

# Report to Audit and Risk Assurance Committee

21 July 2022

<b>Subject:</b>	Governance Review – Proposed Changes to the Council’s Constitution
<b>Director:</b>	Surjit Tour Director of Law and Governance & Monitoring Officer
<b>Contact Officer:</b>	Elaine Newsome Service Manager – Democracy

## 1 Recommendations

That the Committee considers the proposed changes to the Constitution detailed in this report and to be considered by Full Council on 26 July 2022, namely:

1.1 That the Key Decision threshold in the Constitution:

1.1.1 be raised to £1m;

1.1.2 that Cabinet Member be delegated to make financial decisions between £500,001 and £999,999;

1.1.3 that the limit of Chief Officers’ financial delegations be raised to £500,000;

1.2 That Contract and Procurement Procedure Rules be revised and amended as proposed in this report.



- 1.3 That the Protocol for the Disposal of Council Owned Land and Buildings, forming part of the Financial Regulations and Procedures, be revised and amended as proposed in this report.
- 1.4 Subject to the approval of the above recommendations, the Director of Law & Governance/Monitoring Officer, in consultation with the Director of Finance (and S151 Officer), be authorised to make all necessary consequential changes to the Constitution to give effect to the approved changes.







## 2 Reasons for Recommendations

- 2.1 The Council commenced a review of the Council's governance arrangements following the Grant Thornton Governance Review, LGA Corporate Peer Review and CIPFA Review. These reviews identified a number of key governance issues that need to be addressed.
- 2.2 The reviews specifically identified the requirement to address underlying constitutional and procedural deficiencies that directly and indirectly undermine or hinder the Council's governance arrangements, decision making ability and key working relationships.
- 2.3 An Officer Governance Review Project Team has been established to help coordinate and oversee the delivery of the Governance Review. Support has also been provided by the Local Government Association, Centre for Governance and Scrutiny, Chartered Institute of Public Finance and Accountancy, Association of Democratic Services Officers and the Commissioners.
- 2.4 The Governance and Constitution Review Committee, on 27 May 2022, established a cross-party Member Working Group to oversee the process for and coordination of constitution revisions and proposals. The Working Group considered the following proposed changes to the Constitution at its meeting on 14 July 2022:
  - a) Key Decision Thresholds,
  - b) Contract and Procurement Rules, and
  - c) Protocol for the Disposal of Council Owned Land and Buildings.



- 2.5 The changes to the Constitution proposed in his report have been recommended by the cross-party Member Working Group. In order for any of the changes to take effect Full Council approval is required.
- 2.6 Demonstrating progress in respect of the Governance Review is a key area of focus for the Secretary of State and ensuring necessary changes to the Council's Constitution are delivered at pace considered critical to the Council's improvement.

### 3 How does this deliver objectives of the Corporate Plan?

	Best start in life for children and young people
	People live well and age well
	Strong resilient communities
	Quality homes in thriving neighbourhoods
	A strong and inclusive economy
	A connected and accessible Sandwell

### 4 Context and Key Issues

#### BACKGROUND

- 4.1 Earlier this year, we commenced a review of the Council's governance arrangements following the Grant Thornton Governance Review, LGA Corporate Peer Review and CIPFA Review. These reviews identified a number of key governance issues that required consideration and refresh.
- 4.2 The review also identified a need to address underlying cultural and behaviour issues that directly and indirectly undermined the Council's governance arrangements, decision-making ability and key relationships.



4.3 An Officer Governance Project Team has been established to help coordinate and oversee the delivery of the Governance Review. Support has also been provided by the Local Government Association, Centre for Governance and Scrutiny, Chartered Institute of Public Finance and Accountancy, Association of Democratic Services Officers and the Commissioners.

4.4 The Governance and Constitution Review Committee has met and established a cross-party Member Working Group consisting of 10 members – namely, all the members of the Committee and two additional Conservative Group members. The Working Group has started to consider draft constitution proposals and work with other Committees and Boards/Groups to ensure proposed change are joined up, for example, any development and training needs are being fed into the Member Development Programme as training and development needs are identified.

## KEY AREAS OF FOCUS

4.5 The Governance Review is refreshing the Council's decision-making mechanisms and updating the constitutional arrangements to enable: the achievement of the Council's strategic direction and ambition, in particular:

- efficient and effective decision-making;
- a more open, transparent and accountable Council;
- greater engagement with residents, communities and stakeholders in relation to democratic functions;
- more effective support to Elected Members to enable them to be confident and successful in their various roles;
- corporate governance documentation, policies and procedures to be updated and revised so that they are consistent with national guidance, align to best practice and are fit for purpose;
- strong and healthy relationships between Elected Members and Officers.



