

## Review of the Constitution

To: Constitution and Ethics Committee

Meeting Date: 27 September 2022

From: Democratic Services Manager

Outcome: To consider proposed revisions to the Council's Constitution.

Recommendation: The Committee is asked to:

Recommend the following changes to the Constitution, as set out in the report, to Full Council:

- (i) Amendments to the requirement to stand in the Council Procedure Rules;
- (ii) Amendments to petition and public question requirements;
- (iii) A delegation to declare casual vacancies;
- (iv) Removal of requirement for members to sign attendance sheets;
- (v) Grant authority for the delegation of functions to other local authorities to policy and service committees, where appropriate; and
- (vi) Amendments to delegations to appoint representatives to outside bodies;

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## 1. Background

- 1.1 The Local Government Act 2000 requires all local authorities to have a constitution that covers standing orders, delegation processes and a code of conduct for councillors. Changes to the Council's Constitution are considered by the Constitution and Ethics Committee before being recommended to Full Council for approval.
- 1.2 In order that the Constitution remains updated, it has undergone an annual review, which has resulted in the proposed changes set out in this report.

## 2. Standing to Speak at Council Meetings

- 2.1 Rule 19.1 of Chapter 4-1 (Council Procedure Rules) of the Constitution, sets out the requirements for standing to speak at Council meetings as follows:

### 19.1 Standing to Speak

When a member speaks at Full Council they must stand and address the meeting through the Chair. If more than one member stands, the Chair will ask one to speak and the others must sit. Other members must remain seated whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

- 2.2 The Equality Act 2010 and the Council's Single Equality Strategy 2018-2022 seek to prevent discrimination, harassment and victimisation at work based on nine protected characteristics, including disability.
- 2.3 Full Council has previously agreed to suspend Rule 19.1 of Chapter 4-1 (Council Procedure Rules) of the Constitution at Council meetings. This was in order to ensure members' voices could be picked up by the microphone system. To ensure that the Constitution aligns with the Equalities Act 2010 and the Single Equality Strategy, it is recommended by the Council's Equality, Diversity and Inclusion Business Partner to amend Rule 19.1 as follows (removals in strikethrough, additions in bold):

### 19.1 Standing to Speak

**A member may indicate their wish to speak and shall wait to be called by the Chair.** When a member **is called by the Chair** to speak at Full Council they must stand **if able** and address the meeting through the Chair. ~~If more than one member stands, the Chair will ask one to speak and the others must sit. Other members must remain seated whilst~~ **Whilst** a member is speaking ~~unless they,~~ **other members who** wish to make a point of order or a point of personal explanation, **must indicate their wish to the Chair who will then call them to speak.**

- 2.4 It should be noted that when a member remains seated, they will be presumed unable to stand and will not be challenged.

- 2.5 Chapter 4-1 (Council Procedure Rules) of the Constitution also sets out the protocol for the Chair to stand at Council meetings as follows:

## 19.2 Chair Standing

When the Chair stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

- 2.6 This raises similar concerns around disability inclusion. Therefore, it is proposed to amend the rule as follows (additions in bold, deletions in strikethrough):

## 19.2 ~~Chair Standing~~ Halting Debate

When the Chair ~~stands during~~ **indicates a wish to halt** a debate **with the gavel**, any member speaking at the time must stop ~~and sit down~~. The meeting must be silent.

## 3. Petitions and Public Questions

- 3.1 The Council's Single Equality Strategy 2018-2022 Objective B is to 'promote equality and inclusion through fair and accessible services'. In addition, under the public sector equality duty within the Equality Act 2010, those subject to the equality duty must, in the exercise of their functions, have due regard for encouraging participation from and minimising disadvantages suffered by individuals or groups with protected characteristics.
- 3.2 Section 9.3 of Chapter 4-1 (Council Procedure Rules) of the Constitution states that members of the public wishing to ask a question at a Council meeting should provide their address. Section 9.4 states that petitions submitted to the Council should state the postal address and email of the petition organiser. These requirements, as written, prevent individuals without either a fixed address or access to email from engaging in the democratic process, and could therefore disproportionately affect people and communities with certain protected characteristics.
- 3.3 The public question procedures of other local authorities do not generally require an individual to provide details of their address. It is proposed that the Council adopts this practice by removing the explicit requirement to provide their postal address.
- 3.4 The petition procedures of other local authorities also require the address of a petition organiser in order that they can verify identity. However, this requirement prevents an individual without a fixed address from being designated petition organiser, and inhibits communities without fixed addresses from submitting a petition.
- 3.5 Enabling petition organisers to provide any form of contact, rather than specifically requiring a postal address and email, would allow contact and consequent verification of their local identity to occur, while reducing the possibility of indirect discrimination. Therefore, it is proposed to remove this specific requirement from the petition scheme.
- 3.6 These changes would also be reflected in Chapter 4-4 (Procedure Rules for Committee and Sub-Committee Meetings) of the Constitution.

