

Report to Council

8 November 2022

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

1 Recommendations

1.1 That approval be given to the proposed revisions to the constitution including:

- Part 3 - The Scheme of Delegation to Officers
- Part 4 - Council Procedure Rules
- Part 4 - Executive Procedure Rules and associated Articles:
7 – The Executive and 13 – Decision Making
- Part 4 - Access to Information Procedure Rules
- Part 4 – Officer Employment Procedure Rules
- Part 5 – Officer Code of Conduct
- Part 5 - Protocol for Member/Employee Relations

1.2 That approval be given to the protocol for public questions at Council meetings;

1.3 That, subject to the approval of the above recommendations, the Director of Law & Governance/Monitoring 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 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 proposed changes to the Constitution at meetings on 15th September and 13th October 2022 and approved them for wider consultation with elected Members during September and October.
- 2.5 The changes to the Constitution proposed in this 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?

	An effective governance framework supports delivery of all the objectives within 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, the Council commenced a review of its 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 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 considered a series of draft constitution proposals and worked 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 and expeditiously as possible, and in any event by the end of the calendar year.



Timetable

Phase 1 of the review concluded in July 2022 with Council approval of the revised Key Decision Thresholds, Contract and Procurement Procedures and the Sale of Land & Buildings Protocol.

The outcomes of Phase 2 of the review are presented for consideration by Council. This includes a series of proposed changes to the following elements of the constitution:

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

Following Council in July 2022, Council is also requested to consider the introduction of public questions at Council meetings, in line with the objective of wider public participation in democratic functions.

Phase 3 proposals will be recommended for approval by Full Council on 13 December 2022 as follows:

- Budget & Policy Framework Procedure Rules
- Financial Regulations and Procedure Rules
- Remaining Articles
- Responsibility for Functions



KEY WORK STRANDS for COUNCIL (8th November 2022)

Part 3 - Scheme of Delegation to Officers

- 4.7 The Scheme of Delegation outlines the authority for the exercise of functions by Officers. These functions can be non-executive (Council) or Executive and are established in the legislative framework governing the activities and provision of services by local authorities.
- 4.8 The delegations contained in the scheme enable officers to efficiently carry out routine operational activity and functions of the Council. Council, Cabinet, Committees and Boards are additionally able to delegate responsibilities to officers in line with decisions to be enacted.
- 4.9 The Scheme in its current format is comprehensive however, is an extensive document that can be disengaging to the user. There are a number of model schemes in use across the country and it is for each Council to adopt a scheme that best fits the needs of the individual organisation. In reviewing the Sandwell scheme, officers have consulted with Elected Member, Directors and senior managers to understand their views existing arrangements and a preferred future direction. On the basis of the proximity, close working relationship and joint ventures between Sandwell and Birmingham City, their scheme was identified as a preferred model for Sandwell's new Scheme.

The proposed scheme of delegation attached at appendix 1 moves away from the current model and adopts a more general approach which would be supported by a detailed sub-scheme of delegation.

Part 4 – Council Procedure Rules

- 4.10 Council Procedure Rules outline to format for the conduct of business at meetings of Full Council.



The proposed changes to the rules aim to offer a more efficient and effective platform for the conduct of Council meetings and provide further clarity on a number of procedural areas.

Key changes include:

- An increase in time permitted for a quorum to be achieved
- A proposal for a maximum length of time for Council meetings – this is in line with the majority of the benchmarked model constitutions
- A reduction in the time for speeches to afford additional time for debate on Council business
- Additional reporting provisions for Member to report into Council

These proposed Council Procedure Rules are attached at appendix 2.

The rules are then transposed to give effect to similar arrangements at Committees.

Part 4 - Executive Procedure Rules and associated Articles (7 and 13)

4.11 The Constitution provides a framework for the conduct of meetings of the Council and its Committees, Boards and other fora in line with the provisions of the Local Government Act 1972. As meetings of the Executive and Scrutiny are primarily conducted in line with the Local Government Act 2000 (alongside subsequent legislation), arrangements for the transaction of their business vary and are captured in constitutional provisions bespoke to those arrangements.

The current Executive Procedure rules have been reviewed and updated in line with current arrangements for collective and individual cabinet member decisions. For ease of access and completeness, it is proposed also to include relevant sections of the Access to Information rules as they relate to Cabinet meetings.



