

# Appendix A

## Report of the Constitution Review Task and Finish Group

### 1. Recommendations

The Constitution Review Task and Finish Group recommend that the Civic Affairs Committee:

1. Approves the revised draft Constitution of South Cambridgeshire District Council; the Ethical Handbook; the Public Speaking Scheme and Petitions Scheme, circulated separately, and recommends them to full Council for adoption.
2. Asks the Audit and Corporate Governance Committee to:
  - (a) review the Financial Regulations; and
  - (b) review the Anti-Theft, Anti-Fraud and Anti-Corruption Policy; and
  - (c) consider how the Anti-Theft, Anti-Fraud and Anti-Corruption Policy and the Whistleblowing Policy should be published and promoted throughout the Authority.
3. Asks the Chief Finance Officer to undertake a review of the financial “Levels” referred to throughout the Constitution, including in the Contract Regulations.

### 2. Introduction

2.1 The Civic Affairs Committee, at its meeting held on 26 June 2018, established a task and finish group to undertake a comprehensive review of the Council’s Constitution, to include its codes and protocols, and to submit recommendations back to the Committee for onward recommendation to Council.

2.2 The task and finish group comprises Councillor Dr. Claire Daunton (Chair), Councillor Mark Howell and Councillor Dr. Aidan Van de Weyer.

2.3 The terms of reference of the group are set out below:

To review the Constitution for South Cambridgeshire District Council for recommendation to the Civic Affairs and full Council, having regard to:-

- (a) Statutory requirements;
- (b) The effectiveness and any particular strengths of the existing Constitution;
- (c) Innovations or best practice which can be identified from benchmarking with Constitutions of similar size authorities; and
- (d) The following key principles:-

- i. Simple to understand and operate, using plain English, wherever possible;
- ii. Streamlining the document and stripping out any extraneous sections which do not need to be included within the formal Constitution document;
- iii. Open and transparent, with clarity as to who is responsible for decisions; and
- iv. Decisions are taken quickly and responsively with appropriate use of delegation opportunities, bureaucracy is minimised and unnecessary duplication is removed to enable business to be dealt with efficiently.

2.4 The task and finish group met on fourteen occasions. At its first meeting it agreed that the Council's Constitution should continue to be based on the Government's modular constitution for English local authorities. All Members of the Council were invited to submit comments for consideration by the task and finish group. Comments were received from four Members and these were considered at the second meeting of the group. Additionally, comments were sought from officers and these were taken into account in the course of the review.

2.5 Members of the task and finish group agreed a work programme for the review which involved considering separate sections of the Constitution at each of its meetings. Where appropriate, examples of best practice in other authorities were presented to the task and finish group for comparison purposes (eg: definitions of key decisions and examples of the policies contained in the budget and policy framework). Each section was considered in detail and officers requested to investigate further or report back with revisions where required.

2.6 The task and finish group was assisted in its task by a number of Members who were invited to attend its meetings when a section of the Constitution relevant to their areas of responsibility was under discussion, including the Leader of the Council; Chairman of the Council; Lead Cabinet Member for Customer Services and Business Improvement; Chairman and Vice-Chairman of Scrutiny and Overview Committee; Chairman of Audit and Corporate Governance Committee, Chairman of Employment and Staffing Committee and Chairman of Planning Committee. A member of the public also provided feedback on the Code of Conduct Complaints Procedure.

### **3. Revised Constitution**

3.1. The revised Constitution is appended for the consideration of the Civic Affairs Committee.

3.2. The Constitution Review Task and Finish Group particularly draws the Committee's attention to the following key points:-

#### **(a) Glossary**

A new glossary of common terms used in the Constitution has been added at the beginning of the document.

## **(b) Budget and Policy Framework (Article 4)**

The task and finish group has not proposed any significant amendment to the plans and strategies specified in the Council's policy framework (ie: those policies requiring full Council approval), although the revised Constitution does provide for removal of the Member Development Strategy (which now forms part of the Council's overall organisational development strategy) from the list of policies in the policy framework.

