

SLOUGH BOROUGH COUNCIL

REPORT TO: Annual Council **DATE:** 20th May 2021
CONTACT OFFICER: Alexander Polak, Interim Head of Democratic Services,
(For all Enquiries) 07985 686996
WARD(S): All

PART I **FOR DECISION**

REVIEW OF THE COUNCIL'S CONSTITUTION

1. **Purpose of Report**

As part of the Council's governance workstream, the Council is seeking to improve its governance processes to ensure lawful, fair and transparent decision making.

The report seeks approval for Phase 1 of the review, recommending amendments to the councillors' code of conduct, officer scheme of delegation and scrutiny panels, as well as incidental amendments arising from the Phase 1 review.

2. **Recommendations**

Council is recommended to:

1. Consider and adopt the amendments set out in the appendices namely:
 - a. Councillors' Code of Conduct
 - b. Article 12 Officer Roles & Statutory Officer Functions
 - c. Park 3.6 Scheme of Delegation to Officers
 - d. Article 6 – Overview and Scrutiny
2. Delegate authority to the Monitoring Officer to make changes to the constitution to effect changes outlined in Sections 5c and 5d.
3. Agree that the amendments to the Constitution will come into effect on the day following the Council meeting.
4. Note the planned forward work programme of the member working party and that future phases of the review will be reported to Council over the next year.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Wellbeing Strategy Priorities**

The Constitution sets out the rules and procedures for decision making by the Council. The delivery of the wellbeing strategy priorities is dependent on the highest possible standards of openness, honesty and accountability. This is

underpinned by the ethical framework with the Constitution, including the Councillors' Code of Conduct.

By amending the officer scheme of delegation, it will allow officers to make operational decisions in support of the wellbeing priorities, whilst ensuring that strategic and political decisions are taken at a member level.

Overview & Scrutiny plays an important role in scrutinising the progress made in the delivery of all aspects of the SJWS and realigning the panels to lead member areas will strengthen this work.

3b. **Five Year Plan Outcomes**

The Constitution and in particular the Overview & Scrutiny panels are central to ensuring accountability in the delivery of all five priority outcomes of the Five Year Plan.

- Outcome 1: Slough children will grow up to be happy, healthy and successful
- Outcome 2: Our people will be healthier and manage their own care needs
- Outcome 3: Slough will be an attractive place where people choose to live, work and stay
- Outcome 4: Our residents will live in good quality homes
- Outcome 5: Slough will attract, retain and grow businesses and investment to provide opportunities for our residents

4. **Other Implications**

(a) Financial

There are no financial implications of the proposed action. It is assumed that the budget for scrutiny functions will remain the same and there will be no requirement for additional funding.

(b) Risk Management

The Council is legally obligated to keep its constitution under review and ensure that officers and members comply with it. Failure to comply with the constitution could render decisions unlawful, as well as failing to meet requirements in relation to public transparency.

The officer scheme of delegation has not been formally reviewed for some years and the Council's staffing structure has recently changed. It is therefore important to ensure that the scheme reflects the way that decisions are being taken and provides clarity to officers to understand the extent of their delegated powers.

The Our Futures programme includes a workstream on Governance and Grip. In addition, following the MHCLG capitalisation direction, the Council needs to review its financial and governance procedures to ensure that the financial and legal implications of decisions are properly considered.

The Code of Conduct amendments arise from a review of the LGA Model Code of Conduct, which was finalised in January 2021.

(c) Human Rights Act and Other Legal Implications

Under Section 37 of the Local Government Act 2000, the Council is required to prepare and keep up to date a document, referred to as the Constitution, which contains as a minimum:

- (i) The Council's Standing Orders
 - (ii) The Council's Code of Conduct for Members; and
 - (iii) Such other information as the Secretary of State directs – under the Local Government Act 2000 (Constitutions)(England) Direction 2000 this information includes the membership, terms of reference and functions of the Council's Committees and Sub-Committees, and any rules governing the conduct and proceedings of those Committees and Sub-Committees.
- 7.2.

Subject to those provisions, it is for the Council to decide what information its Constitution should contain.

