

Cheshire East Council
Advice Note – Summary of Constitutional Review
27 July 2017



1 INTRODUCTION

- 1.1 Cheshire East Council ("the Council") was created following an announcement in early 2008 that the then three District authorities and one County authority would be brought together as a unitary authority on 1st April 2009. In this short timeframe Members and officers analysed the decision making processes and functions of the exiting authorities and adopted its first Constitution in time for Vesting Day.
- 1.2 The Council's Constitution Committee started a programme of reviewing key elements of the document in 2010 and in late 2011 recommended a Constitution Working Group (CWG) be created to undertake a more detailed assessment of the Constitution to identify any areas that needed to be reviewed. Various changes were brought by CWG up to 2015. Since that time, and recognising that a series of incremental changes were made over a number of years can impact on the efficacy of a constitution as a holistic document, it is understood that the Director of Legal Services and Head of Governance and Democratic Services commenced a page by page review of the constitution, factoring in member and Officer feedback, to ensure that it best served the needs of the organisation and complied with statutory requirements.
- 1.3 In March 2017, recognising the review work underway at officer level, the Constitution Committee considered how best to manage the ongoing review of the Constitution, having recognised the need to review the Constitution to ensure that it was fit for purpose, future proof and appropriate to take the Council forward as a democratic authority. In order to bring forward proposals for Member's consideration it was decided that a CWG be appointed to consider proposed changes to the Constitution and make recommendations to Committee, which in turn would make recommendations for change to full Council.
- 1.4 Mindful of the length of time that the "cover to cover" review has been underway, and of the need to complete that process amid a number of competing demands, the Acting Director of legal Services decided to accelerate that programme of work and draw in external best practice insight by commissioning Bevan Brittan to undertake a comprehensive review of the Constitution. The scope of the review was to ensure it complies with all relevant statutory requirements. In addition observations the Council sought observations as to how the current processes and procedures might be altered to improve organisational efficiency and achieve stronger governance. We have undertaken a comprehensive review of all sections of the Constitution including the procedure rules and the codes and protocols.

VISION STATEMENT

- 1.5 In order to guide the review work, a working Vision Statement was adopted to frame the objectives of a reviewed or refreshed Constitution. That working vision statement was to aim to produce a clear and succinct Constitution which is accessible, user-focused, provides helpful instruction and ensures good governance across all elements of service delivery.

REPORT FORMAT

- 1.6 To help inform the review, feedback was sought on the Constitution from Officers and Cabinet Members. These two groups were chosen as the groups responsible for most decision taking and in the light of short timescales within which this initial review was undertaken (wider Member involvement is proposed as the review progresses).. The feedback received has been very useful to gain an understanding of the key areas of concern and to see practical examples of where officers consider the Constitution is hindering the effective operation of the Council.
- 1.7 **Appendix One** (attached) summarises the issues raised by officers as part of this review. Most of these comments related to concerns and frustrations with the officer scheme of delegation. A number of officers provided very detailed comments on particular aspects of the scheme of delegation and suggested changes to the specific wording. All these comments have been fully taken into account and have been extremely helpful in identifying anomalies and concerns. However, given that we are recommending a completely new approach to the officer scheme of delegation and a full rewriting, we have not incorporated these comments into our annotation of the Constitution.

- 1.8 We are conscious that the comments received are, at this stage, from officers only and we have not had an opportunity to consider comments from, and views of, members. However we hope that many of the issues we have identified will address concerns at member level and we understand there will be opportunities going forward for member comment on the emerging proposals (and full member involvement with any changes brought forward for formal consideration).
- 1.9 Attached to this summary are also:-
- 1.9.1 A compliance checklist (**Appendix Two**) showing how and where the Constitution complies with the relevant statutory requirements and identifying areas requiring review/updating and
- 1.9.2 A full annotated version of the Constitution (**Appendix Three**), highlighting where we have identified
- (a) Contents requiring clarification/redrafting
 - (b) Contents requiring updating/making future proof
 - (c) Sections which are duplicated or superfluous
 - (d) Contents which could be better referenced through e.g. links on the website
 - (e) Sections which could be re-framed to better fit a modern local authority

There are in total 489 separate comments. We appreciate that this is a daunting list of issues but we wanted to be as comprehensive as possible. The Constitution naturally divides into different sections which can be taken forward by the most relevant members and officers in parallel.

Appendices Two and Three are detailed and technical assessments, in our view most appropriately used as a drafting tool by a focused working group or sub-committee tasked with reviewing and producing a reframed constitution.