## **(c) Key Decisions (Article 13.03)**

Having considered best practice in other authorities, the task and finish group concluded that it would be appropriate to include a financial threshold in order better to define those decisions which should constitute "key decisions". The task and finish group concluded that a decision to incur expenditure or savings in excess of £200,000 or to acquire or dispose of land or property with a value in excess of £1,000,000 should constitute a key decision. However revised Article 13.3 also provides that a decision to invite a tender or award a contract shall not be treated as a key decision where the purpose of the contract is to fulfil the intention of any policy or scheme included in the policy framework or budget or involves a continuation of any existing policy or service standard. (Members are reminded that there is also a second category of key decision (a decision which is likely to be significant in terms of its effects on communities living or working in an area of the District comprising two or more Wards)).

## **(d) Responsibility for Functions (Part 3)**

- (i) **Local Choice Functions:** A new table (Table 1) has been included in Part 3 setting out which part of the Authority (Council or Cabinet) is responsible for Local Choice functions. This is not explicit in the current Constitution. The modular constitution includes such a table.
- (ii) **Audit and Corporate Governance Committee:** The Audit and Corporate Governance Committee has reviewed its terms of reference and the updated version is now included in Table 3 (Part 3).
- (iii) **Employment and Staffing Committee:** The terms of reference for the Employment and Staffing Committee have been reviewed to provide greater clarity about where responsibility for appointment and dismissal of chief officers lies. Account has been taken of Model Disciplinary Procedure and Guidance produced by the Joint Negotiating Committee for Chief Executives and the mandatory requirements relating to the appointment and dismissal of the Council's statutory officers (Head of Paid Service, Monitoring Officer and Chief Finance Officer). The opportunity has also been taken to clarify the position with appointment of interims at director level and above.
- (iv) **Licensing Committee:** A new table of delegations had been added to the Licensing Committee 2003 terms of reference in respect of the Gambling Act 2005 functions. The new table reflects the statutory guidance.

- (v) **Scheme of Delegation to Officers:** The Scheme of Delegation to Officers has been updated. The current scheme is set out in Part 4 of the Constitution (Rules of Procedure). However, the task and finish group has agreed that it is more logical for the Scheme of Delegation to Officers to be included in Part 3 (Responsibility for Functions) (Table 7). This proposal is consistent with both best practice and the modular constitution. A new delegation is proposed for the Chief Executive to act in a case of urgency (presently there is only a delegation to act in the case of an emergency).

## (e) Council Procedure Rules

The main changes to the Council Procedure Rules include:

- (i) **Public Speaking and Petitions:** it is proposed that the detailed rules are not now included in the Constitution itself but should be published on the Council's website. The task and finish group has reviewed both the public speaking and petitions schemes:
- i. the public speaking scheme now provides for notice of a request to speak to be given at least **three** clear days before a meeting, rather than **seven** at present. The current arrangements mean that notice must be given before the agenda is published, which means that the public are not aware of the business on an agenda. The revised scheme also states that any person who lives, works, studies or owns or occupies property in the District may, at the discretion of the Chair, speak at meetings. Following further review since the last Civic Affairs Committee meeting, the scheme now also gives the Chair discretion to allow other people to speak where satisfied that they have a legitimate interest in the Council's business.
  - ii. the petitions scheme also now provides that petitions may be submitted by anyone who lives, works, studies or owns or occupies property in the District. The current public speaking and petitions rules do not currently specify the need for a local connection, but the task and finish group were of the view that the new schemes should include such a provision. However, as with the public speaking scheme, the Chair would have discretion exceptionally to vary this provision where satisfied, having regard to the content of the petition, that other signatories have a legitimate interest in the business of the Council. The task and finish group recognise that third party petitions sites are often now used to generate petitions and have taken the opportunity to include within the petitions scheme specific provision relating to such petitions.
  - iii. The revised public speaking and petitions schemes have been circulated separately.