SBC's constitution contains a large number of rules and procedures and is broadly split up in the following way:

1. The Articles
2. Responsibility for functions
3. Procedure rules
4. Ethical framework
5. Members' allowances

This phase of the review focuses on the Councillors' Code of Conduct under the Ethical framework, the articles in relation to statutory and chief officers and overview & scrutiny and the officer scheme of delegation under the responsibility for functions section. As a result of these changes, it is recommended to make consequential changes to the reserved functions for full council and the member officer protocol.

Section 27 of the Localism Act requires the Council to promote and maintain high standards of conduct by members of the Council and, in discharging this duty, the Council must adopt a code dealing with the conduct that is expected of members of the Council when they are acting in that capacity. The Council must secure that such code adopted by it is, when viewed as a whole, consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership ("the Nolan principles").

(d) Equalities Impact Assessment

An equality impact assessment has not been completed.

The proposed new overview & scrutiny panel structure will align better with the new structure of the organisation under the Our Futures programme, which should allow scrutiny the opportunity to examine equalities issues effectively across all areas of the council's operations. In addition, the officer scheme of delegation provides clarity on the extent of delegation to executive directors and gives flexibility to these senior officers to determine the extent of delegation within their directorates. When making decisions, officers must make these in accordance with Council policies and this will include the need to consider equalities implications.

The proposed code of conduct makes specific reference to the duties under the Equality Act 2010 and how these apply to elected members.

5. **Supporting Information**

5a **Councillors' Code of Conduct**

In 2019 the Local Government Association undertook a review of the Councillor Code of Conduct. This review resulted in a new draft code, which was consulted on last Summer, and received over 1,400 responses.

In response to the Consultation, in December last year the LGA published a new Model Code of Conduct, which was sent to all members of this Committee before Christmas. The latest version was published in January 2021.

In a joint statement the LGA introduced the Code as follows:

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role.

Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want people from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

The Member Working Group is an informal group of elected members who meet to discuss proposed amendments to the Constitution. This group met on 5 May 2021 and agreed that the model code of conduct should be adopted by the Council in its entirety. Appendix 1 contains the proposed new Part 5.1 – Councillors' Code of Conduct. The amendments are to Part 1 of the Code which deal with Rules of Conduct, although the general dispensations from the existing code have been retained. No changes have been made to Part 2 or 3, with the exception of removing some of the forms and flowcharts which made the document overly lengthy. The Member Working Group have expressed an interest in reviewing the procedure for investigating complaints as a separate piece of work.

5b Officer Scheme of Delegation

In relation to the officer scheme of delegation, the current scheme attempts to set out a set of rules for how every decision should be taken and to dictate what level of officer should take the decision. There are a number of issues with this approach:

- It is not possible to set out in detail how every decision should be taken and this has led to inevitable gaps and confusion as to what decisions officers can take.
- The current approach does this engender a culture of trust and collective responsibility.
- The current approach does not give responsibility to the Chief Executive and Executive Directors to determine how decisions should be made within their own directorate.
- The current scheme is not particularly flexible and does not link well to internal policies and procedures.
- The current scheme does not explicitly reflect the need to consider political sensitivities, which may mean that good governance would suggest that a proposal should be referred to members for a decision.

It is proposed to simplify Article 12 – Officer Roles and Statutory Chief Officer functions as set out in Appendix 2 to:

a) list the chief officers

b) list the statutory chief officers and the posts that these roles are designated to – the scrutiny officer has been removed, as this is not a statutory chief officer. The monitoring officer and director of public health need to be referred to, even though the current post holders are not employees of SBC;

c) list the statutory functions of the statutory chief officers – this is limited to those functions that sit with statutory post, as opposed to the wider list of responsibilities for the individual post holder.

It is proposed to simplify Part 3.6 of the Constitution, which sets out the Scheme of Delegation to Officers. The amended document is at Appendix 3. The following main changes have been made:

a) Delegation is to Executive Director level only.

Each Executive Director is expected to maintain a directorate scheme of delegation, setting out what each Associate Director and other staff have delegated authority to decide. This will give each Executive Director flexibility to delegate authority based on individual staff members' ability and responsibility. It will also allow the schemes to develop and change over time and at short notice if need be.

b) Delegation is subject to a set of guiding principles.

