

Constitution Review

Overview

This report summarises the key issues and potential changes that have been raised as part of the comprehensive Constitution Review. It follows the structure of the Constitution and itemises the issues/potential changes under each.

Summary:

Any decisions arising from the governance review might also require Constitutional changes. In addition, consideration by officers has identified a range of potential Constitution changes, set out in more detail below. These will require further sifting and consideration. Most are being suggested to:

- Streamline county council business by providing further clarity or less bureaucracy.
- Reduce the number of sections within the Constitution or otherwise to make use of it easier, e.g. through potential inclusion of an index (as some authorities do).
- Reflect legislation and post roles

Key potential changes include:

- Council Meetings: provisions for making these meetings more effective (page 5-6).
- Cabinet Meetings: Leader's wish to 'relax' the rules of members' addressing the meeting (page 6).
- Scrutiny: how best to take forward Health Scrutiny (either as a joint committee or as a formal committee only of this Council; this point is receiving further legal research and attention. (page 4).
- Scheme of delegation: revisions to achieve greater clarity over roles e.g. which posts are intended have 'director' status etc. (page 8).
- Contract Procedure Rules:
 - clarity over the thresholds for triggering tendering (if the amount exceeds EU threshold then tender necessary; if below then Directors to determine having regard to the achievement of best value/value for money.
 - certain changes can be made now to simply the requirements for demonstrating competition necessary above EU thresholds that require tender; and otherwise simply to demonstrate best value (see pages 9-10)
- Contract Procedure Rules (CPRs): Legislative changes, affecting the procurement regime, will be forthcoming later this year. This will require a fundamental review of the CPRs and will revise thresholds, contract clauses, division of contracts

into lots and include currently excluded contracts such as those for CEF, S&CS and Public Health. The legislative changes will be the result of the UK Public Procurement Regulations implementing an EU directive (see pages 9-10).

- Petition Scheme: to be discontinued; no longer a statutory requirement); its wider provisions have been very infrequently used and the thresholds for achieving a debate or holding an officer to account have never remotely been reached; whereas the more regularly used provisions (of presenting petitions at Council meetings) are part of the Council Procedure Rules in any case (see page 12).
- Localities: given the success of these meetings and the consensus to continue them, it is suggested that their purpose should be mentioned in the Constitution's Articles Annex (see page 12).

Part 1 – Summary and explanation

- Key decisions: to review and clarify the Council's meaning of what a 'key decision' should be, under the Constitution.

Part 2 – Articles

Structure

- Suggest that there could be fewer articles:
 - Three relate to the Constitution itself (1, 14 and 15) and so could be merged
 - Merge CAGs (Article 6A) and Transport Advisory Panel (6B) under a generic 'Cabinet Advisory Groups' article

Clarity

- Certain minor changes to amend typos and make certain points clearer

Articles – in substance

Article 4: Full Council

- Policy framework: do Corporate Plans need to go to Full Council?

Article 6: Cabinet

AG6

- Cabinet committees referenced in Article 6 but detail is in the Cabinet Procedure Rules – potential for cross-referencing of the sections to improve clarity.
- Para 7(c) – This to be deleted: it specifies that the Leader/Cabinet member may form ‘groups’ (of officers/cllrs etc.) to assist them in providing advice to Cabinet: not needed now CAGs are in place.

Article 6A: Cabinet Advisory Groups

- No suggested changes save...
- Para 2 (ix) clarify that “nevertheless.... Groups may **not** wish to meet in public”.

Article 7: Overview and Scrutiny

- Para 1 – Terms of reference – make it clearer that the membership is appointed by the Council and that Chairman and Deputy Chairman appointed by Committee as the first item of business each municipal year.
- Para 1 - Clarify what rules the Health O&S Committee use to conduct their business – own Constitution and Rules 6.2 if moot.
- Para 4 – Education Transformation Board – doesn’t exist and so points (a) and (b) need amending to remove references.

Article 8: Committees

- Corporate Parenting Group – on balance this Corporate Parenting Group is happy to remain informal; no constitutional inclusion needed.

Article 8A: Health and Wellbeing Board

- Amendments to update accuracy:
 - Names of organisations, number and of type of sub-boards
- Addition of the role of JMGs (with Adult Partnership Board being abolished)
- Para 4: amend ‘chairmanship’ paragraph to: “Meetings of the Board will be chaired by the Leader of the Council and the Vice-Chairman will be its Clinical Chair as notified to the Monitoring Officer of Oxfordshire County Council”
- Para.10 - need to clarify expectations re: the frequency of meeting e.g. that it’s for the Board to determine ‘but in public at least 3 times a year etc.’

