

Bevan Brittan 

Stockton on Tees Borough Council
Report setting out amendments to Constitution
October 2018



CONSTITUTION REVIEW

1 INTRODUCTION

1.1 Stockton on Tees Borough Council ("the **Council**") commissioned Bevan Brittan to carry out a review of its Constitution (the "**Current Constitution**"). The Council wishes to develop a clear, succinct constitution which is accessible, user-focused, provides helpful instruction and ensures good governance across all elements of service delivery.

1.2 Article 15 of the Constitution imposes a duty on the Monitoring Officer, in consultation with and on behalf of the Chief Executive, to:

"monitor and review the operation of the Constitution on a regular basis, in order to ensure that the aims and principles of the Constitution are given full effect and that the Scheme of Delegation, Rules of Procedure, Codes and Protocols and all of the other constituent elements are up to date and reflect legislative changes, the outcome of reviews or inspections and decisions taken by the Council"

1.3 The Council identified the following issues:

- The Current Constitution is an unwieldy document which has grown over years and is not internally consistent;
- Desire to have a more easily understandable document that meets the needs of all users;
- Concern at legal compliance and the extensive list of statutory references (some of which require updating);
- Recognition that the constitution is not best serving the interests of the council to deliver consistent, effective decision making;
- Change in personalities and loss of corporate knowledge about why things are where within the constitution;
- A structure which requires significant maintenance and is not future proof, with a need for many changes to be approved by Council; and
- Desire to have a more living, working document.

1.4 By having a general summary, a set of Articles then substantive sections, things are said two and three times, often in slightly different ways in the current Constitution and it is very difficult to be certain that the full or correct picture is being presented on any issue without exhaustive searching.

1.5 The Constitution has been re-drafted with the above in mind, along with an objective view of potential changes and streamlining of functions that ought to be clearer and thereby improve efficiency and effectiveness.

2 SUMMARY OF THE CHANGES MADE

2.1 In our initial review we found that overall the Current Constitution to be largely legally compliant and, certainly compared to a number of other Constitutions we have seen and reviewed, too long, but well drafted and reasonably clear, except in relation to the delegation of functions.

2.2 We also identified some areas where additions or amendments were required in order to reflect the requirements of changes in legislation and of statutory guidance.

2.3 The Current Constitution is, however, very long (760 pages with around 50 separate sections). We have sought to reduce this considerably, and whilst some policies have been removed and instead accessible through hyper-links in the Constitution, the Draft Updated Constitution currently comprises 184 pages in total (without inclusion of the latest Members' Allowances Scheme).

2.4 We have also sought to ensure that the Constitution reflects the way in which the Council currently operates following feedback from a number of officers within the Council.

3 FORM AND STRUCTURE OF THE CONSTITUTION

- 3.1 In our initial review we identified that, the Council's Current Constitution does not read as a modern document and could be improved significantly through the use of more modern language, web links, graphics and better presentation.
- 3.2 The Articles have been removed from the Constitution and where appropriate content from the Articles has been moved elsewhere in the Constitution. The aim of moving this content has been to ensure that information about specific functions/committees/officers etc appears in as few separate places as possible so that the document is easier to navigate. Some of the content from the Articles has been removed altogether as it is either duplicated elsewhere or is out of date and does not reflect how the Council operates.
- 3.3 We have also removed a number of sections of the Constitution. This is for a number of reasons:
- 3.3.1 A number of the Council's codes, protocols policies and guidance documents do not need to be in the Council's Constitution. These can be referenced through web links which makes whole document less daunting and unwieldy.
- 3.3.2 Where documents are not a formal part of the Constitution, it allows them more easily to be updated/refreshed.
- 3.3.3 Reducing the length of the Constitution makes it more accessible and understandable. This makes it easier for Councillors and Officers to refer to the Constitution in performing their duties. It also makes it more transparent to members of the public.
- 3.3.4 Having a clear, well-structured and easily understood constitution assists members and officers with complying with the Constitution.
- 3.4 There are now five sections as follows, rather than 11:
- Part 1 - Summary and Explanation;
 - Part 2 - Responsibility for Functions;
 - Part 3 - Rules of Procedure
 - Part 4 - Codes and Protocols
 - Part 5 - Members' Allowances Scheme
- 3.5 We include at **Appendix 1** below a table which summarises the changes in structure to the old Constitution and **Appendix 2** shows the destination of the content of the Articles.