2 OVERALL CONCLUSIONS OF THE REVIEW

- 2.1 Overall we have found that the Council's Constitution is legally compliant and is, certainly compared to a number of other Constitutions we have seen and reviewed, workable and relatively clear. There are a few areas where further information is needed to be contained in the Constitution to meet the statutory requirements (see Appendix Two) but this should be easily remedied.
- 2.2 However, it is very long (477 pages with over 45 separate sections) and there are a number of aspects of it which we consider could be significantly improved. We consider that an updated version would better fit the way the operational practice of a modern Council and would achieve the proposed vision for its Constitution. Our report goes on to identify these aspects and suggest a way forward but we want to place a caveat here first.
- 2.3 In our experience, considerable weight can be attached to the impact a revised Constitution can have on the operation and culture of a council and can focus hopes for change on the production of a revised document. A robust and effective Constitution can make a real difference to the operation and governance of a council and the actual process of production of a new Constitution can be very powerful in providing an opportunity for open debate about the fundamental issues of how the Council operates. The development of the new Constitution also needs to fit into any wider change programme and there is a need to put in place a clear change management process (to include the roll out of the new document and training on the Constitution and the suggested route mapped processes/templates – see below). Our comments in section 4 below (Proposals for next steps and action) consider this further.
- 2.4 In terms of aspects of the Constitution which we have identified as needing particular focus, the following areas should be addressed:-

- Form and Presentation
- Accuracy, updating and future proofing
- Decision Making
 - Member bodies
 - Officer delegations
 - Procedure rules for meetings
- Other procedures/codes and protocols

3 FORM AND PRESENTATION OF THE CONSTITUTION

- 3.1 Although not in as traditional a form as many local authority constitutions, the Constitution does not read as a modern document and could be improved significantly through the use of more modern language, web links, graphics and better presentation.
- 3.2 By having a general summary, then a set of introductory chapters then substantive sections, things are said three times, often in slightly different ways and it is very difficult to be certain that the full picture is being presented on any issue without exhaustive searching. This should all be cut down and assimilated into a much clearer document. For example there are 48 separate references in the Constitution to "Key Decisions" and the definition is repeated in three different places in the document.
- 3.3 As part of this exercise the Constitution should be rigorously edited to remove repetition and to make it more user friendly.
- 3.4 There is much in the Constitution which 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 so that the Council can be more responsive to needs that arise to alter operational practice and react quickly to opportunities to improve service delivery or trial new ways of working.
- 3.5 This will all make it more accessible to its users who include
- The public
 - Members
 - Officers
 - Partners and stakeholders of the Council

4 ACCURACY, UPDATING AND FUTURE PROOFING

- 4.1 The Constitution does not seem to be up to date with the changes in ways of operating and delivering services which the Council has been embracing. For example there are very few references to the operation of the ASDVs (which do have an impact on governance and responsibility for functions) nor to joint working/shared services with other local authorities or across local government and health. This all needs to be captured accurately in the Constitution
- 4.2 Local authority arrangements do 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, trigger a redraft.

- 4.3 A short, 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 any why – this process is very opaque at the moment. Such an approach also significantly reduces the likelihood of changes in one area of the Constitution having unintentional or unforeseen consequences in other areas, potentially making the document contradictory or unclear, which can impact on efficiency in practice.

5 DECISION MAKING

- 5.1 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 individual portfolio holders and
 - Member decision making or officer delegation
- 5.2 The right balance must also be struck in the Constitution to ensure
- Democratic decision making supported by officers;
 - 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).
- 5.3 We consider that the sections in the Constitution dealing with **Responsibility for Functions and the Officer Scheme of Delegations** could both be significantly changed to make this fundamental approach clearer (and also make the document more manageable and future -proof).
- 5.4 In relation to the **responsibility for functions between member bodies**, the Constitution needs to be streamlined and standardised so it is easier (for all stakeholders) to locate easily a clear explanation of what decisions are made where. At the moment there is no standard approach to how the bodies are described or consistency in how their scope is explained.
- 5.5 In relation to the **responsibility for functions relating to officer delegations**, we advise that this needs a fundamental rewrite to adopt a different approach which slims down the detail in the core Constitution and makes it more future proof. At the moment it is repetitive, confusingly drafted and impenetrable in places. We recommend a new approach as follows:-
- A set of general principles covering all delegations and adopting a cascade approach
 - Delegations to Head of Paid Service (HOPs)
 - Delegations of Chief Officers and Deputy Chief Officers
 - Delegation to Statutory Officers
 - Delegation to named directors with statutory functions
 - Arrangements for local schemes of delegations
- 5.6 Linked to general concerns about delegations, there is uncertainty and confusion on the **route map** which certain significant decisions have to follow e.g.
- How is a policy changed?