- 4.6 The Governance Review will review all elements of the Council's Constitution in line with the indicative timetable set out below. Where possible, the various work strands will be expedited to ensure the Constitution review is completed as expeditiously as possible, and in any event by the end of the calendar year.

### Indicative Timetable

Full Council on 26 July 2022

- Key Decision Thresholds
- Contract and Procurement Procedure Rules
- Protocol for the Disposal of Council Owned Land and Buildings

Full Council on 25 October 2022 -

- Scheme of Delegation to Officers
- Budget & Policy Framework Procedure Rules
- Council Procedure Rules
- Executive Procedure Rules
- Officer Employment Procedure Rules
- Access to Information Rules
- Protocol Member and Employee Relations
- Officers' Code of Conduct

For approval by Full Council on 13 December 2022 -

- Financial Regulations and Procedure Rules
- Scrutiny Review Update/Changes (if any) (including Scrutiny Procedure Rules) Remaining Articles (including Committee Structures and Terms of Reference)
- Responsibility for Functions
- Third Sector Grant Funding & Procedures



## CURRENT KEY WORK STRANDS

### Key Decision Threshold

4.6 It has been recognised that the Governance Review needed to promote and embed effective decision making. Over recent years, more and more decisions have been escalated to Cabinet resulting in inefficient decision making in the Council.

4.7 The characteristics of effective decision making include:

- making decisions in a timely manner
- decisions being made at the right level within the organisation (which is balanced between officers and members)
- decision making that is informed
- decisions that are open and transparent and compliant with the Council's Access to Information Rules

4.8 To enable decisions to be taken more effectively, it is proposed that the Key Decision Threshold be changed. Details are set out as follows:

Key Decision threshold to:	£1m (from £250k)
Cabinet Member financial delegations:	£500,001 and £999,999
Chief Officers financial delegations:	£500k (from £249,999)

4.9 A comparison has been undertaken with a number of other councils in relation to their financial thresholds. A table showing the different thresholds is set out at Appendix 1.

4.10 Given the benchmarking information, the proposal is comparable with some other Local Authorities. The changes to the key decision thresholds will enable more agile decision-making and operational efficiency, which supports the Council's ambitious strategic agenda for delivery and improvement.

4.11 It should be noted that decisions taken by officers and Cabinet Members will require the same level of information and consideration of the issues as a decision taken by the Cabinet. Decisions by officers and the Cabinet Member will be accompanied by a Decision Notice that will be published (subject to Sch12 Local Government Act 1972 considerations) and a detailed report that includes all material and relevant information, together with legal, finance, HR, equality and other necessary





implications, to enable an informed decision to be taken. Any delegated decision taken by a Cabinet member or Officer will also be reported to the next available Cabinet Meeting for noting. Such an approach ensures that decisions remain open and transparent, and consistent with good governance principles.

### Contract and Procurement Procedure Rules (CPRs)

- 4.13 A detailed review has been undertaken in relation to the CPRs with the support of internal staff, another experienced Monitoring Officer and governance practitioner (who also supported Birmingham City Council - via the LGA - with their governance review). The review has drawn upon various officer experiences, including the Council's Interim Procurement Manager. The officers involved collectively have extensive experience that has been gained over many years working at other metropolitan, unitary and district councils.
- 4.14 Support and input has also been provided from the wider Procurement Team, Legal Services and various officers from across the Council who have provided feedback on the CPRs to ensure areas of improvement have been identified and addressed as part of the revision of the Rules.
- 4.15 Initial work undertaken looked at the Council's current CPRs and benchmarking against CPRs from a number of authorities around the country. In particular, consideration has been given to a cross section of Greater Manchester Authorities, including Salford City Council, Manchester City Council, STAR Procurement (Stockport, Trafford, Rochdale and Tameside), Brent LBC and Birmingham City Council. These Councils have either been involved in significant procurement projects, recently undergone a CPR review and/or are considered similar in size to Sandwell MBC.
- 4.16 Overall, the Council's CPR arrangements were broadly similar to the benchmarked authorities. However, there were some areas which needed strengthening, such as robust statements were required about the need to procure within a strong ethical governance environment and this has been reflected in the draft CPRs. The review has also provided the opportunity to deal with changes in the law which were not reflected in any benchmarked examples we reviewed – principally around the changes to the statutory procurement regime following the UK's exit from the EU.



