

# CONSTITUTION WORKING PARTY

Minutes of the meeting of the Constitution Working Party held on Tuesday, 7 June 2022 in the remotely via Zoom at 10.00 am

**Committee Members Present:**

Cllr V Gay

Cllr L Shires  
Cllr A Varley (Chairman)

**Officers in Attendance:**

Assistant Director for Finance, Assets, Legal & Monitoring Officer,  
Democratic Services Manager

## 1 APOLOGIES FOR ABSENCE

Apologies were received from Cllr E Vardy.

## 2 MINUTES

The minutes of the meeting of the Constitution Working Party held on 21<sup>st</sup> October 2021 were approved and signed as a correct record by the Chairman.

## 3 DECLARATIONS OF INTEREST

None received.

## 4 ITEMS OF URGENT BUSINESS

None.

## 5 UPDATE ON REVISIONS TO THE CONSTITUTION

The Chairman thanked the Monitoring Officer for the tracked version of the constitution that had been circulated prior to the meeting. He said that there were a lot of amendments and asked the Monitoring Officer to talk through the key changes.

The Monitoring Officer began by saying that following the recent senior management restructure, several job titles were changed and these needed to be reflected in the constitution. She reminded members that as Monitoring Officer she could only make minor amendments, substantial changes to the constitution had to be agreed by Full Council.

The Chairman referred to changes that had been made during the pandemic regarding virtual meeting protocols. He said that with some working parties and sub-committees continuing to be held online, it might be worth retaining some of the procedures within the constitution. The Monitoring Officer replied that one option would be to have a separate protocol to reflect procedures and practice for working parties. The Chairman agreed that this could be useful.

Cllr V Gay said that she agreed with the Chairman. She referred to the Planning Policy & Built Heritage Working Party which continued to hold its meetings remotely. It was not decision-making but was of public interest as it was involved in developing

and reviewing the Local Plan and conservation area appraisals. She was concerned that if the procedure rules governing remote meetings were removed from the constitution, then working parties such as this one would effectively 'sit outside' the constitution and the rules of process may not apply. Cllr Gay said that she felt it would be helpful to clarify the position

The Democratic Services Manager suggested that it could be a good opportunity to review the section in the constitution which covered working parties. It was a very brief section currently and it might be helpful to review it to ensure a consistent approach across all of the working parties and sub-committees. For example, the Joint Staff Consultative Committee was currently treated as an Executive sub-committee whereas according to the constitution, it should report directly to Full Council. She suggested undertaking a full review and bringing a report back to the next meeting of the Constitution Working Party. Members agreed.

Cllr Gay commented on the inconsistencies in language in the updated version of the constitution, such as him/her/their. Also, references to Council throughout had now been changed to Full Council and it was not clear why this had been done. She said that a final proof reading was needed to address these issues.

Cllr Gay then referred to section 9.1 'Open Governance and Probity' where the process for excluding the press and public from meetings was set out. She said that there had also been a situation where elected members had been excluded from meetings and there had been a discussion at a previous meeting of the Constitution Working Party that the Monitoring officer would review this and bring back revised wording. She asked whether this had been done and whether it was reflected in the updated version of the constitution which members were currently reviewing as she could not find anything that addressed this. The Monitoring Officer sought clarification as to whether Cllr Gay was referring to the section where non-committee members had to seek permission from the Chairman to remain in the meeting. Cllr Gay confirmed that this was what she was referring to. The Monitoring Officer replied that she recalled that the Working Party had agreed to review this section but had not yet had an opportunity to do this. The Democratic Services Manager confirmed that Cllr Gay was referring to Chapter 5, section 13.1 'Attendance of other members of the Council'.

The Chairman agreed with Cllr Gay regarding inconsistencies in the revised version of the Constitution. He referred to the use of gender neutral terms which occurred in some sections but not others. The Monitoring Officer replied that this had been discussed at a previous meeting and members had not been supportive of using gender neutral terms at the current time. It was agreed to leave it and review it at a future stage. The Monitoring Officer said that she would like members to consider the appointment of an external consultant to undertake a thorough review of the constitution. This would pick up on any changes to the law that may have been missed and address any errors or inconsistencies in the current version. The Democratic Services Manager confirmed that the last full, external review of the constitution was undertaken in 2011.