This relates to the need for a culture of good governance as officers should only make decisions that are covered by an approved policy, where there are no

unusual features and no political or other significant issues. Officers must also comply with other constitutional rules, such as financial and contract procedure rules and internal council policy. This requires officers to have an awareness of the policy framework and constitutional requirements, as well as good relationships with relevant lead members to understand the political dynamics of a particular decision.

c) Urgency procedures.

These have been redrafted to give specific authority to the Chief Executive to take urgent executive and non-executive decisions. At present the urgency procedures do not cover executive decision making. The Chief Executive is making decisions in relation to the Covid 19 pandemic and reporting these back to Cabinet, relying on these being operational decisions, however it would be preferable to have a clear framework as to how these type of emergency decisions should be taken. This reflects best practice elsewhere.

d) Delegation of function to London Borough of Harrow

This confirms the nature of the delegation of function in relation to legal services that currently sits with HB Public Law, but makes it clear that the Monitoring Officer retains authority to make decisions on legal matters. It is proposed that this includes the ability to sign and seal documents to implement a decision. The seal is currently located in Harrow Council's officers and sealing is undertaken under the supervision of senior lawyers – this ensures proper oversight, including 4 where external lawyers are instructed. As reflected in the Liverpool City Council best value report, the role of the in-house legal team (including HB Public Law) is critical in ensuring that proper processes and authority has been obtained before contracts and property documents are executed, thereby binding the Council.

e) General delegations

These are re-drafted to use more general language and to focus on activities rather than financial limits and functions. The delegations are subject to compliance with financial and contract procedure rules (which are currently being reviewed and will be subject to Member consideration at a later date), which sets out financial limits for officer decision making and to HR policies. By removing the financial limits from Part 3.6 it avoids the need to amend different sections of the constitution and allows each Executive Director to consider the financial limits for levels of staff within their own directorate based on role and skillset. For instance some directorates will regularly conduct commissioning activity and may require high levels of autonomy around letting of contracts than other directorates. The Place directorate will undertake the majority of land transactions and will require a more detailed internal scheme of delegation to take account of this.

f) Proper officer and statutory officer list

This picks up non-chief statutory officers and proper officer functions so it is clear where these statutory responsibilities sit. It is intended that this will replace Part 3.6.1 as the current documents duplicate each other in certain places. g) Specific delegations – these have been redrafted to use more general language, but also to pick up learning from other councils. For instance the ability to suspend one of the three statutory chief governance officers (Head of Paid Service, s.151 officer and Monitoring Officer) has been added to deal with urgent circumstances where it is not possible to convene a member meeting. This following learning from Croydon Council.

g) Executive director functions

The functions of each directorate are set out making it clear that the general delegations apply to these functions. Some specific delegations are specified, but the majority of authority stems from the wider drafted general delegations.

5c Change to Overview & Scrutiny panels

The Joint Cabinet Scrutiny Working Group has over the last six months reviewed the balance and remit of the four scrutiny panels. Drawing on the LGA Governance Peer Review, and previous sessions with members, the Group identified a number of challenges which needed to be addressed:

- Out of date terms of reference.
- A significant imbalance in workloads between panels.
- Duplication in the scrutiny of some policy areas.
- The lack of a clear home for other policy areas – such as employment and skills.
- The need to reflect the new organisational structure and the council's current areas of strategic focus.

The new structure proposed by the joint working group retains the Overview & Scrutiny Committee, which would be underpinned by three new panels: People, Customer & Community and Place. Details of the policy areas which fall under the remit of these panels is included in Appendix 4.

The proposed structure was discussed with the current members of the Overview & Scrutiny Committee and the three sub panels, at a workshop on 24th February. Although it is not part of the scrutiny structure, the role of Audit & Corporate Governance Committee is relevant to the review of scrutiny as part of the same wider assurance framework which provides check and challenge to the authority. It has also been discussed that to avoid duplication with Overview & Scrutiny and free up space on scrutiny work programmes, the Audit & Corporate Governance Committee could play a greater role in scrutinising the performance of major contracts and commissioning processes.

5d Consequential amendments

Other parts of the constitution need amendment to take account of the re-drafting of the Constitution. At present there are a number of discrepancies between different sections of the Constitution (probably reflecting the fact that they were reviewed at different times), which is causing issues in terms of interpreting the extent of officer's delegated powers. The suggested amendments are as follows:

a) General dispensation for members nominated as directors to SBC companies and appointments to outside bodies.

