

Subject:	Review of the Council's Constitution
Date of Meeting:	3 February 2022 2 nd December 2021
Report of:	Executive Lead Officer for Strategy, Governance & Law (Monitoring Officer)
Contact Officer:	Name: Abraham Ghebre-Ghiorghis
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Ward(s) affected:	All

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT:**

- 1.1 This report proposes changes to the Council's Constitution for approval by Policy & Resources Committee and (where relevant) Full Council. The proposals set out in the Report have been considered by the cross-party Constitutional Working Group (CWG), which has approved them either unanimously or on a majority basis.

2. RECOMMENDATIONS:**Policy & Resources Committee:**

- 2.1 Recommends to Full Council the proposal to make changes to the Council's Procedure Rules in Part 3.2 of the Council's Constitution indicated in paragraphs 4.1 - 4.5 inclusive and Appendix 1.
- 2.2 Approves the resources described at paras 4.6 & 4.7 and attached at Appendices 2 & 3 and gives the Monitoring Officer delegated authority to review and update those as necessary in future.
- 2.3 Agrees the proposals to make changes to the Council's Member Working Groups and Advisory Bodies in Part 4 of the Council's Constitution as set out in paragraphs 4.9 to 4.14 inclusive and Appendix 4, including (but not only) by disbanding the Orbis Joint Committee and substituting a new Orbis Partnership Oversight Board.
- 2.4 Recommends to Full Council the proposal outlined in para 4.8 to transfer responsibility to manage authorised and unauthorised encampments (including all activities incidental to the Council's functions of Gypsies, Roma and Travellers and Van dwellers) to the Housing Committee from the Environment, Transport & Sustainability Committee.
- 2.5 Recommends that Full Council note that the disability representative it agreed would attend Environment, Transport & Sustainability Committee at its meeting in

May 2021 has the status of a standing invitee, the appointment of which is a matter for Policy & Resources Committee.

- 2.6 Agrees to delegate to the Chief Executive the power to appoint an individual as disability representative in accordance with para 2.5 above (and any other appointment of individuals as co-optees or standing invitees where the principle of the appointment has been agreed by the relevant committee or Council) following consultation with Group spokespersons for the relevant committee.
- 2.7 Approves the re-appointment for a period of 12 months of the Council's two Black and Minority Ethnic standing invitees (to Policy & Resources Committee and Tourism, Equalities, Communities & Culture Committees respectively) as specified in paragraph 4.15 of the report.
- 2.8 Agrees the proposals to make the changes to the Scheme of Delegations to Officers in Part 6 of the Council's Constitution (paragraphs 4.17 to 4.20 inclusive and 4.23 and Appendices 5 and 6).
- 2.9 Recommends to Full Council both the proposal to make changes to Part 8.5 and the amendments to the rules on future changes to that Part outlined in para 4.21.
- 2.10 Approves the Parents and Carers Leave Policy for Members (as outlined in para 4.22 and Appendix 7) and the revised Indemnity for Members (para 4.24 and Appendix 8).

Full Council:

- 2.11 Approves the proposed changes referred to in paras 2.1 (Appendix 1), and 2.4 to 2.7 above.

Policy & Resources Committee and Full Council:

- 2.12 Authorises the Chief Executive and Monitoring Officer to take all steps necessary or incidental for the implementation of the changes agreed by the Policy & Resources Committee and by Full Council, and authorises the Monitoring Officer to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.13 That the proposed changes come into force immediately following their approval by Policy & Resources Committee or adoption by Full Council, as appropriate.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Council is required to keep its Constitution under review with a view to achieving efficiency, economy and effectiveness. The cross-party Constitutional Working Group (CWG) was set up to assist with this by considering proposals and advising the Council on proposed changes to the Constitution. The current members of the CWG are Councillors Clare (Chair), O'Quinn and Nemeth. The proposals set out in the report were discussed by the CWG, the members of which approved them in principle either unanimously or on a majority basis.

4. PROPOSALS

Changes to the Council's Procedure Rules – Part 3.2

4.1 Changes to the rules governing the conduct of the council's meetings are proposed as described below. Tracked changes version of the proposals described at para 4.4 are attached as Appendix 1.

4.2 Notices of motion

Currently each Group may submit a maximum of two Notices of Motion to each meeting of Full Council, plus also a maximum of two Joint Notices of Motion with another Group. To enable Full Council to manage its agenda and maintain its focus on scheduled items of business, it is proposed to reduce the total number of Notices of Motion submitted. It is proposed that the Rules continue to permit each individual Group to submit two Notices of Motion but that the number of joint Notices of Motion each Group may submit be reduced down to one. If the proposal is agreed then the total number of Notices of Motion that each Group would be able to submit to each full Council meeting would be two Notices of Motion submitted solely by each individual Group, plus one Notice of Motion submitted jointly with another Group.