The Chairman asked whether using an external consultant was standard practice and whether they would be making pro-active changes or just doing a high-level review. The Monitoring Officer confirmed that it would be a full, in-depth review and that many local authorities undertook such reviews every few years. She added that the amendments made by herself and the Democratic Services Manager had taken a long time to do. The Chairman commented that he felt more time was needed for members to review the amended version in full and wondered whether it would be

beneficial for a sub-group of the committee to undertake this work. The Monitoring Officer agreed that this approach could be taken if members so wished.

The Democratic Services Manager explained to members that herself and the Monitoring Officer had undertaken a 'high level' review of the constitution to address inconsistencies in job titles, grammatical errors and section numbering etc. Since the last full review in 2011, there had been several amendments to reflect changes in legislation, various staff restructures and inconsistencies in language but there had not been an opportunity to undertake a deep review of the entire document. It was therefore felt that an external, legal expert could do this and then it would be brought back to the Constitution Working Party for comment before being finalised and any recommendations were made to Full Council.

The Chairman said that it was important that members had more time to review the revised version. He suggested that a hard copy of the document with tracked changes was provided to members of the Constitution Working Party and they could then review it and feed back any comments to the next meeting. Cllr Gay agreed with this approach. She then asked about references within the updated version to a requirement for all members listing outside body appointments on their register of interest. She said that this could be problematic in some cases as sometimes members were appointed to bodies that did not invite them to attend meetings. She queried why it was necessary as members were appointed as representatives of the Council to the outside body and were not lobbying. The Democratic Services Manager replied that this requirement was part of the new Code of Conduct which had been adopted in 2021 and then incorporated into the constitution. She said that she would review this section as she could understand members' concerns and it may be helpful to include some additional guidance. Cllr Gay agreed, she said that she had concerns that members could potentially be accused of failing to declare an interest in relation to something that they were unaware of. The Monitoring Officer added that the LGA had issued useful guidance documents regarding the Code of Conduct and suggested that these were circulated to members.

Cllr Gay sought clarification on the background and experience of any consultant that may be appointed to undertake a review of the constitution. The Monitoring Officer replied that there were legal firms such as Bevan Brittan that specialised in local government law that could undertake this work. Cllr Gay queried what an external consultant could offer that officers working for the Council could not. The Monitoring Officer replied that it would require a considerable time commitment to undertake such work and resources within the Council were limited at the present time.

The Democratic Services Manager suggested that members could be issued with a hard copy, tracked version of the amended constitution and review it and then consider whether they felt a consultant should be engaged to undertake a further review. In the meantime, the Monitoring Officer and the Democratic Services Manager would explore options and costs for consultancy work. The Chairman agreed and said that costs and possible options for consultants would be beneficial before members agreed to progress, if this route was chosen.

It was proposed by Cllr A Varley, seconded by Cllr V Gay and

## **RESOLVED**

**To defer this item to allow additional time for members to review and consider the proposed amendments to the constitution**

## **6 PROPOSED AMENDMENTS TO THE COUNCILS CONSTITUTION RELATING TO ESTATE MATTERS**

The Chairman asked whether these changes were coming forwards in response to issues with recent transactions.

The Estates & Assets Strategy Manager said that the proposed changes were not in response to any specific issue, it just felt that the constitution could be strengthened to improve the efficiency of transactions. She explained that the current arrangements, as set out in the constitution, were quite general, and didn't pick up the differences between acquisitions, disposals and leases. For example, when the Council acquired something it was for the long term and it had cost implications and it was thought such transactions should have a higher level of governance, whereas leases were for a shorter period of time and had reduced implications for the Council and they could be progressed more quickly. It was aimed at making the most of the Council's property transactions. She then outlined the proposed changes.

Cllr Gay said that she was supportive of the proposed changes. She asked if the report had been shared with the Portfolio Holder. The Estates & Asset Strategy Manager replied that it had not been shared with him yet. Cllr Gay said she was not against any of the proposed changes but would want the Portfolio Holder to indicate their support before agreeing to approve.

The Democratic Services Manager suggested that members could approve the recommendations, subject to the Portfolio Holder's agreement. She added that, in future, she would ensure that Portfolio Holders were made aware of any changes to the constitution that were related to their portfolio and invite them to attend the meeting.

