

Subject:	Review of the Constitution : October 2017		
Date of Meeting:	12 October 2017 Full Council – 2 nd November 2017		
Report of:	Executive Lead Strategy Governance and Law		
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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 & Growth Committee and full Council. The issues set out in the report have been considered by the cross party Constitution Working Group.

2. RECOMMENDATIONS:

Policy, Resources & Growth Committee

- 2.1 That the Policy, Resources & Growth Committee approves the recommendations set out at paragraphs 3.2 to 3.11 (Scheme of Officer Delegations) and Appendices 1-3.
- 2.2 That the Policy, Resources & Growth Committee recommends to full Council the proposed changes to the Council's constitution as set out at paragraphs 3.12 to 3.19 in the report and Appendices 4-6.

Full Council

- 2.3 That the proposed changes to the Council's constitution recommended in paragraph 2. 2 above be approved and adopted.

Both Policy, Resources & Growth Committee and Full Council

- 2.3 That the Chief Executive and Monitoring Officer be authorised to take all steps necessary or incidental to the implementation of the changes agreed by the Council and that the Monitoring Officer be authorised to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.4 That the changes come into force immediately following approval by PR&G and full Council.

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 Moonan; Lee Wares and Leo Littman. This report sets out the proposals agreed by the CWG in July 2017.

Officer Delegations – Executive Director, Neighbourhoods, Communities and Equalities

- 3.2 It is proposed that the Executive Director, Neighbourhoods, Communities and Equalities formally takes responsibility for the delivery of the Council's Customer Services and Digital First transformation programme and that the Scheme of Officer Delegations is amended and updated accordingly. This programme is not currently referred to in the Scheme of Delegations to Officers
- 3.3 Amended wording is also proposed in relation to the management of community and voluntary sector discretionary grants to reflect the current commissioning based approach of the Third Sector Investment Programme. The wording proposed is amended to reflect the current practice whereby the budget for community and voluntary sector grants is set at full Council and the framework, including principles, priorities and outcomes is approved by the Neighbourhoods, Inclusion, Communities and Equalities Committee.
- 3.4 The proposed amended wording is shown at **Appendix 1** with tracked changes.

Officer Delegations – Assistant Director, Property

- 3.5 Currently the Assistant Director, Property has delegated powers to acquire or dispose of land of up to £250k in value, with the exception of 'housing land' which is delegated to the Executive Director, Neighbourhoods, Communities and Housing. The reference to 'Housing Land' has caused uncertainty and it is proposed to amend this to 'Housing Revenue Account Land' so that the respective responsibilities of the Executive Director, Neighbourhoods, Communities and Housing and the Assistant Director, Property are clear.
- 3.6 The threshold of delegations to officers in relation to property transactions has been discussed by the recent Policy Review Panel, which indicated that it considered the existing thresholds to be sufficient and therefore there are no recommendations from the CWG to alter these at this time.

Officer Delegations – Emergency Planning

- 3.7 Currently the scheme of delegations to Officers and the Emergency Planning/Civil Contingencies guidance do not consistently use the same terms, thereby raising the risk of a lack of clarity and/or of decisions not being authorised. It is proposed that authority be given to permit the Monitoring Officer to amend the Scheme of Delegations to Officers to reflect the requirements of the Council's emergency planning and major incidents guidance, once the review of it (which is currently underway) has been completed.

Officer Delegations – Orbis Partnership

- 3.8 The Council has entered shared services agreements for support services. Currently, the Scheme of Delegations to Officers does not deal with the issue of officers exercising powers on behalf of other partner authorities. It is therefore proposed that BHCC's Scheme of Delegations to Officers be amended to make specific reference to the practice of cross- authority working.
- 3.9 A draft of the proposed amendments is attached as **Appendix 2**.

Planning Committee – Member call-in procedure

- 3.10 Under current procedures, Members have the right to refer planning applications to Planning Committee that would otherwise be dealt with under Officers' delegated powers. The Planning Working Group has recommended that Members referring such applications to Committee be required to give reasons as these have not been consistently provided and this principle was supported by the CWG.
- 3.11 The proposed amended wording is attached with tracked changes at **Appendix 3**.

Information Governance

- 3.12 Information Governance is the way the Council handles information, in particular, the personal and sensitive data relating to our customers and employees. The focus on this area is set to increase given the use of technology in delivering the Council's modernisation programmes and the rapid legislative changes in this area, including the new General Data Protection Regulation due to come into force from May 2018.
- 3.13 It is recommended that Audit & Standards Committee be delegated the function of oversight of the Council's information governance arrangements concurrently with Policy, Resources and Growth Committee. This area of work is not currently explicitly referred to in the Council's constitution.
- 3.14 The proposed amended terms of reference for Audit & Standards Committee are attached at **Appendix 4** with tracked changes. In addition, it is proposed to amend the delegation to the Executive Director, Finance and Resources to include reference to Information Governance.

Terms of Reference for Committees – Neighbourhoods, Communities and Equalities Committee

- 3.15 In accordance with the ongoing mandate to review the Council's constitutional arrangements for carrying out its business, the remit of the Neighbourhoods, Communities and Equalities Committee has been reviewed.
- 3.16 There are a number of recommendations which aim to align the remit of this Committee with delegations to Officers and to reinforce the Committee's community-facing responsibilities, organising those in a logical way so as to use this Committee and others as effectively as possible.