4.3 Written Questions to Full Council

It has been noted that the lack of any limit on the number of Questions which each Member may submit to Full Council has resulted in some Members posing multiple Questions. This diverts officer resource and directs a disproportionate amount of focus away from other key items considered at the meeting. It is therefore proposed that each individual Member of the Council be permitted to ask one Question only at each Full Council meeting: a provision which - if agreed - would bring the provisions on Oral Questions in line with those which govern Written Questions.

4.4 Criteria for convening an Urgency Sub Committee

The current criteria for convening an Urgency Sub Committee – which refer to “practicability” rather than “reasonable practicability” – are considered to be overly restrictive. Alternative wording is suggested in order to clarify and to flesh out the rationale to be applied by the Committee Chair when considering whether to convene an Urgency Sub Committee. It is proposed that - for completeness - express reference to the Committee's discretion to decide to convene an Urgency Sub Committee if it so wishes be made in the Rules. The suggested proposals are provided at Appendix 1.

4.5 Committee Report writing, including accessibility of information

In a context where the requirements which apply to how public authorities present information have recently been updated, the work of ensuring that all of the council's information is presented in as accessible a way as possible is ongoing and is a key part of the council's direction of travel. So too is the project of continually reviewing the information the council uses to make decisions in order to ensure that decision-making is as rigorous and robust as possible.

- 4.6 A series of key resources have been drafted to ensure that appropriate standards are met, and consistency achieved in Committee report writing. Those include an updated Committee report template & guidance for officers, which includes more detail on reviewing equalities and sustainability considerations. It also explicitly prompts consideration of social value implications in Committee reports on procurement or property-related matters. The revised report template is provided at Appendix 2, while a new checklist is attached at Appendix 3 which it is proposed will sit behind the template to assist report writers in ensuring that sustainable development considerations have been fully reviewed. This checklist has been developed by the Carbon Neutral Officer Group.
- 4.7 Approval is sought for the corporate roll out of the above to report writers as a means of ensuring consistency and robustness in future decision-making. In addition to approving the resources, Committee is asked to delegate to the Council's Monitoring Officer the power to make updating changes to the documents in the future, as considered necessary.

Changes to the Terms of Reference of the Council's existing Committees and Member Working Groups - Part 4

- 4.8 Responsibility for authorised and unauthorised encampments currently sits in the delegations to the Council's Environment, Transport & Sustainability Committee. As well as the management of authorised and unauthorised encampments, this includes all activities necessary or incidental to the Council's performance of its responsibilities in relation to Gypsies, Roma and Travellers and Van dwellers. It is proposed that the function instead be moved to the Council's Housing Committee, on the basis that this area has a logical relationship to that Committee's other key functions. This would align the delegations to Committees with the delegations given to the Council's Chief Officers under the Scheme of Delegations to Officers.
- 4.9 The following changes are proposed in relation to existing Member Working Groups:
- (i) That the name of the Member Development Working Group be changed to the Supporting Members Working Group, so as to more accurately reflect the remit of the Group.
 - (ii) The Terms of Reference of the Stanmer Park Working Group be changed to remove the requirement that its members be appointed from its parent Committee: a provision which is not included in the Terms of Reference of such other Groups as the Strategic Delivery Board and the Housing Supply Board.
 - (iii) That approval is given in principle to changing to the template Terms of Reference for new Member Working Groups to remove the expectation that members must be on the parent Committee. It is proposed that instead express provision be made to allow this aspect of the Terms of Reference to be for the parent Committee to decide.

Disband the Orbis Joint Committee, substituting a new Orbis Partnership Oversight Board – Part 4

