

Birmingham City Council

Full Council

21 May 2024



Subject: Review of the Constitution
Report of: Marie Rosenthal, Interim City Solicitor and Monitoring Officer
Report author: Christian Scade, Head of Scrutiny and Committee Services
christian.scade@birmingham.gov.uk or 07517 550013

Does the report contain confidential or exempt information? Yes No

1 Executive Summary

- 1.1 Council constitutions provide a framework within which people can understand their own responsibilities, and the responsibilities of others. They allow decision-making, within a democratically elected body, to be consistent, accountable and transparent. They facilitate strong, effective relationships.
- 1.2 This report sets out proposed amendments to the Council's Constitution and asks Full Council, following consideration by Council Business Management Committee on 7 May 2024, to approve the changes.

2 Recommendations

- 2.1 To note the work of the Member Constitutional Working Group in reviewing the Constitution.
- 2.2 That approval be given to the proposed revisions to Parts A, B, C and E of the Constitution, as detailed in Appendices 1, 2 and 3 and summarised in paragraph 6 below.
- 2.3 To note that a comprehensive review of the Constitution will be conducted following Annual Council on 21 May 2024 as part of the Governance and Relationships Programme in the Improvement and Recovery Plan.
- 2.4 To note that the Standards Committee are consulting on a new Member/Officer Relations Protocol, as part of the response to the Independent Governance Review carried out by the Centre for Governance and Scrutiny during 2023. This will be the subject of a separate Report to Full Council in June 2024.

2.5 To note that the Interim City Solicitor, in consultation with the Leader of the Council, has been authorised (by Council Business Management Committee on 7 May 2024) to commence a recruitment process to appoint an independent person to chair the Audit Committee. The final appointment, by a cross party member Panel, is subject to Full Council approving the proposed amendment to section B14 paragraph 14.6 - The Chair of Audit Committee will be an Independent person.

3 Background

3.1 The Centre for Governance and Scrutiny (CfGS) undertook an independent review of governance at Birmingham City Council from July to November 2023. The purpose of the review was to assess key governance issues identified in various external reviews and judgements, the Council's response to them, and to recommend actions to further improve governance at the Council.

3.2 On the 12th of December 2023, Cabinet agreed to accept the findings of the CfGS report, and the 13 recommendations and actions contained within the Stabilisation Plan developed jointly by CfGS and Birmingham City Council.

3.3 Recommendation 4 of the Stabilisation Plan contains the following two activities:

- Activity 1: Undertake an immediate **legal compliance check** to identify sections of the constitution that require urgent amendment and updating.
- Activity 2: Include **review of the constitution as a workstream of the IRP**. This should be informed by the CfGS "blueprint for change" and there should be a focus on areas noted in the Stabilisation Plan.

3.4 On the 18 December, the Council Business Management Committee agreed to establish a cross party Member Working group to undertake this work with the following membership:

Constitution Working Group

5 Members (3 Lab, 1 Con, 1 Lib Dem)

Cllr John Cotton (Chair) Cllr Sharon Thompson, Cllr Rob Pocock (Lab)

Cllr Robert Alden (Con)

Cllr Roger Harmer (Lib Dem)

4 Statutory Compliance Review

4.1 In December 2000 a Constitution Direction was issued by the Secretary of State. This requires 80 matters to be included within council constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of residents 'rights.

4.2 Officers have carried out a Statutory Compliance Health Check of the Constitution against these requirements which have been discussed with the Constitution Working Group and resulted in the recommendations in this report.