It was proposed by Cllr V Gay, seconded by Cllr A Varley and

### **RESOLVED**

**To support the proposed amendments as detailed in Section 3 and 4 of the report and recommend approval to Full Council, subject to the Portfolio Holder's agreement**

## **7 APPOINTMENT OF INDEPENDENT PERSON**

The Monitoring Officer introduced this item. She outlined the background to the appointment of Independent Persons, and explained that they were a requirement of the Localism Act. Their role was to provide an independent view on standards / code of conduct allegations. Councils were required to appoint at least one independent person. To ensure full independence, they could not be linked to the council in any way. The current IP had now served two terms (the maximum time allowed). The Monitoring Officer added that the best practice recommendations report published in January 2019 by the Committee on Standards in Public Life recommends that local authorities should have access to at least two Independent Persons.

The role of the IP had been widened following changes to the disciplinary processes regarding statutory officers. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, also required at least two Independent Persons to be consulted and to sit on the disciplinary Panel when dealing with Statutory Officers disciplinary or dismissal processes.

The Council has been operating with one Independent Person since 2013. Recruiting two new Independent Persons would ensure the Council was following best practice recommendations, is able to call on two Independent Persons should the need arise and would provide more resilience should a conflict or sickness issue arise. The Monitoring Officer said that the role should be publicly advertised and a small stipend was currently paid to the existing IP and this may need to be reviewed and possibly adjusted and then reflected in any advertisement.

The Democratic Services Manager confirmed that the standard term for an IP was four years, which could be renewed for one further term. The Council's IP had been appointed for almost 10 years (some additional time had been added by the pandemic) so the recruitment of a new Independent Person was now needed. She said that a payment was made and that it was on a case by case basis and didn't amount to very much. She added that when the requirement to appoint IPs was first introduced, all local authorities were seeking to appoint and it had been possible to 'pool' resources regarding advertisements. Over time, this had slipped and the Council would now need to go out to recruit on its own rather than alongside neighbouring authorities. She said that she would look back at the previous recruitment pack and panel and share that with members.

Cllr V Gay sought more information on the IP's role in the disciplinary process for statutory officers. She asked whether they would be an active member of the disciplinary panel or act as an external adviser. The Monitoring Officer replied that they sat as part of a panel, which was convened at a late stage in the process, following an investigation, where disciplinary action was recommended. They would consider the allegations against statutory officers and then reach a decision which would be reported to Full Council which would then decide how to proceed.

The Chairman asked the Monitoring Officer for her view on whether most authorities had two IP's or if they had one and then consulted with the IP of a neighbouring authority as and when required. The Monitoring Officer replied that most currently just had one but more were considering recruiting two, mainly for resilience purposes.

Cllr Gay said that she was supportive of recruiting two IPs as their input was often required at short notice and it might be beneficial to have the flexibility of using either IP. She added that it was important to attract candidates who wanted undertake the role for the right reasons rather than for payment and for this reason she didn't feel that small amount of income from the post should be an issue. The Chairman agreed, saying that he felt more comfortable appointing two IPs rather than approaching another authority for support if required.

It was proposed by Cllr A Varley, seconded by Cllr V Gay

## **RESOLVED**

**To recommend to Council that the process for recruitment of two Independent Persons should commence.**

## **8 UPDATES TO THE CONSTITUTION**

The Monitoring Officer advised the Working Party that there were some changes in the law regarding contract and procurement legislation and she would be bringing a report forward on that.

The Governance, Risk & Audit Committee had made a recommendation at their last meeting that there should be a separation of roles of those presenting, advising and investigating disciplinary matters relating to statutory officers. This would be coming forward to the next meeting of the Constitution Working Party for consideration, following confirmation that ACAS requirements were not breached.

The Democratic Services Manager suggested that the public speaking procedures were reviewed as they were currently not consistent across all committees, with Development Committee requiring 48 hours' notice and other committees requiring 24 hours' notice. It was causing some confusion and leading to late submissions for Development Committee which could be difficult to accommodate. She suggested reviewing practice at other authorities and bringing a short report to the next meeting. The Chairman agreed that this was a matter that should be reviewed, to address any issues that were causing confusion and ensure a consistent approach.

The Democratic Services Manager confirmed that a review of the procedures for working parties and sub-committees would also come to the next meeting, as well as the matter of addressing the exclusion of non-committee members during exempt business.

The Chairman said that he would like to review the role of the Constitution Working Party and the frequency of meetings. The Democratic Services Manager suggested that the terms of reference could be reviewed at the next meeting. This was agreed.

The meeting ended at 11.15 am.

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Chairman