Article 10: Agency, Joint and Partnership Arrangements

Partnership:

- Add a section here about the principles of Partnership working and add a light touch reference to the LEP/City Deal (but not to the extent of expressing their terms of reference etc.) and how these report back to the Council

Growth Board:

- Add the Growth Board as a joint committee of the Council

Article 11: Officers

- Terminology – need to achieve greater clarity over the terminology of the titles used. Delete the term ‘Chief officers. Make clear that the term ‘director’ (and the delegation accruing to that post) includes the Chief Executive, Directors, the Chief Fire Officer and the three statutory posts of Monitoring Officer, Chief Finance Officer (Section 151) and Chief Internal Auditor. Then dovetail this with Part 7.3 Scheme of Delegation
- Part 1 – Director of Public Health:
 - insert section on services covered by Director of Public Health
 - Chief Medical Adviser – add footnote to specify that Director of Public Health is the Council’s Chief Medical Adviser within the terms of the Mental Health Act 1983

Article 12: – Decision making

- Para 1 - responsibility for decision making: last sentence states that the record of responsibility for who-decides-what ‘is set out in this Constitution’. This suggests a separate specific document. Better to cross-refer to scheme of delegation.
- Para 3 - key decisions taken by officers need to be in the Forward Plan. Need to be clearer about what we expect with regard to officer executive decision making to bring this into line with Exec Arrangement Regs. Need to add section in this Article, as we have for other decision makers, from Rule 4 onwards.
- Forward Plan: suggestion of not including non-key executive decisions in the Forward Plan. Notwithstanding any political decision on that, if they remain in Forward Plan it should be made clear that is a (non-statutory) requirement of our Constitution

Part 3 – Council

Council Procedure Rules

- Taking of advice: consider absolute right for Chairman of the Council to adjourn Full Council for the taking of advice
- Signing of minutes: inconsistency between Para. 18.1 signing of minutes (no discussion other than accuracy) and 1.1.2(iv) which allows for 'receiving of any info arising from them'
- Chairman's discretion:
 - Cabinet questions: give consideration to the adding discretion of the Chairman to redirect questions for a local response by a Cabinet Member where the question has a particularly local focus (some recent examples)
 - Rights to speak: to make it clear that the Chairman has discretion to limit the number of persons who may speak on an issue and the order of speaking; and otherwise to have discretion generally to determine if and how persons should speak, in the best interests of the efficiency of the meeting
- Themed debates: Growing feeling that perhaps there should be a return to themed debates so that might need to be added as a possible option to Political Group Leaders
- Time of meeting: Green Group wish for council meetings to continue beyond 3.30 as needed
- Motions: Green Party request to be added as a fourth group to the priority on Motions (Cllr Williams); all the motions to Council alternating between the Groups (Cllr Pressel)
- Motions – time-wasting: need for a provision about preventing irrelevant or time-wasting motions?
- Motions – number: limit needed on the number of motions and questions a Member can put forward on written notification?
- Petitions and speaking: make it clear that a petitioner's right to speak is predicated on the presentation of a petition – and the right to speak is forfeit if one not presented.
- Members/members of the public: clarify that the word member means 'member of the council'
- Voting: it is permissible for a vote to be recognised on the basis of a 'clear majority' rather than taking a formal count; if this was adopted, it would also be prudent to have a safeguard whereby a member (or perhaps 3?) has a right to request a formal count (separate from 'named vote' which is already provided-for in any case)

Para 12 – questions on notice:

- Currently no restrictions on number of questions by a single member at a Council meeting and nothing about multi part questions. Has led to some uncertainty around what is acceptable.

Para 17 – recorded vote:

- Amend numbering: references at 17.4.3 should be 17.4.1 and 17.1.2, I think. Council must have deleted a Rule and this has been missed in the re-numbering.

Budget and policy framework rules

- No changes

Virement rules

- No changes

Local choice functions

- No changes

Part 4 – Cabinet

Part 4.2 and 4.3: Cabinet Procedure Rules and Cabinet Committees

- Some consideration that answers to questions to Cabinet members should be published in advance in an Addenda
- Speakers: Cllr Hudspeth has given a clear steer that he wants to relax the ‘speaking’ rules. He has used his discretion as Chairman to invite Cllrs to speak where they otherwise have no specific rights.
- Right to speak: Suggest an overhaul of Cllrs right to speak at Cabinet, Cabinet Cttee and delegated decision meetings
- Answers to question: answers to questions to Cabinet members should be published in advance of the Addenda published before the meeting