## 4. Casual Vacancy

- 4.1 The Local Government Act 1972, Section 85 (1) and 86 declares that local authorities must publicly declare any casual vacancies should a member fail to attend a meeting for six consecutive months, unless the failure was due to some reason approved by the local authority before the expiry of that period. In May 2022, the Association of Democratic Services Officers, Association of Electoral Administrators and the Lawyers in Local Government released a report recommending councils delegate this authority to the proper officer in order that the declaration could be made expediently.
- 4.2 It is therefore proposed to delegate this authority to the Service Director: Legal and Governance (Monitoring Officer), in consultation with the Chair of Council. This would be included in Chapter 3D (Scheme of Delegation) of the Constitution as set out below:

**Authority to declare vacancies in office and give public notice of a casual vacancy, in consultation with the Chair of the Council (or in their absence the Vice-Chair) and subject to noting at the next Full Council meeting.**

## 5. Recording Attendance

- 5.1 Rule 17 of Chapter 4.1 (Council Procedure Rules) in the Constitution, sets out the requirements for recording attendance at Council meetings as follows:

### 17. Record of Attendance

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

- 5.2 While additional precautions were in place for the Covid-19 pandemic, the requirement for members to sign their name was not enforced. Attendance is registered during the meeting by Democratic Services and recorded in the minutes. This record is confirmed by the meeting recording and electronic voting system, which automatically records councillors in attendance for each vote. It is therefore proposed to remove Rule 17.

## 6. Delegations to Other Authorities

- 6.1 Chapter 3A (Allocation of Responsibility for Functions - Full Council and Committees) and Article 10 (Joint Arrangements) in the Constitution state that decisions to delegate functions to another local authority are reserved to Full Council; whereas decisions as to whether functions are delegated from another local authority to the Council can be made by the relevant committee.
- 6.2 On 19 July 2022, Full Council delegated functions with regard to Section 53 of the Wildlife & Countryside Act 1981 to Norfolk County Council. Delegations of this nature are sought

when there is a statutory process or decision that affects cross-boundary investigations. Such delegations are generally uncontroversial. Requiring Full Council approval can delay decision-making.

6.3 In order to expedite the decision-making process, it is proposed the Council grants authority to policy and service committees for the delegation of functions to other local authorities, where considered appropriate by the Monitoring Officer, in consultation with the Chair of the Constitution and Ethics Committee.

6.4 The following changes are proposed for Article 10 (Joint Arrangements) (additions in bold):

#### 10.04 Delegation to and from other Local Authorities

1. The Council may delegate functions to another local authority. **The decision to delegate to another authority shall be reserved to the relevant policy and service committee of Council unless it is of such significance it should remain a decision of the Council. This will be determined by the Service Director: Legal and Governance, in consultation with the Chair of the Constitution and Ethics Committee.**
2. Other local authorities may delegate functions to the Council and the decision whether or not to accept such a delegation from another local authority shall be reserved to the relevant **policy and service** committee of Council.

6.5 The following change is proposed for Chapter 3A (Allocation of Responsibility for Functions - Full Council and Committees) (addition in bold):

#### 2. Council Functions

Only the Council will exercise the following functions:

- s) Delegating **significant** functions to other local authorities as described in Article 10 of this Constitution.

### 7. Appointments to Outside Bodies

7.1 Section 9.04 of Article 9 (Advisory Process) of the Constitution states that appointments to outside bodies are the responsibility of Full Council, but this responsibility may be delegated to the policy and service committees.

7.2 The policy and service committees have previously delegated the authority to approve nominations to their lead officers. This ensures that appointments can be made in between committee meetings if required. When appointments are made by an officer, the chair of the relevant committee is consulted and the appointments are subsequently reported to the committee at its next meeting.

7.3 These officer delegations are currently not recorded in the Constitution. It is therefore proposed to include the following delegation to all executive directors and directors, including the Executive Director of Finance and Resources /Section 151 Officer in Chapter

### 3D (Scheme of Delegation):

To approve nominations to outside bodies, in consultation with the chair of the relevant committee (or in their absence the vice chair).