- 4.10 This proposal is made following recent changes to the number of services provided by Orbis and, more importantly, to the change in emphasis of the shared service arrangement from being partnership-led to service-led.
- 4.11 Following the withdrawal of a number of services from the Orbis partnership, including HR, Finance and Business Operations, the services now remaining are IT&D, Procurement, Internal Audit and some elements of Finance (Insurance, Treasury & Taxation). Services have been withdrawn because there was clear divergence in the sovereign service demands and requirements for these services which meant that integrated structures and common standards, processes and systems could not be achieved or implemented for these services.
- 4.12 Those services remaining in Orbis are those where there is a strong alignment of service needs and a common direction of travel. However, with a smaller scale to the partnership, the aim is to reduce administrative and management costs and the amount of time required to support the partnership.
- 4.13 Orbis Joint Committee members have been consulted and the Joint Committee has recommended the approval of proposals to realign member involvement in the partnership to reflect its smaller scale, as a service led approach supported by the service management teams and the Joint Management Board. In terms of member oversight, it is proposed that the formal Joint Committee be dissolved and replaced with an Orbis Partnership Oversight Board, with two members appointed to it from each participating authority. The Orbis Partnership Oversight Board would receive annual reports on the performance of the ongoing Orbis partnership and its services.
- 4.14 It is understood that the other authorities in the Orbis partnership have approved the above proposals, namely to approve the dissolution of the Orbis Joint Committee and the introduction of a new Orbis Partnership Oversight Board with the attached Terms of Reference (Appendix 4).

Co-optees appointed to Council Committees

- 4.15 The Council's two Black and Minority Ethnic standing invitees to the Council's Policy & Resources Committee and its Tourism, Equalities, Economy & Culture Committees were each appointed for a 12-month term which has recently expired. This Committee's formal approval is now sought to extend the terms of those individuals for an additional twelve-month period, after which the appointment will be subject to further review.
- 4.16 The Committee is further asked to note that the recruitment of a disability standing invitee (not a co optee) to the Council's Environment, Transport & Sustainability Committee is being progressed using the process and principles previously followed during the recruitment of the above individuals. That process will involve an open callout as a means of maximising the potential for eligible individuals to consider applying. For the avoidance of doubt: where standing invitees are invited to attend the Council's Committees on an ongoing as

opposed to ad hoc basis, that is properly a matter for the Policy & Resources Committee. The Committee is also asked to delegate to the Chief Executive the task of appointing an individual to this role, following cross party input from lead Members from each of the three Groups.

Changes to the Scheme of Delegations to Officers – Part 6

Qualified Person designation

- 4.17 It is proposed that express reference be made in the Council's constitutional arrangements to the role of the Council's statutory Monitoring Officer as the designated person who normally acts as 'Qualified Person' for the purposes of section 36 of the Freedom of Information Act. That section of the Act provides that public bodies may – provided doing so is in the public interest – withhold certain types of information otherwise disclosable under the Freedom of Information Act, subject to the reasonable opinion of the authority's Qualified Person. While this exemption is applied relatively infrequently, it is considered that enhanced transparency will be achieved by referencing the designation of the Monitoring Officer as Qualified Person: a matter which is not for the authority to decide but is instead the subject of a ministerial authorisation, which provides that the Monitoring Officer and Chief Executive are both designated. It is proposed at the same time to make reference in the Scheme to the Monitoring Officer's nominated Deputy as the person formally designated by the Monitoring Officer to act as Qualified Person in the Monitoring Officer's stead, as the need arises.

Trading Standards delegations

- 4.18 It is proposed to update the delegations provided to the Executive Director – Housing, Neighbourhoods & Communities insofar as the Council's trading standards functions are concerned. It is proposed that money laundering (a function understood as falling under the heading of trading standards) be explicitly referenced as a matter of best practice. Additional proposed changes explicitly reference the enforcement activities which form a key part of the trading standards function. Finally, it is considered that the description provided of the trading standards function is sufficient on its own, and that the list of legislation (currently provided in Schedule 3) may be deleted in its entirety. The proposed changes are as indicated in Appendix 5.
- 4.19 It is further proposed that the Monitoring Officer be given delegated powers to enter into limited timebound agreements under section 101 of the Local Government Act 1972 in relation to the enforcement of specified trading standards investigations only. It is proposed that this power be exercised only where considered to be appropriate as part of a specific investigation carried out by an enforcing authority which has identified potential criminal conduct in the area of Brighton & Hove. The aim is to allow other enforcement authorities to follow to conclusion specific investigations originating in another area in situations where utilising this Council's delegated powers is the only means available of safely following through with enforcement action within the law.

Planning delegations, including changes to Part 8.5

- 4.20 The Planning Committee Working Group has proposed amendments to the delegations of the Executive Director – Economy, Environment & Culture to remove any current lack of clarity around the rules. The objective is to be as clear as possible that either the Chair of Planning Committee and/or any of the Opposition Spokespersons may require any major application to be determined by Committee, whether or not any objections have been received in relation to an application. For the avoidance of doubt: this process is in addition to that whereby ward members may call-in a planning application.
- 4.21 Further changes not limited to the Scheme of Delegations were also proposed by the Planning Committee Working Group and are also indicated in Appendix 6 attached. There is firstly a suggestion that amendments be made to the criteria whereby site visits may be made to a property which is the subject of an application. Secondly it is proposed that the rules on amending the Constitution be changed to provide that any future changes to the criteria for site visits (Part 8.5 of the Constitution) be made by Planning Committee (as the Committee best placed to consider them) without any need for consideration by any other body.