4.3 This required analysis of the legislative framework, including:

- The Local Government Act 2000 (Constitution) (England) Direction 2000
- The Openness of Local Government Bodies Regulations 2014
- Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
- Local Audit and Accountability Act 2014
- Accounts and Audit Regulations 2015
- Local Authorities (Standing orders) (England) Regulations 2001 as amended 2015
- Public Service Pensions Act 2014

4.4 In addition to the above, Members will recall the report agreed by Council on 9 January 2024, which set the out required immediate changes to the Council’s Audit Committee arrangements, as well as the establishment of the Cabinet Committee – Property. Members will recall that the report advised that the Interim City Solicitor and Monitoring Officer had been set a number of key deliverables by Commissioners, including delivering a comprehensive review of the Council’s Constitution. The report provided details and a timetable showing the activities required to update the Constitution. For ease of reference, that information is summarised below:

Stage	Description	Report to Full Council
1	<p>Immediate Changes</p> <p>These changes covered the new terms of reference for the Audit Committee and the new Cabinet Committee – Property</p>	<p>Jan 2024</p> <p>Completed</p>

2	<p>Priority Changes</p> <p>These are covered in this report and is the current position. As advised, the first step was completion of a statutory requirements check list, this has been completed.</p> <p>This report highlights the key areas where changes are recommended.</p> <p>The Member Working Group met for the first time in January 2024.</p>	<p>May 2024</p> <p>As per this report.</p>
3	<p>Comprehensive Review</p> <p>The purpose of the review will be to make the Council's Constitution and governance arrangements fit for purpose, for a financially secure 21st Century European City Council, and ensure a training programme is in place for to enable both members and officers to understand and comply with its provisions, ahead of the next administration in May 2026.</p> <p>This will include consideration of the work, in relation to Full Council, which has been undertaken by Colin Copus, Emeritus Professor of Politics, De Montfort University; Visiting Professor Ghent University.</p>	<p>May 2026 <i>(notwithstanding any changes that need to be made in the interim)</i></p>

4.5 As highlighted above it has been proposed for some time that a more comprehensive review of the Constitution is undertaken following Annual Council and submitted to Annual Council in May 2026. This will pay particular attention to a number of key areas, including:

- The Procurement and Contract Governance Rules (Part D)
- The Scheme of Delegations (Part E)
- The review of the arrangements for Full Council, undertaken by Professor Colin Copus

4.6 Whilst the review is due to be concluded by May 2026, this will not preclude interim changes being submitted to Council for approval where required. May 2026 is the key target date and should be considered in that regard.

5 The Constitution

- 5.1 *“How we interpret and use the Constitution is central to how effective governance is. A council that takes its Constitution seriously, where there’s a sense of collective ownership of the rules it contains, and where people live and breathe its values, is likely to be one with better governance overall, and that’s why these documents are important.”* Ed Hammond, Centre for Governance and Scrutiny.
- 5.2 Section 37 of the Local Government Act 2000 (as amended by the Local Government Act 2011) requires the Council to prepare, keep up to date and publicise a Constitution, with an annual review. This sets out how the Council operates, how decisions are made and the procedures to be followed to ensure these are efficient, transparent and accountable. Some of these processes are required by law, and others are processes which the Council has chosen.
- 5.3 Birmingham’s Constitution was originally adopted over 20 years ago, as the Council moved from a committee system to an executive model of governance. This was based upon national guidance and a model developed, for use by all Councils, by the Department for Transport, Environment and the Regions and the Local Government Association.
- 5.4 Since 2001 there have been no further updates from Government. As a result, local authorities have updated their constitutions themselves, usually by adding to the document as new legislation has been enacted or in response to internal changes within the Council, such as the reorganisation of governance arrangements or restructures of the Council’s management.
- 5.5 Birmingham has been typical in this regard and over time the Constitution has been revised to reflect additional requirements and duties from a range of legislation and guidance. However, many local authorities have recently introduced new formats and structures to help enhance accessibility, understanding, transparency and integrity around decision making.
- 5.6 Responsibility to monitor and review the operation of Birmingham City Council’s Constitution is set out in Part A of the Constitution under the Review, Revision and Suspension of the Constitution. The Monitoring Officer is authorised to make minor consequential amendments, as necessary or required by legislation, from time to time. Members will note that this authorisation has been tightened up to reflect this authority rests with the Monitoring Officer, and is listed in Appendix 1.
- 5.3 The Constitution must contain:
- The Council’s standing orders/procedure rules.
 - The Members’ Code of Conduct
 - Such information as the Secretary of State may direct.

