

## **Report of the City Solicitor to the meeting of Full Council to be held on 15 May 2018**

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**Subject:**

Review of the Constitution

**Summary statement:**

**This Report provides Members with details of proposed amendments to the Constitution for recommendation to Council.**

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Michael Bowness  
Interim City Solicitor

**Portfolio:** Corporate

Report Contact: Joanne Gleeson  
Phone: (01274) 432878  
E-mail: [joanne.gleeson@bradford.gov.uk](mailto:joanne.gleeson@bradford.gov.uk)

## 1. SUMMARY

- 1.1 This Report provides Members with details of proposed amendments to the Constitution for recommendation to Council.

## 2. BACKGROUND

- 2.1 Article 14 of the Constitution requires the Monitoring Officer to maintain an up-to-date version of the Constitution and is authorised to make such amendments to the Constitution and related documents as may be necessary, but not including any changes of substance, to reflect and take account of changes in legislation, guidance, Council policy, decision of the Council and the Executive, and drafting changes and/or improvements.
- 2.2 Article 17 of the Constitution requires the Monitoring Officer to take steps to make himself/herself aware of the strengths and weaknesses of the Constitution and make recommendations for improvement. Changes to the Constitution can only be made following approval by the full Council or by the Monitoring Officer, as at 2.1 above.
- 2.3 This report concerns proposals for amendments to the Constitution.

## 3. PROPOSED AMENDMENTS TO THE CONSTITUTION

- 3.1 Appendix 1 to this report sets out a proposed amendment to paragraph 4.3 of Part 4B Member and Officer Planning Code of Conduct to clarify the position for planning members regarding making representations to either Regulatory and Appeals Committee or any planning panel.
- 3.2 Appendix 2 to this report sets out a proposed amendment to paragraph 4.6.1 of Part 3G of Contract Standing Orders to make clear that reports are to be submitted at an early stage to enable Members to take into account social value and other relevant considerations set out in paragraph 4 of Contract Standing Orders.
- 3.3 Appendix 3 to this report sets out proposed amendments to Part 2 Article 6 regarding the Council's Scrutiny Committees to restrict the membership of the Committees so that ex Executive members do not sit on the Committee within a 12 month period of having been involved with the Executive (**not recommended by the Governance and Audit Committee**), to clarify the powers of the Committees in relation to Social and Best Value duties and to up date and clarify the quorum of the Children's Services Overview and Scrutiny Committee.
- 3.4 Appendix 4 to this report sets out proposed amendments to the rules of procedure to enable the implementation of digital voting at Council meetings.
- 3.5 Appendix 5 to this report sets out the proposed amendments to Articles 11A Health and Wellbeing Board. The Governance and Audit Committee recommended that the composition of the Board be amended to read at (o) the Chief Executive of the Bradford District Care NHS Foundation Trust and at (p) One Member from the GP Community. The Board met on 17 April 2018

and approved the changes indicated in bold.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

4.1 The resources required to amend the Constitution can be met from existing provision.

#### **5. LEGAL APPRAISAL**

5.1 Legal implications are reflected in the Appendices to this report.

#### **6. OTHER IMPLICATIONS**

6.1 There are no equal rights, sustainability, community safety, Human Rights Act or trade union implications of this report.

#### **7. NOT FOR PUBLICATION DOCUMENTS**

7.1 None.

#### **8. RECOMMENDATIONS**

8.1 That the Council consider the proposed amendments to the Constitution set out in Appendices 1 to 5 of this report as considered and recommended by the Governance and Audit Committee on 19 April 2018 for adoption and implementation.

8.2 That the Interim City Solicitor be granted authority to make any consequential amendments to the Constitution as a result of any recommendations approved by full Council.

#### **9. APPENDICES**

Appendix 1 Proposed amendment to paragraph 4.3 of Part 4B Member and Officer Planning Code of Conduct

Appendix 2 Proposed amendment to paragraph 4.6.1 of Part 3G of Contract Standing Orders

Appendix 3 Proposed amendments to Part 2 Article 6 Overview and Scrutiny Committees.

Appendix 4 Proposed amendments to Part 3 Rules of Procedure to enable members to use digital voting

Appendix 5 Proposed amendments to Article 11A (Health and Wellbeing Board)

#### **10. BACKGROUND DOCUMENTS**

None

**PART 4B MEMBER AND OFFICER PLANNING CODE OF CONDUCT**

1. An issue has been raised again in respect of the Member and Officer Planning Code of Conduct relating to predetermination and bias and membership of a relevant panel (Para 4.3 precludes Members of the Regulatory and Appeals Committee or relevant panel from speaking at a meeting in objection or support to any particular item, whether sitting on the body concerned or being an alternate member).