4 ACCURACY, UPDATING AND FUTURE PROOFING

- 4.1 Local authority arrangements evolve and whilst this means Constitutions have to be updated, this should not be a constant exercise. We have generally reduced the number of references to legislation, and to specific named individuals, to reduce the burden on the Council in keeping the Constitution updated.
- 4.2 The draft updated Constitution has been amended to reflect recent changes in the structure of local government. We have updated the Joint Arrangements section to reflect the relationships that the Council has with the Tees Valley Combined Authority, Transport for the North, the Cleveland Police and Crime Panel and other joint arrangements that may change from time to time.

5 DECISION MAKING

5.1 A key part of the Constitution (and one which sets the tone for the culture the Council wishes to operate) is how decisions are taken. This includes the balance between:

- Cabinet collective decision making or powers of individual portfolio holders; and
- Member decision making or officer delegation.

5.2 The right balance must also be struck in the Constitution to ensure:

- Recognition that the Council is a member-led authority;
- Appropriate transparency and involvement in decision making;
- Efficiency of business; and
- The ability to respond swiftly to events (whilst ensuring probity and checks and balances).

5.3 In our initial review we gave our view that the sections in the Constitution dealing with **Responsibility for Functions and the Council Functions** could both be significantly changed to make this fundamental approach clearer (and also make the document more manageable and future-proof).

5.4 We have therefore separated delegations to make it clear what is being delegated to whom and by whom. We have adopted the following approach:

5.4.1 A diagram has been included at section 2.1 showing the Council's decision making bodies.

5.4.2 The table of local choice functions has been retained.

5.4.3 Each committee has its own specific terms of reference.

5.4.4 A separate section on executive functions has been added.

5.4.5 A description of the Council's Joint Arrangements has been included in one place.

5.4.6 A scheme of officer delegation has been created which sets out the general principles by which officers are authorised to act and which also includes specific delegations to the council's Chief Officers. Though the 'cascade principle' these functions may be further sub-delegated.

5.4.7 Detail of the Council's Proper Officer arrangements has been added to comply with the requirements of the Constitution Direction.

5.5 We note the Council has added a significant number of plans and strategies to the Policy Framework. This creates additional bureaucracy, including the need for both Council and Cabinet approval to such plans and strategies. Failure to follow the approvals process could render decisions on such matters more likely to be challenged. For that reason we have reduced the number of documents which require the approval of full Council to the statutory minimum, as follows:

Current Policy Framework	Proposed Policy Framework
<ul style="list-style-type: none">• Council Plan• Medium Term Financial Plan	<ul style="list-style-type: none">• The Children and Young People's Plan;• Licensing Authority Policy Statement;

<ul style="list-style-type: none">• Joint Health and Wellbeing Strategy 2012-18• Seasonal Health and Wellbeing Strategy 2013-16• Domestic Abuse Strategy 2014-17• Early Help and Prevention Strategy for Children, Young People and their Families (published 2014)• Smoke Free Stockton Alliance Tobacco Control Action Plan• Alcohol Action Plan• Stockton Local Action Plan: Mental Health and Wellbeing of Children and Young People• The Statement of Licensing Policy• Stockton-On-Tees Local Safeguarding Children Board Business Plan 2014-2017• Looked After Children and Care Leavers Strategy 2014-2017• Workforce Development Strategy for Social Care Staff in Children's Services 2014-2016• Youth Justice Plan 2014-2015• Stockton-On-Tees Borough Council / NHS Hartlepool and Stockton-On-Tees Clinical Commissioning Group Joint Strategy for Carer Support Services for Adults, Children and Young People 2013-2017• Crime and Community Safety Plan• Local Economic Assessment• Strategic Economic Plan• Area Transport Plan• Local Plan• Housing Strategy• Homelessness Strategy	<ul style="list-style-type: none">• Youth Justice Plan;• Crime and Disorder Reduction Strategy;• Local Transport Plan; and• Development Plan Documents (including the Local Plan and any Neighbourhood Plans); and all plans and alterations which together comprise the Development Plan.
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<ul style="list-style-type: none"> • Local Development Plan • TVU Statement of Ambition • Brighter Borough for All • Joint Strategy for Carer Support Services • Tees Valley Strategic Economic Plan 	
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5.6 There will be other plans and strategies that will be approved by Council on the recommendation of Cabinet, such as the Corporate Plan, the Medium Term Financial Plan and Budget, the Joint Health and Wellbeing Strategy etc, however, this list now reflects the list of the plans required to be submitted to both under the Functions and Responsibilities Regulations 2000.

5.7 In relation to the **Council and Cabinet Procedure Rules**, we have not made many significant suggestions for changes to the content (which we consider is generally clear and comprehensive).

5.8 The financial threshold for **Key Decisions** has been increased from £100,000 to £500,000. This is to ensure that only decisions which are significant in respect of the Council's expenditure are subject to the additional publication and scrutiny requirements which are imposed by The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. This will also reflect the level of delegation to officers set out below.