- 4.16 The revised CPRs are set out at Appendix 2. A summary of the changes proposed are set out in a Summary Table at Appendix 3.
- 4.17 Overall, some 70 substantive changes to CPRs are being proposed. These have formed the basis of a consultation exercise in June with a focus group of officers, before the draft CPRs being submitted to the Corporate Leadership Team.
- 4.18 The proposed changes to the CPRs will make procurement more agile and effective whilst retaining the necessary safeguards to ensure governance risks are mitigated and managed effectively. The changes introduce greater flexibilities on decision-making where it was considered sensible to do so, for example on exemptions and quotations; whilst strengthening requisite check and balances to provide effective assurance to the Council. The CPRs will be accompanied by revised Guidance and Protocols that will promote and embed good practice whilst improving timely and effective procurement. The CPRs specifically require compliance with any guidance, advice or protocol issued by the Council's Procurement Team. The revised CPRs therefore seek to strike a balance between the need for an effective legal framework and operational efficacy to delivery effective procurement across the Council.

### Financial Regulations (Fin Regs)

- 4.19 A review of the Council's Fin Regs is underway and from the benchmarking exercise are considered to be broadly in line with those found in many authorities, although there are some areas, such as the definition of budget overspends and underspends, that seem to have been affected by historic local circumstances.
- 4.20 The Chief Finance Officer will be keeping the Fin Regs under review throughout the Municipal Year to ensure any emerging issues not currently known or anticipated can be addressed.
- 4.21 The Fin Regs are currently being reviewed and a revised version will be considered by Full Council at a later meeting.
- 4.22 The review is almost complete and comprises of consequential changes from the (anticipated) proposed increase in the Key Decision





Thresholds; corrections to Committees references, updates to teams and officer designations and removal of provisions no longer used.

4.24 The Director of Finance has been engaged in the review of the Fin Regs. The changes will help embed improvements to the Council financial management arrangements, provide greater clarity and understanding for members and officer, and ensure financial responsibility and accountability sits at the heart of the Fin Regs.

#### Protocol for the Disposal of Council Owned Land and Buildings ("Protocol")

4.25 The Protocol forms part of the Council's Fin Regs. It was introduced to bolster the Council's governance and decision making around the disposal of significant land and building assets.

4.26 The Protocol provides an opportunity for potential land and building assets considered to be surplus to requirements and appropriate to be disposed of, to be considered by the Land and Asset Management Committee (subject to the value meeting the threshold) prior to any disposal. The Committee whilst not a decision-making Committee, will make recommendations to the Cabinet Member or Cabinet on any qualifying disposal.

4.27 The proposed changes to the Protocol focus on ensuring the Protocol is clear, the thresholds set at the appropriate level to ensure decision making is effective whilst ensuring the requisite checks and balances are in place.

4.28 The proposed Protocol for the Disposal of Council Owned Land and Buildings is set out at Appendix 4.

## 5 Implications

<b>Resources:</b>	There are no direct resources implications arising from this report. However, the changes proposed enables more effective decision making, greater financial oversight and management. The changes ensure greater clarity around obligations, approach and expectations which are essential to promote and embed good governance.
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<p><b>Legal and Governance:</b></p>	<p>The proposals will enable high standards of decision making across the authority and addresses the recommendations contained within the Council's Improvement Plan.</p> <p>The council must ensure good governance underpins its decision making which needs to be informed and timely. The proposed changes seek to achieve this whilst striking a balance between the necessary safeguards necessary tom provide assurance to the Council.</p> <p>Any constitutional changes require Full Council approval.</p>
<p><b>Risk:</b></p>	<p>The proposed changes will reduce the Council risk of challenge as more informed and effective decision making will be achieved. Mitigation of risks associated with decision making is essential and protects the council from avoidable challenge and reputational harm.</p>
<p><b>Equality:</b></p>	<p>There are no direct equality implications arising from this report save that all decision making needs to be compliant with the Equality Act 2010 and the public sector equality duty. All decisions must therefore consider relevant equality, diversity and inclusion implications.</p>
<p><b>Health and Wellbeing:</b></p>	<p>There are no direct implications for health and wellbeing from this report.</p>
<p><b>Social Value</b></p>	<p>The changes [proposed to the Contract and Procurement Rules promote and emphasise the need to ensure social value is properly considered and encouraged wherever possible.</p>

## 6 Appendices

Appendix 1 – Key decision thresholds

Appendix 2 – Draft Contract Procedure Rules



## 7. Background Papers

Constitutions of Salford City Council, Manchester City Council, STAR Procurement (Stockport, Trafford, Rochdale and Tameside Councils), Brent LBC, Birmingham City Council, Durham County Council, Nuneaton and Bedworth Borough Council, Gateshead Metropolitan Borough Council, Nottinghamshire County Council, Hertfordshire County Council, Liverpool City Council.