2. **Current wording in the Constitution is as follows**

4.3 Having disclosed that they could be considered or perceived to have predetermined the outcome of a planning decision then having stood down from the Regulatory and Appeals Committee or **relevant** panel during discussion of an item it is not appropriate for that member to seek to speak as an objector or supporter of the application or planning proposal in question. Equally, where a Committee or panel member does not sit on the Committee or panel at the meeting in question, but would have had to disclose that they had predetermined the outcome of a planning decision and not participate in that item on the Agenda had such a member been officially in attendance, then it is inappropriate for that member still to attend the meeting to support or oppose the application in question.

3. Members will be aware that there is considerable overlap between the membership of the Regulatory and Appeals Committee and the Panels. Where there is membership of both either as a full member or alternate the Code is clear that members are not able to make representations to either. However where they are not members of the “ relevant “ area planning panel or the Regulatory and Appeals Committee the Code is less clear. Advice to a planning member in these circumstances, where they do not sit on the Committee or Panel which is going to consider that application is that owing to the perception of influence that may arise , the member should not make representations.

4. To clarify the position it is proposed that the reference to “relevant” in the Code at para 4.3 be removed to make clear that no planning member may make representations. Members are requested to recommend to Council the amendment of para 4.3 of the Member and Officer Planning Code of Conduct.

**PART 3G CONTRACTS STANDING ORDERS 2017/18**

1. The current wording of paragraph 4.7.1 of Contract Standing Orders does not provide an indication of when reports should be made to Overview and Scrutiny Committees so that Members can comment on social value and other relevant considerations set out in paragraph 4 of Contract Standing Orders.
2. **Current wording in the Constitution is as follows**

4.7 Before inviting tenders or quotations, the Authorised Officer must:

4.7.1 for contracts with a total estimated contract value in excess of £2m, report details to the relevant Overview and Scrutiny Committee using the standard Committee report template. For clarity, details of call-off contracts from a framework or DPS do not need to be separately reported providing the original framework has been reported except where the relevant Overview and Scrutiny Committee request a separate report.

3. Members are asked to consider the following proposed amendments to make clear that reports are to be submitted at an early stage and to recommend to Council the amendment. (CSO 4.7.2 refers to market engagement, 4.7.6 equality and diversity, 4.7.7 TUPE and 4.7.9 Social Value).

**4. Proposed amendments in bold**

4.6.1 for contracts with a total estimated contract value in excess of £2m, report details to the relevant Overview and Scrutiny Committee using the standard Committee report template. **Reports are to be taken at an early stage once officers have a draft procurement strategy and specification to allow members to consider the matters in 4.7.2, 4.7.6, 4.7.7, and 4.7.9.** For clarity, details of call-off contracts from a framework or DPS do not need to be separately reported providing the original framework has been reported except where the relevant Overview and Scrutiny Committee request a separate report.

## PART 2 ARTICLE 6 OVERVIEW AND SCRUTINY COMMITTEES

### Composition of the Committees

1. The work of the Executive is monitored by various Overview and Scrutiny Committees, which can check recent decisions, advise on policy development and review service performance. They can also call the Executive to account where it is felt that their decisions have not been as effective as they should be.
2. To ensure that Overview and Scrutiny Committees take an independent view and to avoid situations where ex-Executive members become involved in scrutinising a decision in which they have been directly involved, it is proposed that Executive members who come off the Executive are not allowed to be members of any Scrutiny Committees for a period of 12 months. Although the Committees can require Executive members and officers of the Council to attend to give evidence about issues under review.
3. Members are asked to consider the addition of a new paragraph at 6.7.1 to Article 6, to read

Proposed new wording

**6.7.1 The composition of any Overview and Scrutiny Committee will not include any member who has in the previous 12 month period been a member of the Council's Executive. NB Not recommended by Governance and Audit Committee**

6. The current paragraph 6.7 would then require re numbering as follows

**6.7.2** The Corporate Overview and Scrutiny Committee shall comprise ten members of Council and shall be chaired by a member of the political group that forms the Executive.

**6.7.3** The Children's Services Overview and Scrutiny Committee shall comprise:

Nine members of Council  
Two voting co-opted church representatives  
Two voting co-opted representatives of parent governors  
Non-voting members appointed by the Council on the recommendation of the Committee.