- If a business case is approved, what subsequent decisions are needed to go back to members e.g. to go to procurement, to award the contract or are these covered in the initial decision/delegation?
 - What decisions require a business case?
 - The process for individual members making decisions and for ODRs
- 5.7 We recommend that certain standard decisions are deconstructed and mapped stage by stage through the decision making process to agree a shared approach and to test the application of the Constitution so that changes/refinements can be made. As a separate document to the Constitution an agreed set of simple flow charts covering typical decisions and explaining the route map can be prepared. This will ensure clarity for members and officers and avoid frustration, confusion and potential delays or risks of legal challenge.
- 5.8 In relation to the **Procedure Rules for meetings**, we have not made many significant suggestions for changes to the content (which we consider is generally clear and comprehensive). However we have raised some questions about the format of this section as it is currently quite complex and difficult to navigate (especially for members of the public who want to understand how their council operates).

6 OTHER PROCEDURES, CODES AND PROTOCOLS

- 6.1 The Finance Procedure Rules very comprehensive but at 66 pages, contain much information which (whilst essential to the running of an effective Council) does not have to be contained in the formal Constitution. The statutory requirement is to set out the Council's financial rules or regulations. Anything else could be better placed in subsidiary documents, guidance etc which could be accessed from links in the Constitution (if all of it needs to be publicly accessible).
- 6.2 We have included detailed comments on all the procedures, codes and protocols in the Constitution. A few points to highlight are:-

Issue	Comment
Access to Information	The Council has given all members rights of access to a wider set of exempt documents than the law requires – this may well be a considered approach to encourage transparency but, in our experience, this approach (and the inevitable fear of uncontrolled release of exempt information) can hinder the openness of written reports on important issues. That can actually be counter productive in terms of transparency and fully formed decision making. We would suggest this is reviewed.
Contract Procedure Rules	We have made some detailed comments to further improve the rules which are already sound.
Other codes and protocols	We have made a number of comments and suggestions to further improve the Constitution but these sections are generally sound and well worded

7 PROPOSALS FOR NEXT STEPS/ACTION

- 7.1 We understand that there is a real momentum and desire in the Council to move ahead quickly with a comprehensive review of the constitution. We would support speedy action to do this but would also, from our experience of leading many constitutional reviews, advise against precipitative action to redraft documents without full consideration and engagement.

7.2 There will obviously be impatience to move ahead with some speed, and concern at the potential of delay. But we would advise against the production of new drafting which has not had proper stakeholder engagement and testing – this will result in documents which are not owned and which do not properly address the current deficiencies.

7.3 We recommend a work programme to identify key areas of the Constitution, involve relevant stakeholders in a consideration of the key issues and a development of the new document. This approach need not take a long time – with a clear and tightly managed project plan/timetable, this could be achieved in one Council cycle so bringing a new Constitution for consideration to full Council after the summer period.

7.4 We consider that, to help frame the new document and ensure it is focused on achieving the right outcomes, there would be merit in agreeing the overall principles which should underpin the development of a new Constitution and which flow from a Vision for the Constitution which the Council would need to confirm/articulate. The Vision currently proposed is:-

"To have a clear, succinct Constitution which is accessible, user-focused, provides helpful instruction and ensures good governance across all elements of service delivery".

7.5 From our understanding of the Council's drivers for this review, and in the context for the Council at the moment, we would propose the following seven principles as a start point for the new Constitution.

Proposed Principles

7.6 The Council's Constitution should

- Recognise the Council's democratic leadership role;
- Support, not hinder, the efficient exercise of democratic decision making, good governance and the delivery of services;
- Be modern in its language, format and presentation;
- Be concise – covering only those essential issues which need to be in the formal Constitution and sign posting to other documents/sources;
- Recognise the new ways in which the Council operates (for example through ASDVs and shared services);
- Delegate decision making to the most appropriate level with the right checks, balances and scrutiny and
- Be future proof, not requiring constant revisiting and updating

8 KEY AREAS FOR ACTION

8.1 We suggest that areas of the Constitution are prioritised for consideration/focus as follows:-

Issue	Proposed Approach
Principles to drive the review of the Constitution	A report should be taken to the Constitution Committee, on behalf of full Council, to consider the proposed principles as soon as possible. This will then provide a basis to drive the revision of the Constitution.
Overall form and presentation	The Constitution Committee should be asked to consider the