Elected members are often appointed to outside bodies to provide a link to the council and the local community. However, their involvement in the outside body is likely to constitute a disclosable pecuniary interest, meaning they are not entitled to participate in the decision making process. It is likely that the public interest would be better served if these members could participate in discussion and voting on matters relating to certain outside bodies to which they have been appointed directly by, or on the nomination

of, their own authority. To provide transparency, members should still declare the interest at the start of the meeting, even though the interest will be on their register of interest. The member should also seek advice of the Monitoring Officer if they are concerned about whether participation would breach the code of conduct. Finally due to the more judicial nature of certain regulatory decisions, it is recommended that members do not participate in decisions to grant licences, approvals or consents to bodies that they are nominated or appointed to. The amendment appears in the Councillors' Code of Conduct appended as Appendix 1.

b) Officer appointment to outside bodies.

This is a local choice function and has been reserved to full council with no right to delegate it. This means that officer and member appointments should be approved by full council. It is unlikely that this has consistently happened to date for officer appointments. It is proposed to amend 3.3 to reserve appointment of members to outside bodies to full council, but permit officers to be appointed in accordance with the scheme of delegation. The scheme proposed that this decision is reserved to the Chief Executive.

Council officers are currently undertaking work to ensure that officers and members are appointed to outside bodies based on a skills analysis of what is needed at board level in these organisations. Officers are also undertaking work to ensure that proper terms of appointment are provided, with details of the role and extent of insurance and indemnity and that officers and members are provided with an appropriate induction and training by the outside body. This work is outside the remit of the review of the constitution.

c) Secondment of officers to other bodies

The placing of officers at the disposal of other authorities is a local choice function that has been reserved to full council and is stated as not capable of delegation. This would prevent officers from seconding staff to other bodies on a temporary basis, including to facilitate a member level decision. It is unlikely that this was the intention of the restriction and with an increasing number of LA connected entities and shared service arrangements, this creates an unnecessary level of bureaucracy. Chief officers should be able to take operational decisions in relation to secondments to implement policy decisions of the Council. It is proposed to amend 3.3 to make this a permitted delegation in accordance with the scheme of delegation.

d) Attendance at mandatory member training

The Member Working Group were keen that the Constitution emphasised the importance of elected members participating in member training. A new member development programme has been launched this year to ensure that training and development is appropriate and high quality. Part 5.4 Local Code Governing Relations Between Elected Members and Council Employees sets out the roles and responsibilities of members and officers and how the relationship should be managed. At section 3.1 it sets out what members can expect from officers, including (i) Training and development in order to carry out their roles effectively. The Member Working Party were keen to see this amended to refer to "high quality" training and development. In addition, it is proposed to add in a new line in Section 3.2, which dealt with what officers can expect from members, stating "members attendance

and commitment to training and development offered by officers, including attendance at mandatory training events.”

The Member Working Party were keen to emphasise that members should actively participate in training events and that feedback should be sought to measure the impact of the overall member development programme. The Audit and Corporate Governance Committee has already requested an officer report on the member development programme, including attendance levels and feedback. This will enable changes to be made to the programme over time.

6 Comments of Other Committees

The Audit and Corporate Governance Committee received a report on the Councillors’ Code of Conduct on 4 March 2021, however the Committee determined that the informal Member Working Group should consider the issue. This group met on 5 May 2021 to consider all proposed amendments to the constitution and agreed that these should be referred to full council for a decision.

The Member Working Group is keen to produce a forward work programme focusing on other aspects of the constitution. Members were particularly keen to review the complaints procedure. It is also likely that as part of the work on governance, officers will be recommending further amendments to the constitution, including to financial procedure rules and contract procedure rules.

6. Conclusion

Approval of the constitution is a matter for Full Council, however senior officers and the Member Working Group have been consulted on these changes and are supportive of them and recommend that they are adopted by Full Council.

8. Appendices Attached

- ‘1’ - Councillors’ Code of Conduct
- ‘2’ - Article 12 – Officer Roles and Statutory Chief Officer functions
- ‘3’ - Part 3.6 – Scheme of Delegation to Officers
- ‘4’ - Appendix to Article 6 – Overview and Scrutiny

9. Background Papers

None.