**6.7.4** The Health and Social Care Overview and Scrutiny Committee, Regeneration and Economy Overview and Scrutiny Committee and the Environment and Waste Management Overview and Scrutiny Committee shall comprise:

Nine members of Council  
Non-voting members appointed by the Council on the recommendation of

the committees

### **Quorum of the Committee**

4. The current wording of paragraph 6.8.2 in relation to the quorum of the Children's Services Overview and Scrutiny Committee refers to five voting members in relation to the functions of the local education authority. This wording is outdated and leads to uncertainty around the quorum of the Committee. Legislation has reduced the role of the Local Authority and strengthened that of schools and central government departments. Previously the LA managed all state schools in its area and controlled what schools did. The LA held the budget for all schools. The LA appointed the staff, set the curriculum and inspected the schools. This is no longer the case and therefore the statutory education functions of the LA are significantly reduced and the responsibilities of the Children's Services Overview and Scrutiny Committee cover wider matters relating to the strategies, plans, policies, functions and services relevant to the corporate priority about services to children and young people. Its composition therefore includes co-opted church representatives and parent governors as well as non voting members appointed by the Council.

#### **Current wording in the Constitution is as follows**

6.8.2 The quorum of the Children's Services Overview and Scrutiny Committee shall be five voting members in relation to the functions of the local education authority

5. To clarify the position it is proposed that the reference to "in relation to the functions of the local education authority" in paragraph 6.8.2 be removed to make clear that the quorum for the Committee shall be five voting members.

#### **6. Proposed revised wording for the Quorum of the Committee**

6.8.2 The quorum of the Children's Services Overview and Scrutiny Committee shall be five voting members.

7. Members are asked to consider the revised wording to paragraph 6.8.2 to clarify the quorum of the Committee and to recommend to Council the amendment.

### **Powers of the Committee**

8. The current wording of paragraph 6.10 regarding the powers of the Committees requires clarification. Revised statutory guidance on the Best Value Duty setting out some reasonable expectations of the way authorities should work with voluntary and community groups and small businesses was published in 2015. This no longer refers to Best Value principles and councils should consider overall value including social value when considering service provision.

#### **9. Current wording in the Constitution is as follows**

6.10.6 Monitor the performance of Council functions against the policy framework recognised performance indicators and Best Value

principles.

6.10.10 Monitor the performance of external organisations against recognised performance indicators and Best Value principles and make recommendations to the appropriate body.

#### 10. Proposed revised wording for the Powers of the Committee

6.10.6 Monitor the performance of Council functions against the policy framework, recognised performance indicators **and Social** and Best Value **duties**.

6.10.10 Monitor the performance of external organisations against recognised performance indicators, **Social** and Best Value **duties** and make recommendations to the appropriate body.

11. Members are asked to consider the revised wording to paragraph 6.10.6 and 6.10.10 to clarify the powers of the Committees and to recommend to Council the amendments.



**PART 3 RULES OF PROCEDURE**

1. Members will be aware that the Council is in the process of refreshing the technology required to support digital voting in Council meetings. Before implementation of the digital voting system the Constitution will require amending.

**Current wording in the Constitution regarding voting at Council and at committee and sub-committee meetings is set as follows**

**25 Voting** (in relation to Council)

25.1 Members will vote by a show of hands. A member's vote will only be counted if they are sitting in a seat reserved for members.

**42 Voting** (in relation to committees and sub- committees)

42.1 Voting is by show of hands, unless the majority of members decide to vote by ballot on a particular item.

2. Members are asked to consider the revised wording to paragraph 25.1 and 42.1 below to enable members to use digital voting at meetings but to keep the alternative method of a show of hands in cases where the technology is not available.

**25 Voting** (in relation to Council)

25.1 Members will vote in one of the following ways

25.1.1 Digital voting or

25.1.2 by a show of hands.

A member's vote will only be counted if they are sitting in a seat reserved for members.

42.1 Members will vote in one of the following ways

42.1.1 Digital voting or

42.1.2 by a show of hands.

A member's vote will only be counted if they are sitting in a seat reserved for members.

## Article 11 A Health and Wellbeing Board

1. S.194 of the Health and Social Care Act 2012 Act lists the persons to comprise the Board and also provides “for such other persons, or representatives of such persons, as the local authority thinks appropriate”. The Council has added various persons listed in the Constitution at Article 11A.2. These matters were considered by Committee on 25 April 2017.
2. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, Regulation 6 provides that- **“Modification of section 13 of the 1989 Act**

Section 13 of the 1989 Act (voting rights of members of certain committees: England and Wales) applies in relation to a Health and Wellbeing Board with the modification that after subsection (1) there were inserted—

“(1A) A person who is a member of a Health and Wellbeing Board, a sub-committee of such a Board, or a joint sub-committee of two or more such Boards, shall not be treated as a non-voting member of that Board or sub-committee by virtue of subsection (1), unless the local authority which established the Board otherwise directs.