- Such other information (if any) as the Council considers appropriate

5.4 The Constitution currently comprises 255 pages and is organised into five parts, many divided into several sections. As advised, the proposed changes have been made to clarify existing arrangements and to reflect organisational changes. In accordance with recommendation 2.3 it is proposed that a more comprehensive review of the Constitution be conducted following Annual Council.

6. Proposed Changes

6.1 This report is seeking Council's approval to the recommended amendments to the Constitution marked as tracked changes in Appendix 1. Appendix 1 provides an index to the majority of the changes and Members are directed to more detailed content, as indicated in Appendix 1, and set out in the attached Annexes 1-4. Given the nature of the changes to the structure of the organisation, Appendices 2 and 3 are standalone given the number of changes. Given the number of changes this was felt to be the clearest and most transparent way to lay those changes. The information provided can be summarised as follows:

- **Appendix 1** covers the range of changes to the Constitution both in terms of clarification, amendment to tighten existing arrangements and to reflect organisational changes. These cover the following parts of the Constitution, further details are set out in paragraph 6.2 of this report -
Part A – Summary and Explanation
Part B – Roles, Functions and Procedures
Part C – Codes and Protocols
Part E – Scheme of Delegations
- **Annex 1** and **Annex 1(i)** details updates to the officer senior staff structure (B1) and changes to the Employment Committee (B18)
- **Annex 2** sets out revisions to the roles and procedures for Council Business Management Committee, given the establishment of the new Employment Committee (B5)
- **Annex 3** sets out the revisions to the Council's scrutiny arrangements (B11)
- **Annex 4** sets out new employment procedure rules for Employment Committee (C7)
- **Appendix 2** senior officer structure chart
- **Appendix 3** this has been updated to show the recent changes to the senior officer structure of the Council to delete the post of Strategic Director Council Management and create new posts of Director of Finance; Chief Operating Officer and Director Intervention and Delivery.

6.2 Further information on the changes to Parts A, B and C and E is summarised below.

6.3 Part A - Summary and Explanation

1. How the Council Operates - clarifies elections for all members are held every four years.
2. How the Council Operates - clarifies the Executive and Non-Executive function definitions.
3. Review, Revision and Suspension of the Constitution – makes clear the delegation to make minor changes to the Constitution rests with the Monitoring Officer and will be reported to Council.
4. Suspension of the Constitution - clarifies the role of the Lord Mayor's ruling.

6.4 Part B – Roles, Functions and Rules of Procedure

1. Paragraph B1, paragraph 1.7 – See Annex 1 (relates to the officer structure)
2. Section B2, paragraphs 2.1, 1(ii), 2.1, 2 and paragraph 2.3 – minor change to headings
3. Section B3, new paragraph 3.1 F xvi - clarifies the process for the consideration of urgent business for all committees
4. Section B4, paragraph 4.4 K iv – explains when the process for a casting vote by a Chair of a Committees can be applied and by whom
5. Section B4, paragraph R i – covers the suspension of the procedure rules and recommends excluding a few from ever being suspended
6. Section B5, paragraphs 5.1 and 5.3 – See Annex 2 (relates to the new Employment Committee)
7. Section B5, paragraph 5.1 viii, revised bullet point 2 – this updates the Constitution in accordance with the arrangements for managing pension at Birmingham City Council
8. Section B6, paragraphs 6.5 a, b, d and e – reflects the change from Clinical Commissioning Groups to Integrated Care Boards
9. Section B6, paragraph 6.5 iii, bullet points 2, 3, 4 and 6 – corrects job titles and makes minor grammatical changes
10. Section B6, paragraph 6.7 i – provides clarity to the scrutiny call-in procedure
11. Section B6, paragraph 6.9 ii – makes reference by signposting readers to scrutiny call-in procedure rules
12. Section B7, deletion of paragraph 6.9 iv – to reflect the current arrangements
13. Section B7, paragraph 6.10 i – aligns with legal requirements and current arrangements
14. Section B9 paragraphs 9.2 iii and iv – provides additional information about West Midlands Combined Authority
15. Section B9 paragraphs 9.2 new paragraph - references the West Midlands Police and Crime Panel