Part 4.4: Delegated Decisions – Individual Cabinet Members

- Speakers – see above re: Cllr Hudspeth’s preferences s to speaking rights
- Consideration to spelling out that Cabinet Member is the appropriate decision maker except where stated - to bolster use of delegated decisions

Part 5 – Committees and sub committees

- Clarify which roles require appointment by Full Council or simply notification to Full Council; clarity needed on these rights to appoint.
- Updated as needed – when memberships change

Part 6 – Scrutiny

Scrutiny procedure rules

- Rule (1) – suggest cross reference to spell out how they conduct their proceedings i.e. which parts of Council Procedure Rules apply.
- Rule (2)(b) – clarification of voting rights for Co-opted members. Education Scrutiny Committee deals solely with education functions – not the wider Children’s Services that has been the case in the past. There was an argument in Committee as to whether co-opted members could vote on whether a Working Group should be set up or the matter dealt with by Committee as whole. Some Members argued that co-opted members did not have a vote as this was *part of process* of committee and *not about education function*. Clarification of extent of voting rights to be achieved.
- Rule (8) on quorum. Easier to just state the rule rather than need to find it in Council Procedure Rules.
- Rule (9) on agenda items. Whilst wanting to uphold the aim of this rule to allow members to get issues aired, there is concern that currently it could prove resource intensive, particularly (a), (b) and (d). Suggest bring these rules into line with the rules for committees and sub-committees which initially commit to an oral report if less than 20 days’ notice given. See Part 9.3 Protocol on Members Rights and Responsibilities – Rule 7 Rights of Members to Place Items on Agendas, para (d).
- Rule (11) about reports from Scrutiny Committee – current wording reflects a time when there were far more formal scrutiny review reports. It is sensible to keep it in so that when needed the process is there but it is not appropriate that all outcomes from Scrutiny go by this formal route. Suggest tweaking by changing “will” to “may” to reflect actual current practice.
- Rule (11). Nothing in Constitution refers to tracking the outcomes from Scrutiny Reviews. Suggest adding an extra para here closing the circle.
- Part 6.3 – Protocol on public participation (scrutiny context): update to remove out of date references.

Part 7 – Scheme of delegation

Sections

- Remove section 7.2 (not in use in any case)

Part 7.1 Management structure

- Update post titles and consider inclusion of wider management structure (i.e. “top three levels of the organisation” – consistent with the publicity requirements of the *Code on Data Transparency 2014*).

Part 7.3 Scheme of Delegation

- Unpaid leave – mechanism for approval (beyond 12 months): request for a period of unpaid leave exceeding 12 months was a responsibility of former Democracy and Organisation Committee that passed to Remuneration Committee, although not perhaps explicit. HR have also used the route of the Leader and Chief Executive to get this leave authorised which seems heavy handed. HR propose that unpaid leave beyond 12 months and any other exceptional request for any sort of leave over and above the limits specified in Part 7.3 section 4 are delegated to agreement by the Director, Chief HR Officer and Chief Finance Officer. That would cover the service, HR policy and financial / pension implications.
- Para 1: Terminology - clarify the Council’s understanding of the range of roles that are to be regarded as ‘directors’ within the terms of this section and others (e.g. contract and financial rules); also whether there is significance to the term ‘officers’ (as encompassing Chief Exec, Directors and other chief officers’)
- Para 2: is it intended that the ‘principles of delegation’ only apply to ‘chief executive and directors’ and not to any of the other persons? This section *specifies* that the principles (only) apply to chief exec and directors; and so others (county solicitor, chief fire officer, chief finance officer) are excluded from them. Decision needed to achieve clarity.
- Para 2: specify that all directors are official deputies for the Chief Executive and how deputisation will follow rotational pattern etc.
- Para 6: Chief Executive’s authorisations - "any exercise of these functions shall be reported to the Cabinet or other relevant committee or sub-committee". The reporting is currently done on a quarterly basis. With the new regs will have to reflect that a record of the decision should be published on the web site as soon as possible

Part 8 – Procedure rules

Access to information

- No main changes

Financial Procedure Rules

- Loan schemes: reflect that Full Council needs to agree loan schemes
- Minor format/amendment changes (ditto associated Financial Regulations)
- Rule 45: transfer of property assets – discussion needed on how the transfer of property assets to be determined (since the ending of Capital Investment Board).
- Rule 59: update section on Directors' Responsibilities in line with the new Accounting Code
- Rule 60: Reflect updated Audit and Account Regulations (2011)

Contract Procedure Rules

Now - simplification:

- Contract Procedure Rules: certain changes should be made now to simply the requirements for demonstrating competition necessary above EU thresholds that require tender; and otherwise simply to demonstrate best value
- Key decisions – revert to the statutory definition of key decisions
- Thresholds – if contract value is above the EU tender threshold then a tender should be undertaken; if below it, then determination lies with the Director so long as this achieves/demonstrates best value/value for money