Issue	Proposed Approach
and accuracy, updating and future proofing	recommendations in this review in relation to the form, style, presentation and arrangements for updating/future proofing the constitution, on behalf of full Council, agree an approach to guide the Constitution redrafting.
Decision making – terms of reference of member bodies	These need a detailed review and redraft to present them in a more coherent and standard form. There are also missing areas which need addressing quickly, particularly • Terms of reference for Shared Services Committee? • Arrangements for Local Area Partnerships? • Arrangements for the governance of ASDVs? But otherwise no fundamental issues have been identified with the core arrangements for the allocation of member decision making – the challenge is to make the documents more accessible and user friendly. There may be scope through the review process to identify, with stakeholders, opportunities to improve efficiency and operational practice. Any such changes should be proposed as part of this review.
Decision making – officer scheme of delegation	This is the area of the Constitution which, in our view, requires most focus and detailed work. The Constitution Committee to consider the overall approach to officer delegations recommended in this report. If agreed, we suggest that a small working group be set up to redraft the structure of the scheme of delegation, drawing in officers from key service areas as and when needed (and building on much detailed work which has already been undertaken). The Constitution Committee should be asked to consider and agree the overall approach to officer delegations. An approach to local schemes of delegation should be agreed and then each relevant service area required to develop their own scheme (within a standard non-negotiable template) in specified deadlines to ensure their own local delegations work effectively.
Decision making – route maps and flow charts for significant decisions	A number of important decisions (which appear to be difficult to navigate through the current constitution) should be identified and then worked through by officers and members to agree an approach and route. These can be used as a check as the new Constitution emerges to ensure it 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.
Council Procedure Rules	We suggest that the Constitution Committee considers the two issues/proposals we have raised to change the format of this section • Possibly disaggregate all the meeting procedures and

Issue	Proposed Approach
	embed the relevant ones in the section dealing with that meeting (easier for stakeholders to find everything about that meeting in one place) • If the procedures are kept separate, consider losing the 8 appendices and incorporating the relevant sections into one block, recognising that this will involve some repetition.
Other rules, codes and protocols	We suggest that these are divided up for review by the appropriate officer and members and taken forward in parallel so there is no delay. Some of these are self-standing and can be reviewed and finalised as a self-standing task; others will need to tie in with the broader reviews of e.g. decision making and procedure rules
Overall consistency	Although different sections can be reviewed and worked on in parallel, it is essential that a strong overview and control is retained (finalised by a rigorous signing off process) so that the final document is internally consistent and robust. A final check for statutory compliance should be made using the checklist at Appendix Two
Roll out of new Constitution	Once the new Constitution has been agreed and signed off, whatever level of engagement there has been in its production, there will still be a need for a structured roll out programme. This should include workshops, training, briefings, induction for new members and officers and opportunities for feedback.

8.2 We hope that this review will assist in moving towards a Constitution which supports and drives forward the overall aims and objectives of the Council.

Bevan Brittan LLP
16 June 2017

Appendix One

Officer Comments on Constitution

This Appendix contains a summary of officer comments on the current Constitution. They are grouped into the relevant topics/sections of the Constitution to which they refer. The vast majority of them relate to frustrations with the Officer Scheme of Delegation (which is probably to be expected).

All departments were asked to consider current issues and respond. There were around 30 detailed responses received through the shared portal, but many of these wrapped up comments from a number of teams/officers and attached previous comments/suggested changes. So the comments should represent a meaningful set of views from the officers as a whole.

There were some powerful comments which we felt it was appropriate to quote (anonymised) to communicate these views directly.

"The main problem with the Constitution is that it has developed organically and been updated on a piecemeal/ad hoc basis (without reviewing how this relates to the rest of the document) which has affected its consistency and internal logic"

"We should be working towards empowering people at every level, to get on and do their jobs and not putting unnecessary blocks in the way"

"We need a cultural change backed up by simplified procedure and clear delegation making to the appropriate level"

"At 476 pages the constitution needs to go on a diet if anybody without an academic background is going to be able to read and understand it"

"The long list of legislation just hamstrings us and we're out of date".

"Don't get me started on updates (to the Constitution) which just appear"

The key areas identified were as follows:-

Officer scheme of delegation
There were numerous detailed comments and criticisms of the current scheme of delegation to officers. These included • The listing of all relevant legislation made it quickly out of date and required constant updating • Officers were not confident that the "chain of delegation" from the constitution through to every officer needing authority to take a decision etc was sound • Designations were out of date • There were anomalies in specific schemes which needed addressing • There was insufficient discretion for officers to act and financial thresholds were too low
Overall decision making
• Decision making was, generally, too slow and months were needed to get an issue through to members and a decision made • There was a lack of clarity on the route map for significant decisions e.g. when a business case needed to be presented, when budget implications had to be addressed, how was a new policy taken through the decision making process • There was uncertainty on the requirements for transparency and notice on individual decision

making and on ODRs

Format and Process for the Constitution

- The Constitution was too long
- It was internally inconsistent
- It took too long to amend
- New versions appeared without notice and with no indication of how it had changed from the previous version