5.9 The requirement for any decision to be treated as a key decision where its effect is likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority remains unchanged.

6 CHANGES TO THE NON-EXECUTIVE COMMITTEES

6.1 Few changes have been made to the structure of the Council's Committees, other than to bring the Responsibility for Functions up to date. There is a new Investigation and Disciplinary Panel specifically to deal with Chief Officer Discipline, Capability and Grievances in line with the Terms and Conditions of Service of the Chief Executive and Chief Officers and in particular it will link to the Independent Persons Panel where the dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer is being contemplated.

7 FINANCIAL REGULATIONS

7.1 The Budget and Policy Framework Procedure Rules have been updated along with the Financial Procedure Rules.

7.2 The following financial limits are proposed on the delegation of functions to Officers:

Officer	Limit in respect of revenue expenditure	Limit in respect of capital expenditure
Head of Paid Service and Chief Officers in consultation with a relevant portfolio holder	£500,000	No limit where Council has approved the scheme in the budget and/or the Cabinet has agreed to progress the scheme

8 OTHER PROCEDURES, CODES AND PROTOCOLS

- 8.1 We have removed a number of the Codes and Protocols from the Constitution, as detailed in **Appendix 1**. This is to reduce the administrative burden on the Council, and to create a more manageable and relevant constitution.
- 8.2 All of the documents that have been removed from this section are "operational" documents. Whilst these are important to the Council, they are not required to be part of the Constitution. As operational documents they are likely to be updated regularly, and in our experience the requirement for all amendments to be approved by Full Council can result in these documents being updated less regularly than if there was a more streamlined procedure for reviewing and amending them.

Bevan Brittan LLP
October 2018

Appendix 1 Summary of structural changes to the Constitution

Section in Current Constitution	Location in new constitution	Summary of Changes
Part 1 Summary and Explanation	Part 1 Summary and Explanation	This has been expanded to include information previously in the Articles.
Part 2 - Articles	<i>Removed/relocated</i>	These have been removed and the information has been largely been relocated as detailed in Appendix 2 or omitted since it was duplication.
Part 3 - Responsibility for Functions	Part 2 - Responsibility for Functions	There is a much shorter scheme of Officer delegation and the Committee Terms of Reference have been brought up to date.
Part 4 - Rules of Procedure	Part 3 - Rules of Procedure or removed.	<p>The detail of the Cleveland Police and Crime Panel has been taken out of the Constitution and will be made available on the CP&CP website.</p> <p>The Contract Procedure Rules have been updated to include the most up to date version agreed through Audit and Governance Committee.</p>
Part 5 - Codes and Protocols	Part 4 - Codes and Protocols or removed	The Confidential Reporting Policy and the Concordat of Communication and Consultation with Members have been removed as they do not need to be within the Constitution. They will be retained as HR policies and will continue to apply to employees.
Part 6 - Members Allowance Scheme	Part 5 - Members Allowance Scheme	This has been updated for 2018/19. There are no substantial changes.
Part 7 - Management Structure	Part 2 - Responsibility for functions	This has been updated it remains basically unchanged, but is now included in Part 2.
Part 8 - Essential Supporting Documents	Part 2 - Responsibility for function or removed	<p>The following guidance and protocols have been removed from the Constitution – but will be available on the intranet and in Democratic Services. The content will also be included in the Members induction and training programmes.</p> <ul style="list-style-type: none"> - General Guidance on the Code of Conduct for Members - Protocol for Submitting and Determining Dispensations Applications - Members' Guide to Information Security - Protocol on the Use of IT Equipment - Gifts and Hospitality Protocol

Section in Current Constitution	Location in new constitution	Summary of Changes
		<p>- Scrutiny Toolkit</p> <p>The Members Allowances Independent Remuneration Panel has moved to Part 2.</p> <p>The Cabinet Member Portfolios have moved to Part 2.</p>
Part 9 – Petition Scheme	<i>Removed</i>	The Petitions Scheme has been removed from the Constitution. It is not necessary to have such a detailed scheme any more – nor to include this level of detail in the Constitution. The Council Procedure Rules include new provisions on when and how petitions received by the Council will be considered.
Part 10 – Statutory Derivation Table	<i>Removed</i>	This table has been removed. It is not a legal requirement to include it in the Constitution and it will impose a burden on the Council in respect of keeping it updated.
Part 11 – Related Documents	<i>Removed</i>	