Forthcoming – legislative changes

- Contract Procedure Rules (CPRs): Legislative changes, affecting the procurement regime, will be forthcoming later this year. This will require a fundamental review of the CPRs and will revise thresholds, contract clauses, division of contracts into lots and include currently excluded contracts such as those for CEF, S&CS and Public Health. The legislative changes will be the result of the UK Public Procurement Regulations implementing an EU directive

The major legislative changes will be occurring later this year which will require substantial changes to the Council's approach to procurement and therefore to the Contract Procedure Rules. Some structural and other minor changes could be made now and it may be beneficial to achieve clarity around thresholds. Key question:

Legislative changes – in summary

New UK Public Procurement Regulations (reflecting the new EU Procurement Directive) are expected to be in force later this year/early next year (and must be in force by April 2016 in any event). They will:

- Introduce additional threshold values
- Introduce obligatory contract clauses that may need to be covered
- Introduce obligations in maintaining procurement records that may need to be covered
- Introduce obligations on whether to divide requirements into lots that may need to be covered
- Require changes to Children, Education & Families, Social & Community Services and Public Health Services Joint Commissioning/Procurement Procedures after the abolition of the Part A and Part B service differentiation
- Not exclude many of the contracts for CEF, S&CS and Public Health as is the case at present
- Affect pre-qualification requirements, as it is possible that there may be provisions restricting our ability to use pre-qualification questionnaires to only invite a limited number of suppliers to tender for lower value contracts
- Change the definitions of elements that otherwise remain as before

Interim structural & clarification proposals – see Annex 1 (summary from Legal Services) and Annex 2 (track change version of re-ordered/clarified CPRs)

Reordering the document more closely to align with the chronology of a procurement process and we suggest the use of chapters to make it easier to find relevant provisions, the proposed chapters are:

1. Introduction
2. Pre-procurement
3. The procurement process
4. Contract award
5. Post-award
6. General

Officer employment procedure rules

- Changes only to update job and committee titles

Part 9 – Codes and protocols

Members code of conduct

- Principles of public conduct: make it clear that the principles at the beginning of the Code are ‘the basic principles to inform behaviour; the requirements of the Code are however as follows’; this provides a clear break to clarify what can be the subject of a complaint i.e. the requirements of the Code and not the principles.
- Gifts and hospitality: while the requirement to have specific gifts and hospitality register has gone, the an Annex to the Code should nevertheless contain guidance/advice to members that gifts and hospitality should be registered in any event to protect members and promote transparency.

Protocol on members’ rights and responsibilities

- Part 9.3 (para 8): take out the rights for Councillors to receive papers copies on request? Not suggesting that members of relevant Cttees not get copies but print budget under pressure and may be helpful to cut out the additional copies to non-members of committees?

Members’ planning code

- Issue an updated code based on existing code and in comparison with the Lawyers for Local Government Model Code
- Addition of a protocol on *Bias and Predetermination* reflecting recent government guidance, best practice and legal case law
- Each discussed with District Council Monitoring Officers; and while non-standard format, key principles are agreed
- Addition of an annex re: bias and predetermination

Protocol on member/officer relations

- Part 9.3: where Cabinet considers a matter ‘directly relates to an *Electoral Divisions*’ (para. 9(f)): Councillors tend to misunderstand the ‘division specific’ item. They tend to take this to mean that there are impacts for their local area even where it is a wider matter as opposed to (possibly due to the phrase ‘any matter which directly relates’ as opposed to the ‘directly relates’). Refine the wording to make the meaning clearer.

Officer code of conduct

- No changes proposed.

Part 10 – Members’ allowances

- Retain existing format and structure. However...
- Revise the definitions of ‘approved duties’ to make more plain what can/cannot be claimed under travel and subsistence
- Insert outcomes of the Autumn 2014 Allowances Review

Part 11 – Petition Scheme

- Not a legal requirement – to be deleted. Hardly ever used and the thresholds never remotely reached for triggering debate at council or holding officer to account; most common usage is petitions at meetings (e.g. Council) the principles for which are in the Constitution in any case (e.g. Council Procedure Rules).

Other Issues - new sections

Localities

Include a reference to the purpose of the Locality Meetings in the ‘roles of members’ section of the Constitution (Article 2).

Index

Ease of use likely to be facilitated by introducing an index; better to facilitate cross-referencing. This would require an additional section to be updated when changes are made elsewhere but will probably facilitate use by the public, members and officers.

END