
Update of the Council's Constitution

Decision to be taken by: Full Council

Date of meeting: 8th July 2021

Lead Director: Kamal Adatia

Useful information

- Ward(s) affected: All
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- Report version number: 1

1. Summary

- 1.1 To agree updates to the Council's Constitution

- 1.2 Article 16 of the Constitution imposes a duty to monitor and review the operation of the Constitution. This report proposes suggested amendments reflecting the on-going work to meet this duty.

2. Recommended actions/decision

- 2.1. To agree the changes to the Council's Constitution, save that the change explained at paragraph 5.14 shall only be approved in principle and effective only if consultation with Trades Unions results in agreement.

3. Scrutiny / stakeholder engagement

- 3.1 The Monitoring Officer has worked closely with key officers for the last 12 months to review the Constitution

- 3.2 Key officers have in turn consulted with appropriate Elected Members to discuss the proposals

4. Background and options with supporting evidence

5. Detailed report

The Monitoring Officer has been working with key officers for some months on a comprehensive update to the Council's Constitution. The key changes are:

- 5.1 Throughout – updated text to improve readability
- 5.2 Throughout – removal of obsolete statutory references
- 5.3 Throughout – Insertion of statutory references for ease of future cross-referencing
- 5.4 **Article 4.03** – This section has been reformatted (and updated) to make it clearer what matters are for Council to decide, and by what mechanisms matters come to Council for decision.
- 5.5 **Article 15.06** – this section has been updated to allow for electronic signing and sealing of legal documents
- 5.6 **Planning & Development Control Committee Terms of Reference** – The Terms of Reference (ToR) of PDCC require updating. The current ToR reflect a time when the Council had a Planning Committee that decided policy, and a Development Control Committee that decided applications. Under our Executive system of governance, the legally required development framework documents (Planning Policy) are approved by Full Council. Other aspects of Planning Policy are undertaken under Executive powers. Functions which relate to development control and management, planning enforcement and planning applications being the most common, are Council functions which are undertaken by PDCC or delegated to Officers.
- 5.7 The long list of operational items that are currently included in the ToR are either (i) inaccurate or (ii) not performed or (iii) absorbed within the powers and duties that flow from being the “Local Planning Authority”. A comprehensive list of matters that must be determined by the Committee (and may not be discharged by the Executive) are set out in law (The Local Authorities (Functions and Responsibilities) (England) Regulations 2000) and the current list risks obscuring these functions by mis-referencing functions or missing some functions off altogether.

- 5.8 It is therefore proposed to amend the ToR to focus upon the actual work of the Committee, as defined in law and as carried-out in practice.
- 5.9 It is proposed that Opposed Traffic Regulation Orders no longer come to PDCC "*to consider and make recommendations...*" The determination of TROs has always been, and remains, an Executive function discharged either by the Director or, where significant Transport Schemes include TROs, through the Executive Decision-making mechanism. Objections, where received, are fully considered by the Director before making a decision on whether to confirm or reject a TRO. For Executive Decisions which include TROs, the power of call-in remains.
- 5.10 **Licensing and Public Safety Committee Terms of Reference** – the list of functions has been updated
- 5.11 **Employees Committee Terms of Reference** – There are two main proposals:
- 5.12 Removal of item 1 "*To consider the terms and conditions of service on which staff hold office (including procedures for their dismissal), as appropriate*"
- 5.13 The Committee does not discharge this function. The terms and conditions on which staff hold office are determined through statutory law and contract. Contractual terms are negotiated with the Unions through well-established collective bargaining arrangements.
- 5.14 Removal of item 2 "*To determine formal disciplinary, capability, and sickness procedure appeals*"

The reasons are as follows:

- 5.15 Recent Employment Tribunal (ET) case law requires that the Appeal Panel chair takes ownership of decision-making for dismissals. This means that Panel Chairs are required to be available to give evidence as the Council's prime decision-maker, often years after the Panel hearing. Employment Tribunals are being utilised more often to resolve employee/employer disputes. Employment Tribunal fees (introduced in 2013) were abolished in 2017. This has resulted in a steady increase in the volume of claims and, consequently, the number of hearings. In the event of an ET the chair,

and potentially other members of the committee, are required to commit significant time towards preparing for, and attending, ETs as a witness