- 7.4 Full Council retains responsibility for appointing to a number of outside bodies, including the Cambridgeshire and Peterborough Combined Authority, the Greater Cambridge Partnership, Cambridgeshire and Peterborough Fire Authority, the County Councils Network Council, and the Local Government Association. There is currently no equivalent delegation for an officer to approve a nomination to these bodies between Council meetings. It is therefore proposed to include the following delegation to the Chief Executive in Chapter 3D (Scheme of Delegation):

To approve nominations to outside bodies, in consultation with Group Leaders, except where appointment to those bodies has been delegated to committees.

## 8. Code of Conduct

- 8.1 At its meeting on 26 September 2021, the Committee reviewed the Council's Code of Conduct against the Local Government Association Model Code. It agreed to retain the Council's current Members' Code of Conduct for the time being and keep it under review pending a response from the Government to the recommendations from the Committee on Standards in Public Life.
- 8.2 On 26 April 2022, the Committee considered the government response to the Committee on Standards in Public Life Report on Local Government Ethical Standards, which included the new model code of conduct in its response to the twenty-four recommendations.
- 8.3 The Committee agreed, following a suggestion by the Monitoring Officer, to review the Code of Conduct on an annual basis, and it was also agreed that the Council's Code of Conduct would be reviewed against the Model Code of Conduct in September 2022.
- 8.4 The report setting out how the new model Code differs from the Council's existing Code is available at the following link: [Constitution and Ethics Committee - 29 September 2022](#). The LGA Model Code of Conduct and the Council's current Members' Code of Conduct are also available at this link.
- 8.5 The key differences are as follows:
- (a) The new LGA Code of Conduct has comments/guidance built into every section, as well as separate guidance on how to interpret it.
  - (b) The new LGA Code of Conduct makes clear in the introduction that it applies to social media communications in specific circumstances, and includes a rebuttable presumption that a Member is acting in their official capacity for all public interactions, including on social media.

- (c) The new LGA Code of Conduct adds in "harassment" as well as bullying. This is a best practice recommendation from the Committee on Standards in Public Life, which also recommends that examples of such behaviour are given.
- (d) The new LGA Code of Conduct adds back in (previously contained in the pre-2012 national code of conduct) "bringing your role or local authority into disrepute". This is not included in the Council's current Members' Code of Conduct.
- (e) The new LGA Code of Conduct adds in a requirement to undertake Code of Conduct training, and to comply with any sanctions imposed on a Councillor following a finding that there has been a breach of the Code of Conduct.
- (f) The new LGA Code of Conduct sets gifts and hospitality declarations at £50 and over. The Council's current Members' Code of Conduct is set a higher level of £100.
- (g) The new LGA Code of Conduct has a section on "Other Registrable Interests". The Council's current Members' Code of Conduct calls these "non-statutory disclosable interests", which is very similar.
- (h) The standards in the new LGA Code of Conduct are set out in the first person (e.g. "I ..."), so a Member reads the Code of Conduct as a personal commitment to behave in accordance with the standards.

## 9. Social Media Protocol

- 9.1 At its meeting on 1 October 2019, the Committee was asked to consider and agree amendments to the Social Media Code for Councillors, which had been agreed at its previous meeting on 27 June 2019.
- 9.2 The Committee was informed that the LGA was in the process of developing national guidance for social media. It was then agreed to: withdraw the Council's Social Media Code; consult with a member representative from each district council, along with their Monitoring Officers, to develop a countywide approach to social media guidance; and present a new County Council social media guidance at a future committee meeting.
- 9.3 On 14th January 2020, the Committee received a report on the work the LGA was undertaking regarding civility in public life and its model code of conduct. At that meeting, the Monitoring Officer informed members that, as requested, they had consulted monitoring officers across the County regarding the development of a County-wide approach to social media guidance. Due to the ongoing review of the national model code of conduct, it had been decided to await guidance from the publication of the new model code of conduct at the LGA annual conference in July 2020 before establishing a local approach.
- 9.4 At the 30 June 2020 meeting, the Committee agreed that a report on the Review of Social Media Guidance, would be deferred to a later date following the completion of the LGA's review of the model code of conduct.
- 9.5 The Government's view, set out in its response to the Committee on Standards in Public Life Report on Local Government Ethical Standards, is that it is for individual local

authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media.

## 10. Source documents

10.1 [The Council's Constitution](#)

10.2 [Constitution and Ethics Committee Minutes, 26 April 2022](#)

10.3 [Council Restructure Report, Council Meeting, 19 July 2022](#)

10.4 [Council Meeting Minutes, 19 July 2022](#)

10.5 Part 3.4, [AEA LLG ADSO, Casual Vacancy Failure to Attend Meetings Report, 10 May 2022](#)