**(ii) Notices of Motion:**

- i. The task and finish group was mindful of the challenges faced in managing consideration of a large number of motions at any one Council meeting. For example, at the July Council meeting 10 motions were received and, given that the Constitution provides up to 30 minutes for each motion to be debated, this could have required up to 5 hours, had all motions been dealt with at the meeting. The task and finish group concluded that up to **5** motions should be permitted per meeting, to be accepted in the order of receipt (subject to validity). Members felt however that there might be merit in keeping this new provision under review to assess how it works in practice.
- ii. The task and finish group also noted that the current timescale for submission of motions (7 working days before the day of the meeting) leaves little time for the Chairman of the Council and officers to liaise with proposers of motions before the Council agenda is published. The task and finish group is therefore proposing that the notice period should be increased to **10** working days before the date of the meeting.
- iii. The task and finish group noted that the Council is not permitted to approve a motion which seeks to discharge a function which is the responsibility of the Cabinet and that any such motions need to be referred to Cabinet for determination. Members debated the merits of automatically referring such motions to Cabinet without allowing any discussion at Council but concluded that Standing Orders should be framed so as to enable discussion normally to take place at Council meetings and that the outcomes of the debate should inform Cabinet's future consideration, but not bind Cabinet's decision.

**(iii) Amendments to Motions:** Standing Order 15.6(i) has been amended to make clear that any substantial budget amendment needs to be discussed at the relevant Scrutiny and Overview or Cabinet meeting at which the budget report is considered, in order to be accepted for debate at the Council's budget meeting.

**(iv) Voting:** Standing Order 17 (Voting) has been amended to reflect that recorded voting will take place at Planning Committee meetings, as well as Council. The task and finish group considered the motion submitted by Councillor Mark Howell to Council on 18 July 2019 proposing that voting should be recorded at all committee meetings. Following review of the implications of such a proposal, the task and finish group was not minded to recommend the recording of votes at all committees but, recognising the difficulty that smaller political groups may experience in calling for a recorded vote under the current rules, the task and finish group agreed that Standing Orders should provide for a recorded vote to take place at committees (other than Licensing Sub Committees) where 1 member of the committee calls for it.

## **(f) Access to Information Procedure Rules**

These rules have been updated to reflect the revised position concerning decision making by individual members of the Cabinet and changes in legislation around such decision making.

## **(g) Cabinet Procedure Rules**

These rules include provision for an individual lead cabinet member to make a decision in a public meeting where he or she considers it expedient to do so.

## **(h) Financial Regulations**

It has not been possible to update the Financial Regulations as part of the task and finish group's review. Accordingly, the regulations have just been updated to replace references to portfolio holders with references to lead cabinet members. The task and finish group recommends that Civic Affairs Committee asks the Audit and Corporate Governance Committee to undertake a review of the Financial Regulations to ensure that they are up to date and reflect current practice.

## **(i) Contract Regulations**

The Procurement Officer has undertaken a comprehensive review of the Contract Regulations to reflect current legislation and practice. However, no changes to the levels specified in the regulations have been made and it is recommended that a future review of the levels should be undertaken to enable the Council to ensure that officers make the appropriate decisions when authorising and procuring on behalf of the Authority. The future review should ensure that the Council maintains its commitment to Small and Medium Size Enterprises (SMEs); good expenditure and budgetary control, whilst delegating effectively and reducing unnecessary bureaucracy.

The regulations have also been reviewed and new provisions added to reflect the Council's environmental aspirations and its commitment to create a cleaner, greener and zero-carbon future for South Cambridgeshire and to set out its expectations of suppliers.

## **(j) Officer Employment Procedure Rules**

These rules have been updated to reflect best practice and guidance and to align with the provisions of the Employment and Staffing Committee terms of reference as referred to in (d) (iii) above.