16. Section B11 paragraph 11.4 - updates the changes to the Council's scrutiny arrangements
17. Section B11 paragraph 11.5 i - updates the Overview and Scrutiny terms of reference
18. Section B11 paragraph 11.9 ii - provides clarity on the process for considering the call-in criteria
19. Section B11 paragraph 11.9 iii – reflects changes to the Council's scrutiny arrangements and updates the name of one of the Overview and Scrutiny Committee
20. Section B11 paragraph 11.9 new vi – makes reference to the relevant call-in provisions for clarity
21. Section B14 paragraph 14.6 - amends the constitution to reflect the fact Chair of Audit Committee will be an Independent person
22. Section B16, paragraph 16.1, i, d – reflects the legal position in the Code of Conduct for Councillors
23. Section B16, new paragraph 16.3 – reflects the changes to the Standards Committee arrangements
24. Section B16, new paragraph 16.4 – this brings to Part B into line with the provisions of Part E of the Constitution
25. Section B18 – New B18 existing B18 becomes B19 - See Annex 1 (relates to the new Employment Committee)

6.5 Part C – Codes and Protocols

1. The Standards Committee are consulting on a new Member/Officer Relations Protocol as part of the response to the Independent Governance Review carried out by the Centre for Governance and Scrutiny during 2023. This will be the subject of a separate Report to Council in June.
2. Section C7 – See Annex 5 (relates to the Employment Procedure Rules)
3. Section C10 – amendment for clarity and longevity to make clear the Members Allowances Scheme will be considered on an annual basis

6.6 PART E – Scheme of Delegations

1. Section E4, paragraph 4.2 – clarifies the position regarding the process for dealing with urgent key decisions
2. Section E4, paragraph 4.2 – clarifies the position regarding the process for dealing with urgent non-key decisions
3. Section E4, paragraph 4.3 – provides consistency with other parts of the Constitution regarding the role of the Chief Executive in making Executive decisions in matters where immediate implementation is required.

7. **Organisation Chart**

- 7.1 A structure chart will be included within the Constitution, as detailed in Appendix 2.

8. **Scheme of Delegations**

- 8.1 Officer designations in the scheme of delegation have been revised to reflect recent changes agreed by the Commissioners to delete the post of Strategic Director Council Management and create new posts of Director of Finance; Chief Operating Officer and Director Intervention and Delivery.

9. **Financial Implications**

- 9.1 There are no immediate financial implications arising from this report. However, there will be some savings during 2024/25 in special responsibility allowances and office clerking time resulting from reducing the number of Overview and Scrutiny Committee from 8 to 7. Work will be completed during the 2024/25 and 2025/26 financial years to review the scheme of delegation for financial decisions, which will build on the work completed within this report.

10. **Legal Implications**

- 10.1 A local authority is under a duty to prepare and keep up to date its constitution under section 9P Local Government Act 2000 as amended. The Constitution must contain:
- a) The Council's standing orders/ procedure rules.
 - b) The Members' Code of Conduct
 - c) Such information as the Secretary of State may direct.
 - d) Such other information (if any) as the authority considers appropriate.
- 10.2 In December 2000 a Constitution Direction was issued by the Secretary of State. This requires 80 matters to be included within council constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint

arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things. Whilst issued under Part II Local Government Act 2000, the Direction survives the re-enactment into Part 1A (section 9B et seq.) of the 2000 Act by the Localism Act 2011 (under section 17 Interpretation Act 1978).

10.3 Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

11. Environmental Implications and contribution to achieving a net zero carbon Birmingham by 2030

11.1 There are no environmental implications.

12. Equalities Impact Assessment

12.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

12.2 An up-to-date Constitution will help ensure decisions contribute to the advancement of equality and good relations and demonstrate that the Council is paying due regard in our decision making in the design of policies and in the delivery of services.

13. Reasons for recommendations

13.1 Full Council is asked to consider and agree the recommendations to ensure the Constitution is up to date and legally compliant.

Appendices:

These are listed in paragraph 6.1 above.

Background papers:

None