Appendix 2 – Table detailing changes to the Introduction and the Articles

Section	Summary of Changes
Summary and Introduction	<p>This section previously included information about the constitution and parts of the Council that was replicated in the Articles.</p> <p>Following the removal of the Articles, we have expanded slightly the scope of this section to set out in more detail. It now includes:</p> <ul style="list-style-type: none"> • The purpose of the Constitution • What the Council is and how it operates • Who Councillors are, what they are responsible for and how they are elected • What the Cabinet is and what it does • The role of the Mayor • Who the officers of the Council are and what they do • The rights of residents including the rights to access services, vote and submit petitions • A summary of the Joint Arrangements which the Council is party to. • The Council's scrutiny arrangements • How decision making works within the Council • The duty to monitor and review the constitution • When and how the constitution can be waived
Articles	<p>In the current Constitution these repeated much of what is stated elsewhere. It also created uncertainty by restating, in a slightly different form, information which appears elsewhere, such as in the procedure rules.</p> <p>We have therefore removed this section, and relocated its content as follows:</p> <p>Article 1: Most of this section has been moved to the Introduction and Summary.</p> <p>Article 2: Most of the information in Article 2 has been moved to the Introduction and Summary.</p> <p>Article 3: Most of the content from this section now appears in the Introduction and Summary. We have sought to set out the residents rights in broad terms (such as the right to be consulted and the right to submit petitions) but in a way which is less prescriptive than is currently the case.</p>

Section	Summary of Changes
	<p>Article 4: Part of this section has been moved to the introduction and summary. Most of the detail, however, has been moved to the Responsibilities for Functions section.</p> <p>Following feedback from officers we have considerably reduced the number of plans and strategies comprising the Policy Framework, as set out in the main body of the report. This is to reduce the administrative burden on the Council, as every plan and strategy in the policy framework can only be amended by Full Council.</p> <p>Article 5: We have summarised the role of the Mayor in the Introduction and Summary. The role of the Mayor is also covered in the Council Procedure Rules.</p> <p>Article 6: We have moved the terms of reference of Scrutiny and select committees to sit with other terms of reference of committees in the Responsibility for Functions section. A summary of the Council's Scrutiny Arrangements can be found in the Summary and Introduction.</p> <p>Article 7: Executive arrangements now appear in the Responsibility for Functions section.</p> <p>Article 8: Regulatory committee details had already been placed with other terms of reference of committees in the Responsibility for Functions section</p> <p>Article 9/9A: Terms of reference of the Standards Panel, Audit Committee and Health and Wellbeing Board have been moved to sit with the terms of reference of committees in the Responsibility for Functions section.</p> <p>The Audit Committee has been renamed the Audit and Governance Committee.</p> <p>Reference to the Internal Audit Service has been removed.</p> <p>Article 9B/C/D We have removed the sections which relate to the Adults Health and Wellbeing Partnership, Adult's Joint Health and Wellbeing Commissioning Group, the Children and Young People's Partnership and the Children and Young People's Partnership Commissioning Group as these bodies do not have a formal status within the Council.</p> <p>Article 10A/10B and 11: It is important that Joint Arrangements are reflected in the Constitution.</p> <p>We have moved these sections to sit within Responsibilities for Functions. We have included high level descriptions about the Tees Valley Combined Authority and the Cleveland Crime and Police Panel to reflect the formal role that the Council has in those bodies, with web links to their internet pages.</p> <p>Article 12: The Summary and Introduction provides a brief summary of the role of officers. We have moved the detail from Article 12 to the start of the officer delegations in the Responsibilities for Functions section, and the officer delegation section includes more details about which areas officers have responsibility for.</p> <p>At the end of the officer delegations there is a list of proper officer functions which deals with the various legislative provisions that require the allocation of a proper officer.</p>

Section	Summary of Changes
	<p>Article 13: This Article contains important information, but it largely duplicates what appears elsewhere. We have moved the decision making principles to the Introduction and Summary.</p> <p>The definition of a Key Decision now appears in the Introduction and Summary, and has been significantly simplified.</p> <p>Article 14: Finance, contracts and legal matters properly sit within the Responsibility for Functions section.</p> <p>Article 15: Likewise review and revision of the Constitution is referenced in the Summary and Introduction. More detail is included in the Responsibility for Functions section.</p> <p>We have removed provisions around changes to existing executive arrangements – these were updated in the Localism Act 2011 and if the Council wished to change its governance then it would need to follow the new rules.</p> <p>Article 16: Suspension and interpretation of the Constitution can be found in rule 22 of the Council Procedure Rules.</p> <p>Schedule 1 – Description of Executive Arrangements: Executive Arrangements are now described in the Responsibility for Functions section and the Council Procedure Rules.</p>