- 5.16 There are considerable operational challenges in convening Appeal Panels to meet in a timely way to satisfy current, and predicted future, demand. Inclusive of the pandemic period a total of 11 Elected Member appeals have taken place in the last two financial years. There are a further eight appeals pending. It is projected, based on historical trends, that there will be approximately a further six appeals this year. Based on this projection it is estimated that members in the pool will need to spend a total of 288 hours (39 days) between them fulfilling this task for the remainder of the year. Additional time will also need to be factored in for those chairing hearings. The average timespan between dismissal and appeal in the past two years was eight months with two cases taking 15 months. In comparison appeals against dismissal on the grounds of probation, redundancy or 'some other substantial reason' are heard by Directors. There have been eight of these lodged in the past two years and the average timescale between dismissal and appeal is under three months
- 5.17 There is an evolving practice away from Member Appeals across Local Authorities. The practice in 26 unitary, metropolitan and county councils was ascertained in 2019. In summary, at that time appeals were heard by (i) Officers in 16 authorities; (ii) Elected members in 7 authorities; (iii) Alternative models in 3 authorities. Of those who were using member appeals three were considering options to move to officer led appeals. This change in approach across local government reflects the operational challenges and evolving case law outlined above.
- 5.18 The proposal is that determining appeals from employees against dismissal under the council's disciplinary, capability and absence management procedures should, in future, rather than being a function of the Employees Committee, be an officer decision.
- 5.19 Appeals would be heard by an independent and unbiased manager with no prior involvement in the case, who would normally be more senior than the manager taking the decision to dismiss. There is no reason to believe that appeals will be less likely to succeed if determined by officers. Between 2014 to 2021 69 dismissal appeals were heard by Employees Committee, with 16 appeals (23%) being upheld. These

figures show that, in most cases members uphold the decision of management to dismiss

5.20 **To proceed with changes the necessary amendments to the relevant procedures would need to be the subject of consultation with the recognised Trades Unions. Therefore, at this stage the proposal is put forward subject to further consultation and agreement by the Unions.**

5.21 **Scrutiny Committee Terms of Reference** – Some time ago the Overview Select Committee invited officers to undertake work to better align the work of scrutiny commissions with relevant subject areas. The proposal is to de-couple the ambit of the work of individual Scrutiny Commissions from the Assistant Mayoral portfolios, and instead to refer to a document which aligns the work of Commissions to these subject areas - ([Overview and scrutiny \(leicester.gov.uk\)](https://www.leicester.gov.uk/scrutiny-reconfiguration) “scrutiny reconfiguration” document)

5.22 **Part 4A Council Procedure Rules:**

5.23 Rule 14(a)(ii) – proposal that Questions at Council must be about matters that “specifically” affect the City. This will focus questions upon topics that are within the purview of Executive members.

5.24 Rule 1 (a)(iv)(c) – Rule 14 contains a list of topics that may not be the subject of a Council question. For example, there is an absolute prohibition on posing a question that may identify a specific person. This proposal attempts to offer some, albeit more limited, protection to businesses/charities by requiring that questions about them may not be asked unless directly linked to Council business.

5.25 Rule 14(b) – currently only adult residents may ask a Question at Council. The proposal is that any resident can do so. This will encourage participation from Young People.

5.26 Rule 14(b)(iv)(b) – currently there is a prohibition on members of the public asking a question “*from or on behalf of a political party or organisation or in connection with the activities and aims of such a party or organisation*”. This is potentially very wide and could preclude legitimate questions being asked by people who may be members of an organisation that could be classed as undertaking political activity

(because political activity is defined as *relating to government or public affairs of a country*). The proposal is therefore to confine the restriction only to questions that are wholly about party-political business.

- 5.27 If approved, it is proposed that the changes to Rule 14 captured at 5.23 to 5.26 above are applied to Questions at Scrutiny (Part 4E) as well as Questions at Council (Part 4A)
- 5.28 Rule 16(b) – allows for a Notice of Motion to be submitted electronically
- 5.29 Rule 24 reworded to provide clarity on interventions sought to be made during Council meetings to provide a personal explanation or a point of information.
- 5.30 Rule 35(a) – proposes that parent Committees may appoint subcommittees and appoint Chairs and Vice Chairs thereof
- 5.31 Rule 35(d) – makes provision for substitutes where a main Member cannot attend a meeting
- 5.32 **Part 4C Budget & Policy Framework Procedure Rules** – The previous rules have been expressed more clearly. The requirement for the budget, plans and strategies that form the budget and policy framework to be included in the forward plan prior to decision has been removed but the requirement to consult scrutiny committees remains.
- 5.33 **Part 4D City Mayor and Executive Procedure Rules** – Rule 12 updated to allow for call-in to be by electronic means
- 5.34 **Part 4E Scrutiny Procedure Rules:**
- 5.35 Rule 10 – aligns the right to ask Questions (or make a Representation) with being a *resident* of the City (the current rule says “member of the public”). This is consistent with the equivalent Rule for Full Council meetings. However, a new clause has been added to modify this condition for cross-boundary issues or cross-boundary Commissions (e.g. LLR joint Scrutiny)
- 5.36 Rule 8(2) – aligns the right to request to speak at a Scrutiny meeting with being a resident of the City, so as not to undermine Rule 10 above. (Note that under Rule

