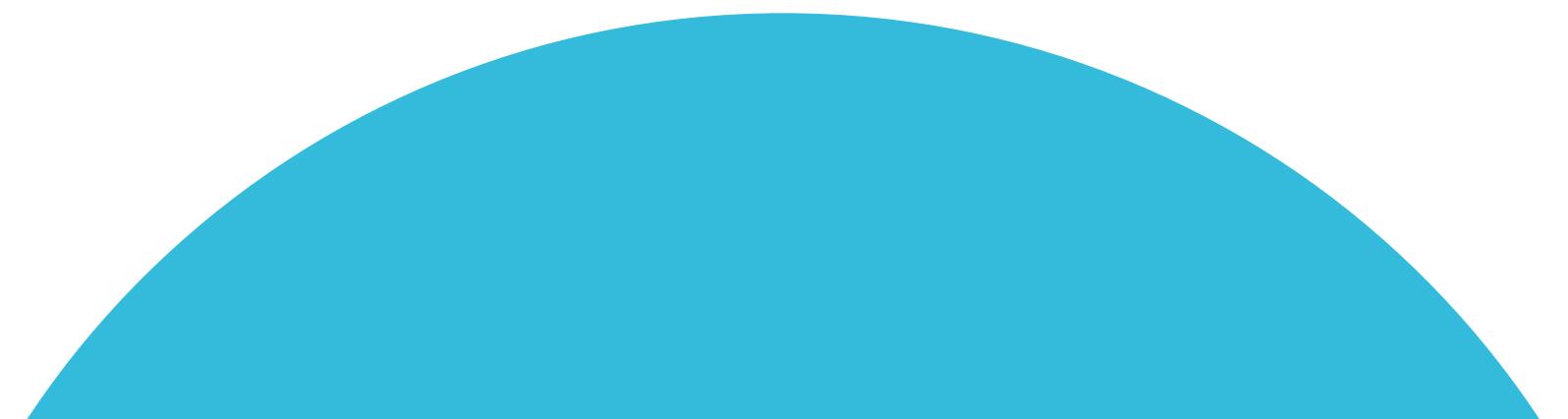


Bevan Brittan 

Havant and East Hampshire Councils
Summary of Constitutional Review
11 January 2021



CONSTITUTION REVIEW

1 BACKGROUND AND CONTEXT

- 1.1 In autumn 2019 Havant Borough Council (“HBC”) and East Hampshire District Council (“EHDC”) (and together “the Councils”) jointly commissioned Bevan Brittan LLP to carry out a review and health-check of their respective Constitutions.
- 1.2 The Councils sought to review their Constitutions and align their governance arrangements, deliver continuous improvement, increase efficiency and provide value for money for residents, by adopting similar committee structures, codes and requirements where possible (recognising that there will be some Council specific variations e.g. HBC is a Coastal authority with significant involvement with coastal issues and EHDC has significant involvement with the South Downs National Park). Alongside harmonising their respective Constitutions, the Councils wanted to undertake a review of compliance with legislative provisions and best practice with a view to developing a clearer, more succinct Constitution which is accessible, up to date, modernised and easier to use.

2 FORM AND STRUCTURE OF THE REVISED CONSTITUTION

- 2.1 There is much in the Constitutions which is important for the Councils to have somewhere, but need not be contained in this document. To avoid the documents becoming quickly out of date unnecessarily we have included hyperlinks to policies, legislation and procedures etc. on the intranet or the web. This makes the whole document less daunting and unwieldy and, if this information is not a formal part of the Constitution, allows for it to be more easily altered/refreshed without needing to undertake a full Constitution review. An example is links to the existing web pages outlining individual Councillors, their wards and interests etc.
- 2.2 The Constitutions have been updated to address inconsistencies in approach, inaccuracies in cross-referencing and areas of duplication. They have been modernised through the use of more modern language, web links and better presentation in a revised structure. Whilst the current Constitutions are largely up to date, a number of statutory and legislative references have been updated throughout the document (e.g. references to Accounts and Audit Regulations 2003/2006/2011 rather than the Accounts and Audit Regulations 2015).
- 2.3 We have included an index within each part of the Constitution as well as headers and footers to know at a glance which part of the Constitution is being viewed. The Glossary of defined terms has been expanded and all terms in bold in the document can be found within the Glossary.
- 2.4 Online, the format will be that the Constitution may be viewed as a whole, so there is the ability to use an electronic search facility to find things more easily, and also provided in separate distinct Parts to aid navigation of the document for those who are familiar with it.

Part 1 Introduction

- 2.5 The Constitutions have been rigorously edited to remove repetition and to make them more user friendly. Most notably, we have removed the Articles from the Constitution to reduce since much of the Articles are replicated elsewhere. Some of the content of the Articles has been moved to other parts of the Constitution. More information is provided in Annex 1 which maps where in the Constitution the Articles have been moved to.
- 2.6 The Introduction has been expanded to give more information about how the Council works, being drawn from the Articles to give a more comprehensive picture.

