

Birmingham City Council

Council Business Management Committee

18 December 2023



Subject: Amendments to the Constitution
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Does the report contain confidential or exempt information? Yes No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential : N/A

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 A constitution should be a living document – one that reflects not only evolving practice and law, but also one that is periodically strengthened and refined (as a whole document) to ensure it stays both relevant and consistent.
- 1.3 This report sets out:
 - Revised terms of reference for Audit Committee so immediate amendments to the Council's Constitution (Part B14) can be considered by Full Council on 9 January 2024
 - Plans for delivering a comprehensive review of the Council's Constitution.

2 Recommendation

That Council Business Management Committee:

- 2.1 Notes the proposed amendments to the Terms of Reference for Audit Committee (Part B14 of the Constitution), set out in Appendix 1, and agree that these be presented to Full Council on 9 January 2024 for approval.
- 2.2 Notes the timeline for delivering a comprehensive review of the Council's Constitution, set out in Section 5.

- 2.3 Re-establishes a cross-party working group, consisting of 5 Members (3 Labour, 1 Conservative and 1 Liberal Democrat) to support the Monitoring Officers review of the constitution.
- 2.4 Agrees who should Chair the Constitution Working Group (highlighted at 2.3 above).

3 Background

“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

[\(Local Government Lawyer\)](#)

- 3.1 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. 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.
- 3.2 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.
- 3.3 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.
- 3.4 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.

4 Developments Since 2022

- 4.1 Last year a cross party working group was established, by Council Business Management Committee (CBMC), to review areas of the Constitution. This was set up to help ensure business was well managed and decisions taken effectively

and efficiently, in accordance with statutory requirements and the council's governance framework.

4.2 Unfortunately, for a variety of reasons, it has not yet been possible to conclude this review. In addition, over the last couple of months the context for this review has changed and evolved significantly, including:

- Ongoing activity to agree an approach to achieve pay equity, culminating in a decision at an Extraordinary Full Council meeting on 12 October 2023.
- The issuing of 2 notices under Section 114 of the Local Government Finance Act 1988 during September 2023, and a Section 5 report issued by the previous Monitoring Officer.
- Statutory Recommendations issued on 29 September 2023 by the Council's External Auditors, Grant Thornton under Schedule 7 of the Local Audit and Accountability Act 2014. These recommendations related to equal pay, oracle implementation, financial pressures, governance and management capacity, and statutory accounts 2020/21, 2021/22, 2022/23.
- Government intervention: On 19 September 2023, DLUHC indicated that the Secretary of State was considering exercising the powers of direction under sections 15(5) and (6) of the Local Government Act 1999 in relation to the Council and its compliance with the best value duty. This was followed on 5 October by the appointment of Commissioners.

5 Next Steps and Timeline for Review

5.1 The incoming Interim City Solicitor and Monitoring Officer has been set a number of key deliverables by Commissioners, including delivering a comprehensive review of the Council's Constitution.

5.2 Moving forward, work to review the Constitution will be prioritised and will take place, at pace, over a number of stages:

Stage	Description	Reporting to Full Council
1	Immediate Changes As set out in Section 6, this refers to new terms of reference for the Audit Committee.	Jan 2024
2	Priority Changes This will include, as a first step, completion of a statutory requirements check list. This useful tool will help identify any missing areas and/or areas requiring review and will also provide a quick reference point for finding statutory information across the Constitution.	May 2024

	Once completed, priority review areas will be identified, so that proposed changes can be considered by CBMC/Full Council ahead of the start of the 2024/25 Municipal Year. It's anticipated that the Member working group will meet for the first time in January 2024.	
3	Comprehensive Review To make the Council's Constitution fit for purpose, for a financially secure 21 st Century Council, and ensure a training programme is in place to enable both Members and Officers to understand and comply with its provision, ahead of the next administration in May 2026.	May 2026

