and agreed there is no single member decision-making and no executive function. This corporate policy framework currently lists the statutory policies and full council may wish to make further additions in November 2021.
3. Council. This is largely unchanged and full council retains all its responsibilities for the organisation.
4. Committees. This section has removed all references to Cabinet, Portfolio Holders and references to the executive style of governance. This has been replaced with service, regulatory and oversight committees. As part of the process, where practicable, functions at risk of being 'orphaned' have been allocated to service committees. e.g. ASDV shareholder function to finance subcommittee. Officers have attempted to align budget responsibility with committee terms of reference so that committees have

a degree of budgetary homogeneity: this has resulted in some minor changes to committee functions.

5. This part sets out the Scheme of Officer Delegation and will include a diagram (pending) of the officer structure at the Council. It sets out the areas of responsibility, in a tabular form, of the Senior Officers and Statutory Officers and the arrangements for the discharge of the Proper Officer functions. This has been amended to reflect the committee system but will require further redrafting and is currently largely reflective of the current scheme of delegation based upon the 3 executive director model. The draft Constitution provides for Council Leadership Team (CLT) as the senior management body. This is designed to provide additional flexibility without the necessity of concerns around chief officer status etc. as officers can be seconded as required. As the Committee system moves forward the alignment of Director and Heads of Service to Committee provision will evolve and it is anticipated a more informed review of alignment and delegations may be required in November 2021 and April 2022 after the system has operated for a period of time.

4.4 Significant changes have been made to Chapter 2 which provides a working Committee system of governance. Members must note this is an evolving area of the Constitution and will inevitably require further changes as committee decision-making takes over from the previous executive model.

PART 3 Chapter 3 and 4

4.5 Chapter 3 provides the greatest area for members to engage and create bespoke approaches which best enable the Council to engage with residents. The procedure rules look significantly different in presentation and now read sequentially with internal appendices reduced to a minimum.

The drafting design for ease and efficiency seeks to avoid repetition. An example is found in the urgent decision provision for full council. This sets out the *definition* of an urgent decision which is not repeated. The urgent decision *process* is repeated as council and committee have different consultees, but the *criteria* is the same.

The design principles set by full council require officer support for each committee and a wider range of members and officers will now be required to access, understand and advise on the constitutional provisions, and paragraph numbers, section headings and sequential approach will be invaluable. The majority of the full council procedures are unchanged save where repetition or inconsistency was identified.

All the previous cabinet/executive procedure rules etc have been removed and the committee procedure rules updated. There are significant changes to the rules relating to the powers of chairperson, debate, length of speech and potential for time limits on debates and meetings.

- 4.6 Public engagement is also a design requirement and mentions petitions, public questions and speaking. It is suggested an approach of continuous development is taken to this aspect with the Council adopting elements that work well and redesign for parts that work less well. A fundamental basis of engagement by the public is the ability to attend a committee, speak to a topic on the agenda and attempt to persuade the committee to adopt a particular position. This engagement and interaction will allow the committee to be better informed and have a greater understanding of an issue. The ability to ask a question does not always achieve this outcome and can confuse the route for the public to engage with services. To allow questions to be answered in a meaningful way will require early notification, otherwise, they risk the moment or relevance to the committee being lost. The development of the best approach to questions is likely to engage members into the future.

The role, engagement and empowerment of the public, ensuring the public obtain a timely and efficient response to questions, rather than multiple responses from different service areas, aligning service based questions with the customer service strategy will require further policy development through the Corporate Policy Committee.

The public also engage with the council through ward members, who are often asked to intervene or assist members of the public in dealing with the council. A key element of improving public engagement is likely to be through the empowerment and engagement of ward councillors which is again an area for further policy development.

- 4.7 Consideration has also been given to member questions, the role or purpose of questions in a cross group/party committee which is fundamentally different from questions to a controlling executive or cabinet. With a proportionate committee groups are already engaged in the decision-making process, so the purpose and management of questions dealing with accountability, challenge, service requests etc and how this relates to the role of and empowerment of ward councillors will require further policy development. Members will be required to strike a balance between ward issues and committee issues, to decide if ward councillors are to be the primary conduit or if committees are to engage in very local issues rather than borough-wide decisions. This balance is likely to be reached through the evolution of the Cheshire East committee system and variation and

additions to these provisions should be expected at each review point following recommendation from the Corporate Policy Committee.

- 4.8 The access to information rules are largely untouched but require substantial review for legislative compliance and these will be updated for November 2021.
- 4.9 The Budget and Policy framework sets out the rules providing the framework for managing the Council's financial affairs. These remove reference to the framework for executive decisions and replace them with the committee approach. The indicative budget process for the first year is set out in the transitional paper.
- 4.10 In the Finance Procedures Rules the fundamental elements remain unchanged and there are no significant variations to delegations. They have been substantively rewritten in respect of style and approach. The rules provide a mechanism for virement between committees and controls through full council, corporate committee, and the finance subcommittee.
- 4.11 The Contract Procedure Rules are again broadly unchanged save for updating to language to reflect the post EU procurement landscape.
- 4.12 The removal of the Staffing Committee and creation of the Appointments Committee has resulted in a need for a technical rewrite of the Employment Procedure Rules which have consequential updates to reflect changes in the local government landscape.