**(k) Legal Proceedings Rules and Procedure for the Annual Establishment of, and Appointments to Council and Outside Bodies.**

In line with its objective to streamline the Constitution and remove extraneous sections, the task and finish group concluded that the above sections should be deleted, noting that these sections do not form part of the modular constitution nor any other constitution reviewed.

**(l) Codes and Protocols**

(i) The task and finish group agreed that Part 5 of the Constitution be streamlined so that it comprises only the following codes and protocols:-

- (a) Code of Conduct for Members;
- (b) Code of Conduct for Officers; and
- (c) Protocol on Member/Officer Relations

(ii) It further concluded that the codes and protocols below should form part of a new **Ethical Handbook** which is separate from the Constitution:-

- (a) Gifts, Hospitality and Sponsorship Policy for Members;
- (b) Gifts, Hospitality and Sponsorship Policy for Officers;
- (c) Procedural Guidance for Members and Officers in Planning and Licensing;
- (d) Code of Conduct Complaints Procedure;
- (e) Civic Affairs Committee – Procedure and Sanctions for Local Hearings; and
- (f) Licensing Act 2003 Committee – Appeals Hearing Procedure

(iii) The task and finish group felt that the following codes and protocols should be deleted from the Constitution:

- (a) Principles of Proportionality;
- (b) Chairman's Casting Vote (already covered in procedure rules);
- (c) Majority;
- (d) Reference to "Chairman" (to be added to glossary);
- (e) The Seven Principles of Public Life (already covered in the Code of Conduct);
- (f) Anti-Theft, Fraud and Corruption Policy (see (vi) below);
- (g) Member Role Descriptions (to be included in Members' induction manual);
- (h) Procedural Guidance – Public Addressing Scrutiny and Overview Committee (superseded by new public speaking scheme)
- (i) Procedural Guidance – Petitions (superseded by new petitions scheme).

(iv) The task and finish group considered the current provisions in the Protocol on Member/Officer Relations insofar as they relate to Members' enquiries. Following comments at Civic Affairs Committee on 3 December 2019 the task and finish group also consulted further with the Chief Executive who had not been in post when the protocol had originally been reviewed. On the basis of the advice of the Chief Executive, paragraph 7.3 of the protocol has now been revised to provide that

officers shall aim to respond to Members within 48 hours of receiving an enquiry.

- (v) Feedback was received from a member of the public in relation to the Code of Conducts Complaints Procedure which informed the updating of that procedure.
- (vi) The task and finish group did not review the Anti-Theft, Fraud and Corruption Policy and recommends that the Civic Affairs Committee asks the Audit and Corporate Governance Committee to review this policy.

### **(m) References to Chairman**

The task and finish group was reminded of the equality duty requiring the Council to tackle stereotypes and to consider whether the use of certain language reinforced inappropriate “norms”. In that context, the task and finish group considered whether the Constitution should continue to refer to “Chairman” or whether “Chair” provided a more inclusive and appropriate term, taking account of the Council’s equality duties. The task and finish group acknowledged the sensitivities and individual preferences likely to be associated with the terminology to be used in the Constitution but, on balance, concluded that the term “Chair” should be adopted for use in the revised Constitution. However, the task and finish group felt that an individual should be allowed to use a different form of address for any meeting at which he or she presided, where he or she so wished. The revised Constitution has been drafted on that basis and the Glossary refers to the opportunity for an individual to request to use a different form of address at a meeting at which he or she presides.

The task and finish group has also asked that the terms “he” and “she” or “him” and “her” should be replaced by the more gender neutral “they” and “them” as appropriate.

### **(n) Delegations to Officers in consultation with non-executive Chairmen**

The opportunity has been taken to clarify that, where appropriate, decisions are delegated to officers, in consultation with the relevant non-executive chairman, rather than by the non-executive chairman in order to reflect the statutory position. Decisions may however be delegated to individual executive members.

### **(o) Senior Management Review**

The Constitution has been updated to reflect the new organisational structure (with the exception of the Financial Regulations which, as indicated in paragraph (h) above, have yet to be reviewed).