8(4) the Chair has discretion to invite *anyone* to speak at the Scrutiny meeting in any event, to assist in the performance of the Committee's functions).

- 5.37 **Part 4F Finance Procedure Rules** – These rules had not been reviewed for some time, and a substantial rewrite has taken place. This reflects, amongst other things, new practices such as the use of procurement cards and greater automation. The rules have been streamlined and will be supplemented with more detailed staff instruction where needed. These will be prepared once the rules are approved.
- 5.38 **Part 4H Land and Property Transaction Rules** – updated to account for electronic submission of documents. At 5.25 the de minimis threshold for requiring land to be openly marketed is raised from £1,500 to £2,500.
- 5.39 **Part 4I Officer Employment Procedure Rules** - There are two (potentially) conflicting statements in the Constitution:
- 5.40 Part 4I Officer Employment Rules states - *Neither the City Mayor nor any Councillor will seek support for any person for any appointment with the Council*
- 5.41 Part 5 Political Conventions states - *A member may provide a reference in relation to staffing matters within the Council*
- 5.42 It is proposed to resolve any confusion by modifying Part 4I to read - *Save for providing a written reference upon request, neither the City Mayor nor any Councillor will seek support for any person for any appointment with the Council*
- 5.43 **Part 5 Political Conventions** – Part A (Principles) and Part B (Application) are merged in order to improve readability
- 5.44 **Part 5 Good Practice Guidance for Members (Planning):**
- 5.45 Section 13.4 deleted to avoid duplication of circulation of correspondence.
- 5.46 Section 16 (Departures from Officer recommendations) expanded to provide more guidance and to improve the robustness of decision-taking in these circumstances
- 5.47 Section 23 (gifts) added to align with recent Local Government Association Guidance

5.48 **Part 5 Good Practice Guidance for Members (Licensing):**

5.49 A whole new document is included here to guide Licensing Committee members on good decision-making.

5.50 **Part 5 Petitions Scheme**

5.51 Sections have been reordered to make for improved readability.

5.52 E-Petitions will remain live on the Council's system for a maximum of 6 months rather than 28 days.

5.53 **Part 6 Members' Allowances Scheme**

5.54 Paragraph 4 deleted. This permitted withholding of Member Allowances where a Councillor is suspended. However, the power to suspend a Councillor was revoked in 2012.

6. Financial, legal, equalities, climate emergency and other implications

6.1 Financial implications

There are no significant financial implications arising from this report.

Colin Sharpe, Deputy Director of Finance, 0116 454 4081

6.2 Legal implications

The report is concerned throughout with the law.

6.3 Equalities implications

When making decisions, the Council must comply with the Public Sector Equality Duty (PSED) (Equality Act 2010) by paying due regard, when carrying out their functions, to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, to advance equality of opportunity and foster good relations between people who share a 'protected characteristic' and those who do not.

In doing so, the council must consider the possible impact on those who are likely to be affected by the recommendation and their protected characteristics.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The update to the Council procedure rules listed in this report will widen the criteria to allow more people to participate in Council meetings, which will be particularly positive for younger people with the removal of restrictions that previously only allowed adult residents to ask questions. Allowing increased participation in the political processes for all residents will help foster good relations with people who share a protected characteristic. Extra consideration should be given to provide reasonable adjustments for residents that may require it, in order to support them in the process to ask a question.

Kalvaran Sandhu, Equalities Manager, Ext. 6344

6.4 Climate Emergency implications

There are limited climate change implications directly associated with this report. However, allowing use of electronic signing and sealing of legal documents may have a small positive impact through helping to reduce the need for business travel by employees.

Aidan Davis, Sustainability Officer, Ext 37 2284

6.5 Other implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

None

7. Background information and other papers: Track-changed version of Constitution appended

8. Summary of appendices: None

9. Is this a private report (If so, please indicate the reasons and state why it is not in the public interest to be dealt with publicly)? No

10. Is this a “key decision”? If so, why? No