- 5.3 It is anticipated that the cross-party working group will support the review by considering governance changes suggested by Members, Officers and Commissioners, by reviewing areas of the Constitution to ensure they are fit for purpose; and by putting forward proposed changes for consideration by Full Council.
- 5.4 To ensure recommendations can be made the working group will need to consider a range of documentary material, and other evidence, including:
- Information from the Council's Constitution, including findings from the completed statutory requirements checklist;
 - Comparative data (where available) from other Core Cities and CIPFA's Nearest Neighbours;
 - Good practice from other local authorities
 - Information from Knowles on Local Authority Meetings: Manual of Law and Practice.
- 5.5 The Working Group will also need to consider findings from the review of Full Council meetings which was carried out by Colin Copus, Emeritus Professor of Local Politics, De Montfort University; Visiting Professor Ghent University.
- 5.6 This research was conducted before the issues set out in section 4.2 occurred. However, the review was commissioned by Council Business Management Committee to:
- assess if full council meetings were operating in the most appropriate way given the executive political arrangements existing; and to
 - identify ways to improve and enhance:
 - o opportunities for genuine debate between and among members executive accountability;
 - o opportunities to engage with external partners and other agencies;

- how full council can instigate policy change and review and assess existing policy;
- the procedure for motions to council;

5.7 Following recent meetings with Group Leaders and a meeting between Colin Copus and the Lead Commissioner, a final report, setting out both findings and suggestions for change, is expected to be available before the end of the year.

6 New Terms of Reference for Audit Committee

6.1 The new terms of reference for Audit Committee, attached at Appendix 1, will help ensure its alignment with current best practice as set out by CIPFA in the “Audit Committees: Practical Guidance for Local Authorities and Police 2022 Edition” and in compliance with CIPFA’s “Position Statement: Audit Committees in Local Authorities and Police 2022.”

6.2 Audit Committee was asked to make comments, including any specific amendments, to the new terms of reference as part of the meeting held on 29 November.

6.3 As part of this Commissioners noted (under item 6 of the agenda - [CMIS > Audit Committee 29 Nov 2023](#)) that they were pleased to see that the Committee were being recommended to adopt the CIPFA guidance and model terms of reference. The Commissioners also highlighted that:

- Changes to the terms of reference was seen as an important step in the process of recovery;
- The Council’s Constitution should make it explicit that no Councillor should be able to serve on the Audit Committee until they have attended the necessary training course on how to be an effective member of the Committee.
- As part of the annual review of the effectiveness of the Committee the training and development needs of councillors in general and members of this committee should be considered.

6.4 In response to the above, it should be noted that the need for training is addressed as part of section 14.5 para 3 of the new terms of reference, This is because the CIPFA Position Statement 2022 identifies that Audit Committee Members need to be trained.

6.5 Comments, from the Audit Committee, were made with reference to the Head of Internal Audit verses the internal audit service.

6.6 It is recognised that the terms of reference reflects not only the CIPFA guidance for Audit Committees 2022 and the CIPFA position statement 2022, but also the CIPFA Role of the Head of Internal Audit 2019 and the Accounts and Audit Regulations (2015) requirement for the service to be conformant with the Public Sector Internal Audit Standards 2017, both of which articulate a distinct role of the Head of Internal Audit, similar to how the S151 Officer role is defined by CIPFA but still supported by a finance team. Additionally, the new terms of

reference for the Corporate Governance Group and the Schedule for the Audit Committee, both of which support the Audit Committee's request for enhanced Annual Governance Statement activity and therefore have not been directly added into the Audit Committee Terms of Reference.

- 6.7 However, other enhancements have been made, and included at Appendix 1, including; additional wording on Value for Money; counter fraud; ethics and culture; membership and the Independent Technical Adviser role.

7 Legal Implications

- 7.1 The Local Government Act 2000 requires the Council to have and maintain a constitution. Full Council is the decision making body with responsibility to adopt and amend the Constitution. The Monitoring Officer must be satisfied that the Council's Constitution continues to fulfil its stated purposes.

8 Financial Implications

- 8.1 The work of the Audit Committee is a vital part of the Council's governance framework. An effective terms of reference should ensure the resources of the Audit Committee are directed at the most important areas of focus for the Committee.
- 8.2 There are no other direct financial implications arising from this report.

9 Public Sector Equality Duty

- 9.1 There are no direct equality implications arising from this report.

10 Background Papers

- 10.1 [The-review-and-redrafting-of-constitutions-v.3.pdf \(cfigs.org.uk\)](#)

11 Appendices

- 11.1 Appendix 1 – New Terms of Reference for Audit Committee