(1B) Before making a direction under subsection (1A), the local authority must consult the Health and Wellbeing Board.”

3. The Council has approved Article 11A.2, Composition of the board. The current wording is set out below, these persons are therefore voting members of the Board as the Council did not direct otherwise. The Board now intends to co-opt further members, (see wording for revised composition below, new members are shown in bold ) and for those new co-opted members to also have voting rights. Therefore the Council must be given an opportunity to direct otherwise if it chooses. The representation on the Board by members from the NHS and Clinical Commissioning Groups has also been clarified and those amendments are underlined in the revised composition shown below. Members are asked to consider the amendments to the Composition and recommend to Council the additional members as voting members

## **Current wording in the Constitution is as follows**

**11A.2** The Health and Wellbeing Board shall comprise of the following

- a) The Leader of the Council
- b) The Chief Executive of the Council
- c) The Elected Member portfolio holder for Health and Wellbeing
- d) One opposition Elected Member
- e) The Accountable Officer for the District's Clinical Commissioning Groups and a clinician from each CCG if the Accountable Officer is not a clinician
- f) The NHS Area Team Director
- g) The Director of Public Health
- h) The Strategic Director of Health and Wellbeing.
- i) The Strategic Director of Children's Services.
- j) One member from Bradford HealthWatch
- k) One member from the Voluntary, Community and Faith Sector, elected through Bradford Assembly.
- l) One full and two co-opted representatives of the three main NHS providers.
- m) One co-opted representative of the Community Interest Companies (representing primary care).

11A2.1 The Board may co-opt further members, as required, from provider organisations

11A2.3 Named alternates can be provided for the members of the Health and Wellbeing Board except the representatives of the Clinical Commissioning Groups who are able to ask any clinician on the CCGs to alternate for them.

The co-opted representatives indicated are non-voting unless the Council decides otherwise.

11A2.4 The Board shall report to the Bradford District Partnership as required.

11A2.5 Sub-groups that report directly to the Board shall include the Bradford Health and Care Commissioners and the Integration and Change Board.

## **Revised wording in the Constitution recommended to be as follows**

### **Composition**

- a) The Leader of the Council, CBMDC
- b) The Chief Executive of the Council, CBMDC
- c) The Elected Member portfolio holder for Health and Wellbeing, CBMDC
- d) One opposition Elected Member, CBMDC
- e) The Accountable Officer for the District's Clinical Commissioning Groups and a clinician from each of Airedale, Wharfedale, Craven CCG, Bradford City CCG and Bradford District CCG if the Accountable Officer is not a clinician

- f) One member from the NHS England Area Team
- g) The Director of Public Health, CBMDC
- h) The Strategic Director of Health and Wellbeing, CBMDC.
- i) The Strategic Director of Children’s Services, CBMDC.
- j) The Strategic Director of Place, CBMDC**
- k) One member from Bradford HealthWatch
- l) One member from the Voluntary, Community and Faith Sector, elected through Bradford Assembly.
- m) The Chief Executive of Bradford Teaching Hospitals NHS Foundation Trust
- n) The Chief Executive of Airedale NHS Foundation Trust
- o) The Chief Executive of Bradford District Care NHS Foundation Trust
- p) One member from the GP Community
- q) The District Commander West Yorkshire Fire and Rescue Service**
- r) The Chief Superintendent Bradford District, West Yorkshire Police**
- s) The Group Chief Executive, InCommunities Group Ltd**

**Additions to the role and functions of the Health and Wellbeing Board**

11A4.8 shall read: “The Board is the senior strategic partnership in Bradford District, leading the family of linked strategic partnerships through which the Council collectively deliver the five outcomes of the Bradford District Plan.”

“The Board shall oversee the development and delivery of the outcomes within the Bradford District Plan 2016 – 2020, via the District’s strategic delivery partnerships”

“The strategic delivery partnerships (Economic Partnership, Children’s Trust, Safer Stronger Communities) will take direction from and are responsible to the Health and Wellbeing Board for delivering the District Plan outcomes and other strategic priorities. They will be expected to report their progress against these outcomes to the Health and Wellbeing Board on an annual basis.”