PART 4

- 4.13 This part remains as currently drafted save for consequential changes to use consistent language and cross referencing in codes and protocols. All the substantive changes to the codes and protocol are due for revision and this work will continue through the next two updating cycles of the constitution. There are some changes driven by engagement with the committee system, for example the member/officer protocol has been updated to reflect changes from officer interaction with portfolio holders to officer interaction with service committee chairpersons and other consequential changes. The substantive changes will require careful member consideration of command papers such as Local Government Ethical Standards January 2019 and the LGA changes to the draft model codes of conduct. This is not required for the committee system of governance in May 2021.
- 4.14 Chapter 5 will be the member allowance scheme and will be drawn directly from the Independent Remuneration Panel report and is simply a link to the web page that has been populated with the relevant data after agreement at council on the 12 May 2021.

- 4.15 Chapter 6 is the glossary. The removal of definitions in the body of the text and the use of a single definition in a glossary is a significant aid to interpretation and helps avoid errors and duplication. This also allows for single amendments e.g. the membership of a group such as Corporate Leadership Team (CLT) need only be changed in one place: the glossary, to take effect throughout the document and hugely reduces the risk of error creeping into the text from imperfect editing.
- 4.16 Chapter 7 is a schedule of supporting documents. Some of these documents have been removed from the main body of the text, some documents that have always been linked to the Constitution are formally referenced for clarity. It should be noted that some of these documents such as the Mayoralty Code of Practice have been updated. Some, such as the Member Allowances is in the process of being updated and will be available via the Constitution Committee for the 12 May 2021, others will be updated in phase 2.

Areas for further development

Council may wish the Constitution Committee to consider amongst other matters:

- Confirmation of the decision-making structure diagram as this is fundamental tool for the public to see which committee of the council makes a decision.
- To consider elements relating to public engagement as the Public will now have the right to ask questions and to speak to Committee on a topic.
- To consider if the right to speak at Committee should be limited to an agenda item and if the time limits are appropriate.
- To consider the link between the Public and the role of ward councillor.
- The procedure rules are locality based and must reflect both custom, practice and the needs of the council. The use of time limits to speak in committee, limitations on length of meetings, are all legitimate tools that council may wish to consider ensuring the 5 design principles are maintained.
- The role or function of opposition spokesperson is not defined in the constitution. Council may feel the Constitution Committee could provide helpful guidance on development of this role.

5. Implications

5.1. Legal Implications

- 5.1.1. It is imperative that a lawful and transparent decision-making process exists which translates the existing forms of decisions into the new style of governance. If Council remains silent on these issues the efflux of time will create issues of urgency and cost which require officers to act. This would be costly and defeat the design principles of openness.
- 5.1.2. The Committee System must be implemented from the date of the next AGM (12 May 2021) and in the absence of an updated Constitution the Council must continue to operate but the level of risk increases and officers will be required to step in and fill any constitutional gaps.
- 5.1.3. The Council will maintain all necessary statutory services, and business. Member engagement in service provision relies upon a constitutional framework which gives certainty to members, officers and third parties, in their relationship with the Council. A failure to provide certainty will damage confidence and create doubt over lawful decision making which will impede the Council's ability to transact business.

5.2. Finance Implications

- 5.2.1. Clear decision making, and the adoption of a budget setting process is a legal necessity:
- The council must set a budget.
 - The process for setting a budget is set out in the Constitution.
 - A failure to set a budget will result in statutory intervention.
 - A failure to set a lawful budget may result in personal liability for Councillors.
- 5.2.2. In February 2021 Council agreed the medium-term financial strategy (MTFS) based on budgetary assumptions and as a response to recognised issues. Implementation will remain challenging and will soon become the remit of the Council's new Committee System. Achievement of business cases will be particularly difficult if capacity is reduced due to any emerging issues. A failure to implement an effective Constitution places achievement of a balanced budget at risk.
- 5.2.3. Council should also note that in respect of the adequacy of reserves, that reserves are adequate to support the proposals within this four-year strategy, however members must recognise that there is virtually no scope for variation to retain the balanced position. and does not provide any

scope for non-delivery of proposals. A failure to implement a decision-making process ultimately jeopardises the financial stability of the Council.

- 5.2.4. The Council budget is based upon a condition precedent accepted in the MTFS by full Council that the budget presents a robust set of forecasts, subject to the achievement of proposals identified within the budget report. A failure to achieve the budget proposals due to an inability to agree a decision-making process undermines the budgetary position.

5.3. Equality Implications

- 5.3.1. The Council's governance arrangements must enable all groups to engage in the decision-making process. No equality implications are identified.

5.4. Human Resources Implications

- 5.4.1. There are no direct implications for human resources although Council should be aware wider training will be taking place to assist the transition of staff into the new arrangements.

5.5. Risk Management Implications

- 5.5.1. This represents the first phase of legal and financial compliance and risk management. The absence of a functioning constitution would place the council at risk and severely impede the council ability to make lawful decisions.

5.6. Rural Communities Implications

- 5.6.1. There are no direct implications for rural communities.

5.7. Implications for Children & Young People

- 5.7.1. There are no direct implications for children and young people.

5.8. Public Health Implications

- 5.8.1. There are no direct implications for public health.

6. Ward Members Affected

Borough wide

7. Consultation & Engagement

- 7.1. Leader, Deputy leader, have been consulted. The constitution committee working group has meet twice and this has been widely contributed by

officers across the council via the project board. All Councillors will be offered training on the committee system and an introduction to the constitution session.

8. Access to Information

- 8.1. Additional information is available to members from the council's committee system sharepoint site.

9. Contact Information

- 9.1. Any questions relating to this report should be directed to the following officer:

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