Part 2 Responsibility for Functions

- 2.7 We have introduced an ‘Introduction to Decision Making’, to explain how the Council operates and the separation of responsibilities between ‘executive’ and ‘non-executive’ functions. This includes the introduction of a key decision threshold of £250,000 and a prohibition on officers taking key decisions

save where this is specifically delegated by the Leader, the Cabinet, a committee of Cabinet or a Cabinet member.

- 2.8 The Council's Decision Making Structure and Management Structure have been updated.
- 2.9 The Committees of the Council are now presented in a uniform and consistent way, with clarity of the matters reserved to members and therefore not delegated to officers.
- 2.10 Those which had been missing are now included (e.g. the Shareholders Sub-Committee and Planning Policy Committee).
- 2.11 The purpose of the **Shareholders Sub-Committee** is to approve and oversee the Council's strategic objectives across Havant Borough Council's companies and to support the development of these companies in line with the Council's regulations and ambitions. The Shareholders Sub-Committee will provide monitoring and strategic oversight of the Council's companies and provide assurance to the Cabinet that these companies are compliant with the Council's constitution, rules and procedures; achieving best value; and are fit for purpose. The Shareholders Sub-Committee may also take decisions reserved to the Council regarding operation of the companies, for example agreeing significant changes to the annual business plan.
- 2.12 The **Planning Policy Committee** now reports directly to Council although it may make recommendations to Planning Committee, the Cabinet or full Council, depending upon the issues involved. The Committee will have a valuable role in planning policy issues, particularly in connection with the Havant Local Plan.
- 2.13 The role of **Overview and Scrutiny** has been redesigned to allow for a single committee to be responsible for these functions yet with the ability to create sub-committees and task and finish groups to work on specific tasks under the work programme as necessary, to enable an effective and efficient scrutiny function that is flexible and tackles key issues for the Council such as climate change. Overview and Scrutiny plays a key role in ensuring that the Council acts in an open and transparent way and in holding the Council's executive decision-makers to account to ensure effective local democracy.
- 2.14 Planning the **Overview and Scrutiny** work programme is key to making an impact on the ground - allowing the necessary time and attention to be given to a particular issue in order to make a tangible difference to the work of the Council. Under the proposed structure, the Overview and Scrutiny Committee sets its own annual work programme, a long-term agenda, preferably focussing on delivering the Council's key policy aims, whilst making it flexible enough to accommodate any urgent, short-term issues that might arise during the year. Effective scrutiny helps to secure the efficient delivery of public services with increased customer satisfaction; and drives improvement within the Council itself.
- 2.15 It is proposed that at the first meeting each year the **Overview and Scrutiny Committee** will establish sub-committees or task groups and confirm the terms of reference specifically to consider the following areas (based on relevant existing portfolios of Portfolio Holders at the beginning of the municipal year) as an element of the committee's annual work programme, and to report back to the Overview and Scrutiny Committee on any recommendations:
- Business and Commercial Services, including any relevant strategic partnerships
 - Operations and Place Shaping, including regeneration issues.
- 2.16 A dedicated Audit Committee and a Standards Committee have been created to ensure good governance and oversight of corporate governance risk, and member conduct.
- 2.17 The **Audit Committee** will focus primarily on the Council's finances, risk and assurance including the Annual Governance Statement. It will have responsibility for oversight of the risk register, internal and

external auditors, receive the Annual Management Letter and consider the Council's response as well as approving the Council's Annual Statement of Accounts.

- 2.18 The **Standards Committee** is responsible for promoting and maintaining high standards of conduct across the authority, particularly by Councillors. The Committee will have a role on member training and induction and will also manage the Council's arrangements for dealing with complaints that a Councillor has breached the Code. The Committee is responsible for determining how hearings will be held and will make recommendations to full Council on appropriate sanctions, where there has been a breach of the Code. The Committee will also have power to grant dispensations, where appropriate, to allow Councillors with interests to attend, speak and vote on matters and deal with appeals from decisions of the Monitoring Officer on such matters.
- 2.19 The **Standards Committee** will respond on behalf of the Council to national reviews and consultations on standards related issues. The Government has still to respond to the Committee on Standards in Public Life (CSPL) report that made numerous recommendations to improve standards in local government two years ago in January 2019. The Committee will have a key role in considering whether to make any changes to the Council's Code of Conduct for Councillors, following the recent publication of the LGA Model Code, that is available at: [Model Councillor Code of Conduct 2020 \(local.gov.uk\)](https://www.local.gov.uk). The Committee will also be the conduit for changes to the Constitution that are not delegated to the Monitoring Officer (see below).
- 2.20 The Joint Arrangements in place for Human Resources between the two Councils have been updated and clarified and we have introduced provision for statutory officer discipline and an Independent Persons Panel as required by the Local Authorities (Standing Orders) (England) Regulations 2001.
- 2.21 The Scheme of Delegation to Officers has been simplified, moving away from a recital of numerous statutory powers and in favour of functional areas, to avoid a situation where any change in law or in Council structure would otherwise require a review. The Scheme is more descriptive and high level, with reference back to matters reserved to members, meaning that the Scheme is less likely to become out of date so quickly. The drafting has been future proofed so changes in post holders, should not, of themselves, trigger a redraft. The Scheme is more generic and wide-ranging in order to cover future changes to service specific legislation.
- 2.22 The Monitoring Officer has been provided with greater delegation to make changes to the Constitution to include changes which improve drafting and clarity and efficiency of operations. The Monitoring Officer is required to report to Council to notify members of the changes made as and when they are undertaken.