Parental & Carers Leave Policy for Members

- 4.22 The obstacles to ensuring representation from across all of the city's communities were noted in recent Reports compiled in response to the Women in Local Government Report produced by the Fawcett Society. The Council does not currently have a dedicated policy applicable to those members whose personal circumstances may require them to step back from their Council responsibilities for a period of time of less than six months duration. (Note: this is a threshold implicitly endorsed by legislation which provides that members failing to attend meetings for six or more consecutive months will be deemed to have vacated their office by reason of absence - see following paragraph). Adopting a Policy on Member Leave is considered to be a way of promoting a more visibly inclusive, family-friendly approach and thereby encouraging greater participation by under-represented groups. A draft Policy is attached at Appendix 7.

Delegation to determine applications to permit absence of six months or more

- 4.23 A separate proposal arises from the provisions in section 85 of the Local Government Act 1972, which provide that elected members will be deemed to have vacated their office by reason of absence if they do not attend any Council meetings for six or more consecutive months. It is noted that provision is made in the legislation for the Council to authorise member absence of a duration of six months or more, provided that the member applies in advance of the expiry of the six-month period. With this in mind, it is suggested that the Council's Monitoring Officer be given delegated authority to determine any such application received by a member, so that if such application is ever made, there is the option of considering it without calling a meeting of Full Council. It is proposed to develop an advisory protocol or guidance, following consultation with Group Leaders, on the criteria to be used in dealing with such applications.

Revised Indemnity Policy for Members

- 4.24 The Council currently has in place an indemnity policy which aims to protect members appointed to outside bodies by the Council. It is proposed that the current policy be updated and extended so that it applies whenever members are acting in good faith in their capacity as elected members; in other words so that it is not limited to situations where members are appointed to external bodies. The proposed Policy has been further extended to cover the Council's Independent Persons as well as its formally co-opted voting members and is provided at Appendix 8.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 5.1 The Committee or Council could - if it wished - decide not to implement the changes set out in this Report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 The proposals in this Report have been reviewed in detail by elected Members in the Constitution Working Group and Leaders Group. The proposals do not represent changes to the decision-making structure or framework and due to the procedural nature of the changes that are proposed it is not considered that community engagement would be appropriate.

6. CONCLUSION

- 7.1 The proposals reflect the Council's ongoing efforts to review its Constitution to ensure that it is reflective of current practice and priorities and to achieve clarity and increased efficiency. As a result, it is recommended that the proposals in this Report be approved.

8. FINANCIAL & OTHER IMPLICATIONS:

8.1 Financial Implications:

There are no material financial implications arising from this report. Where costs do occur it is expected that these would be contained within existing resources.

Finance Officer Consulted: Peter Francis Date:11/11/2021

8.2 Legal Implications:

Policy & Resources Committee and, where specified in this report, full Council have the authority to make the changes to the Council's Constitution which are set out in the report. The intention is for the proposals to be implemented with immediate effect following the decision of the decision-making body, unless expressly stated to the contrary.

Lawyer Consulted: Victoria Simpson Date: 10/11/21

8.4 Equalities Implications:

The Council has a public sector equality duty under s149 of the Equality Act 2010. In the exercise of its functions the Council must have due regard to the

need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those that do not.

The Council's public sector equality duty has been considered by officers and the proposals of this report have been assessed for their equalities impact. The Council's arrangements in relation to standing invitees invited to key decision-making bodies reflects its desire to ensure specialist input in areas relevant to BAME and disability individuals. In addition, the introduction of a dedicated Parents and Carers Leave policy for Members aims to enhance the Council's offer further, including to those individuals who have caring responsibilities.

Sustainability Implications:

None

Brexit Implications:

None

Any Other Significant Implications:

None

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1 – Part 3.2 – Urgency Sub Committee
Appendix 2 – Officer reports template & guidance
Appendix 3 – Sustainable development checklist
Appendix 4 – Part 4 – Orbis Partnership Oversight Board
Appendix 5 – Part 6 – Trading Standards delegations
Appendix 6 – Part 6 – Planning delegations
Appendix 7 – Parental and Carers Leave Policy
Appendix 8 – Indemnity Policy

Background Documents

None