Additional changes include:

- The increase in time permitted for a quorum to be achieved – this is in line with Council and Committee Procedure Rules proposals
- Attendance at meetings by non-executive members
- Arrangements for the appointment of a Chair in the absence of the Leader and Deputy Leader
- Referral of reports from Scrutiny Boards

4.12 The proposed procedures for consideration is attached at appendix 3.

4.13 The proposed changes have impacted on Articles 7 and 13 of the constitution which have been amended to reflect proposals. These are attached at appendices 4 and 5.

Access to Information Rules

4.14 The access to information rules describe the council's obligations and processes in accordance with the Local Government Act 1972 as amended, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the Openness of Local Government Bodies Regulations 2014 and any other relevant statute.

4.15 The rules apply to all meetings of the Council, Scrutiny Boards, committees and panels, the Ethical Standards and Member Development Committee and, Regulatory Committees and meetings of other non-executive meetings of the Council.

4.16 The rules, attached at appendix 6 were subject, as all elements of the constitution review, to wider member engagement and now reflect the proposed changes to the Executive Procedure Rules.



Officer Employment Procedure Rules

- 4.17 The Officer Employment Procedure Rules outline the process for recruitment of Council Officers. A review was last completed in July 2017.
- 4.18 The review has updated the legislation and amended the process to reflect the current council senior officer structure. Proposals are attached at appendix 7.

Officer Code of Conduct

- 4.19 In 1995, Sandwell Metropolitan Borough Council (“Council”) voluntarily agreed to adopt the Code of Conduct for Local Government Employees (“the Code”).
- 4.20 Since this time, various governments have stated their intention to update the Code, but in 2011, the proposal to carry this out was dropped by the new Government.
- 4.21 It has therefore fallen to individual authorities to update the Code as they consider appropriate. The Council adopted a new code of conduct for its Members, which sets out high standards of Conduct for its Members. The Council expects the same principles of honesty and integrity from its employees.
- 4.22 The Council recognises the need to promote high ethical standards among its workforce and has updated the Code of Conduct for Employees. Consultation on the Code with Unions has taken place, and on the 26 May 2015 the Code was adopted by the Council.



4.23 A review of the Officer Code of conduct has been completed. The proposed changes are minimal as the substance of the code is sound. The changes propose to bring the code in line with current council policies and procedures, hyperlinks will be added to related policies and procedures for ease of navigation and to provide a single point of access. The proposed Officer Code of Conduct is attached at appendix 8

Protocol for Member Officer Relations

4.24 The Council have adopted an Officer Code of Conduct (as referred to above) that was last reviewed in 2015 and a Member's Code of Conduct, that was adopted on 23 March 2021. Both codes recognise and embrace the Nolan principles and the expected behaviours for both officers and elected members.

4.25 A protocol was adopted to guide members and officers in their relations with one another in such a way as to ensure the smooth running of the Council. It is important that any dealings between Members and Employees should observe standards of courtesy and that neither party should seek to take unfair advantage of their position.

4.26 The current protocol was last reviewed in March 2013. A review of the protocol has demonstrated that the protocol remains broadly current and reflects the principles of both the Member and Officer codes of conduct. The review has proposed to update terminology and add hyperlinks to documents where appropriate. Further changes to the protocol may be required following consideration of any outcomes from the LGA facilitated workshops on member/officer working relationships. The protocol is attached at appendix 9

Written questions from member of the public at Council Meetings

4.27 At its July meeting, Council considered and approved a motion to explore options for wider public engagement in Council meetings. The working group reviewed and considered proposals for the introduction of a facility for members of the public to ask questions at meetings of Council. The proposed protocol attached at appendix 10 provides a



format similar to the provisions in the Council procedure rules affording Sandwell residents and business rate payers to submit and ask questions to Council.

5 Implications

Resources:	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.
Legal and Governance:	<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>
Risk:	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.
Equality:	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.
Health and Wellbeing:	There are no direct implications for health and wellbeing from this report.
Social Value	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.
Climate Change	The proposals will not have a detrimental impact on climate change. However, a fit for purpose Constitution will play an important role to ensure the council drives and delivers upon its climate change objectives and targets.

6 Appendices

1. Appendix 1 Scheme of Delegation to Officers
2. Appendix 2 Council Procedure Rules
3. Appendix 3 Executive Procedure Rules
4. Appendix 4 Article 7 The Executive
5. Appendix 5 Article 13 Decision Making
6. Appendix 6 Access to Information Rules
7. Appendix 7 Officer Employment Procedure Rules
8. Appendix 8 Officer Code of Conduct
9. Appendix 9 Protocol on Member/Employee Relations
10. Appendix 10 Protocol on Written Questions to Meetings of the Council.

7. Background Papers

Constitutions of Salford City Council, Manchester City Council, 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.