3.17 It is proposed to implement the following changes:

- NICE Committee to be responsible for the development and oversight of support to the Council's enforcement functions, including Field Officers;
- NICE Committee to include the functions of the Council insofar as they relate to Customer Services, including Digital First. These functions are not currently delegated to any Committee.
- The responsibility for Libraries to move from Economy, Development and Culture Committee to NICE Committee, to bring the Committees into line with changes already made in relation to the Directorate. The CWG noted that the EDC Committee retains an overarching responsibility for 'culture, including arts, entertainment, cultural facilities and heritage' and therefore this remit can extend to look at cultural matters wherever they arise, including as part of the library service.
- Social impact bonds to be included in the NICE Committee delegations. Social impact bonds are a method of funding social policy through a payment-by-results contract with initial funding coming from a social investor. The example that the Council is currently engaged with relates to rough sleepers. This function is not currently delegated to any Committee.
- NICE Committee to be delegated responsibility for developing and overseeing the pilot of the new ward budgets approved by PR&G.

3.18 A copy of the proposed amendments to the NICE Committee delegations is attached as **Appendix 5**.

Council Procedure Rules

3.19 The CWG considered a proposal to clarify the rules around substitution at meetings. The proposed amended Council Procedure Rule 18 is attached at **Appendix 6** with tracked changes. The key change is to making explicit the requirement that a substitute may only be appointed where the Member for whom they are substituting is absent for the whole meeting. This is to ensure effective and lawful decision making, where those Members taking decisions are apprised of the relevant issues before the decision is taken.

Petition Reports

3.20 The Constitution Working Group was asked by full Council to review the application of the Council Procedure Rules on amendments to petitions. The CWG reviewed the arrangements and agreed that the usual rules in relation to Petitions should apply. The CWG proposed that the covering reports supporting Petitions should be amended to make clear that the Council Procedure Rules in relation to amendments to Petitions are the same as those for other reports. The rule in relation to amendments is set out below for information:-

Extract from Council Procedure Rule 15 Notice of Amendments

15.4 Copies of amendments will be prepared and circulated prior to the start of a Council meeting only if such amendments are presented to the Chief Executive by 10.00am on the day of the Council meeting. Amendments for which notice has not been given may be permitted at any time at the discretion of the Mayor or Chair if s/he considers it appropriate with regard to the complexity of the matter, the question of whether notice has been given as soon as is reasonably practicable and any other circumstances that appear to be relevant. Such amendments shall be put in writing unless the Mayor or Chair exercises his to her discretion to allow an amendment to be put orally.

Review of Councillor numbers – Boundary Commission review

- 3.21 The CWG requested officers to contact the Local Government Boundary Commission in order to consider the possibility of an electoral review. The Council's current electoral arrangements were reviewed against the Boundary Commission's detailed criteria and, having considered those, the Commission indicated that it did not consider the electoral variance at BHCC to be significant. As a result it confirmed that BHCC does not meet its criteria for initiating a review at the current time.
- 3.22 A table showing the Commission's calculations is appended as well as a chart indicating where BHCC's arrangements sit in relation to those of neighbouring authorities. This is attached as **Appendices 7a & 7b**.

Decision making arrangements

The CWG considered the current committee system decision making arrangements in Brighton & Hove in the context of the recent LGA Peer review, which recommended that the issue of the governance arrangements for the Council be settled. The CWG did not have a unanimous position in relation to a preferred model of decision making but the majority view was that at this time the Committee system worked well for the Council and should be retained. There is therefore no recommendation to change decision making arrangements at this time.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The Committee or Council could decide not to implement the changes set out in the report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The Cross Party Constitutional Working Group have been consulted and Leaders group considered the proposals set out in the report.

6. CONCLUSION

- 6.1 The proposals reflect the Council's ongoing efforts to review and streamline its processes in an ongoing way so as to achieve both financial savings and increased efficiency. It is therefore recommended that they are pursued.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

There are no direct financial implications arising from this report.

Finance Officer Consulted: James Hengeveld Date:4/9/2017

Legal Implications:

- 7.1 PRG and where specified in the report, full Council, have the authority to make the changes to the Council's constitution as set out in the report. The intention is for the proposals to be implemented with immediate effect unless otherwise indicated.

Lawyer Consulted: Elizabeth Culbert Date: 4/9/2017

Equalities Implications:

- 7.2 None

Sustainability Implications:

- 7.3 None

Any Other Significant Implications:

- 7.4 None identified

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1 – Officer Delegations – Executive Director, Neighbourhoods, Communities and Housing

Appendix 2 – General Officer Delegations – Orbis Partnerships

Appendix 3 – Officer Delegations – Executive Director Economy, Environment and Culture

Appendix 4 – Terms of Reference for Audit and Standards Committee

Appendix 5 – Terms of Reference for Neighbourhoods, Inclusion, Communities and Equalities Committee

Appendix 6 – Council Procedure Rules – substitution

Appendix 7a and 7b – Boundary Commission data

Documents in Members' Rooms

1. None

Background Documents

1. None