Part 3 Rules of Procedure

- 2.23 The Standing Orders have been updated throughout in line with current legislation. In respect of the Council and Committee Standing Orders at Section A, it is recognised that the Council is currently holding meetings remotely under the Coronavirus Act and Regulations¹ and that as these are time limited (to 7 May 2021), the Constitution will be kept under review as the position evolves.
- 2.24 Within the Access to Information Standing Orders at Section B, the provisions have been updated regarding exempt matters in particular. This is largely to deal with the requirements of the Local Government (Executive Arrangements) Meetings and Access to Information (England) Regulations 2012 and the rules around notice of private meetings of a decision-making body. Currently, Standing Order 51 (SO 49 EHDC) provides that the Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private. However, in accordance with regulation 3 of the 2012 Regulations meetings are to be held in public unless legislative exemptions apply.
- 2.25 In respect of Section F Officer Employment Standing Orders, the provisions have been updated regarding staff matters and in particular the requirements in relation to the Investigation and

¹ Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 SI 2020/392

Disciplinary Committee in order to marry up with the latest JNC Terms and Conditions of Service for Chief Executives and Chief Officers.

- 2.26 At Section H Contract Procurement Rules, these have been updated to cover the 2015 Public Contracts Regulations and in line with the introduction of a key decision financial threshold, clarified how decisions are taken. It is recognised that the UK is in the transition period for Brexit and a 'health' note is given in respect of this.

Part 4 Codes and Protocols

- 2.27 The Codes have been largely replaced with updated versions.
- 2.28 A new Code of Conduct for Officers has been introduced which is high level and focuses on the key principles of probity without straying into either employment matters or matters covered within the Councillor/Officer Protocol.
- 2.29 The Code of Conduct for Councillors has been replaced following a review by the Council. The Code now extends to where a member of the public may perceive that a Councillor is acting in an official capacity, as well as including interests beyond DPIs and the requirement to declare gifts and hospitality over £50. The Planning Code of Conduct has been reintroduced into the Constitution.
- 2.30 A revised Councillor/Officer Protocol has been introduced in an effort to simplify the previous protocol and further clarify the relationship between officer and members.

Part 5

- 2.31 The latest Councillors Allowances Scheme is to be inserted into the document.

Glossary

- 2.32 The Glossary of defined terms has been expanded and all terms in bold in the document can be found within the Glossary.

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Articles	Proposed Approach
Article 1:	Add re-vamped purpose of the Constitution to Part 1 Summary and Explanation with hyperlink to member details.
Article 2:	Rights of residents of the public extended and included in Part 1 Summary and Explanation.
Article 3:	Full Council – Moved to Part 2 Responsibility for Functions.
Article 4:	The Mayor – Included in Part 1 Summary and Explanation.
Article 5:	Non-Executive Functions – Moved to Part 2 Responsibility for Functions. The general role of Scrutiny is included in Part 1 Summary and Explanation.
Article 6:	Scrutiny Functions – Moved to Part 2 Responsibility for Functions.
Article 7:	Executive arrangements – Moved to Part 2 Responsibility for Functions.
Article 8:	Joint Arrangements – Moved to Part 2 Responsibility for Functions.
Article 9:	Officers – Moved to Part 2 Responsibility for Functions, within the Officer Scheme of Delegation.
Article 10:	Decision-making principles –relocated within Part 2 Responsibility for Functions and Part 3 Rules of Procedure (Access to Information Standing Orders).
Article 11:	Finance, contracts and legal matters – Moved to Part 2 Responsibility for Functions and Part 3 Rules of Procedure.
Article 12:	Review and revision of the Constitution – Moved to Part 2 Responsibility for Functions.
Article 13:	Description of Executive Arrangements – Moved to Part 2 Responsibility for Functions.

Decision Making Structure

