

Council

17 October 2023



Reading
Borough Council
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Title	Review of the Constitution
Purpose of the report	To make a decision
Report status	Public report
Report author	Michael Graham, Monitoring Officer
Lead Councillor	Cllr Jason Brock, Leader of the Council
Corporate priority	Our Foundations
Recommendations	<ol style="list-style-type: none">1. That the progress to simplify decision making since October 2022 be noted.2. That progress towards revised Financial Regulations be noted.3. That, in respect of the Contract Procedure Rules (as set out in Appendix 1):<ol style="list-style-type: none">(a) the revised CPRs be adopted;(b) the further development and implementation of a Procurement Manual for staff, containing the procedural and practical details and guidance to support the processes outlined within the updated CPRs be supported;(c) the Assistant Director of Procurement and Contracts, in consultation with the Chief Executive and Executive Director of Resources, be authorised to make appropriate amendments to ensure that the proposed Contract Procedure Rules aligned with terminology included within the new Procurement Bill when it was introduced in autumn 2024.4. That Article 12 of the Constitution be revised in accordance with the recommendations of this report (as set out in Appendix 2).5. That references to the School Admission Forum and the Cultural Partnership Board be removed from Article 10 (Consultative Committees and Forums).6. That the revised wording for Sealing of Documents be adopted as set out in paragraph 3.39.7. That the existing power of the Monitoring Officer to make changes to Committees etc during the municipal year be added, to Part 3 (Officer Delegations) of the Constitution.

1. Executive Summary

- 1.1. The Council last reviewed its Constitution in October 2022. This revision contained a new way of working, simplifying the Key Decision criteria and directing other decision making not captured by the Key Decision criteria to be within the remit of officers.
- 1.2. When this review was considered, it was envisaged that a review would take place after 12 months to assess whether the objectives of the Review had been successful and to consider further revisions if necessary.

- 1.3. It was also noted that the Financial Regulations and the Contract Procedure Rules would require further revision. The Financial Regulations because, they had not been reviewed for some time and it was not possible to review them for October 2022. The Contract Procedure Rules would also need further refinement because of the introduction of new procurement legislation, and also because there was expected to be further roll-out of the hub and spoke model of procurement which may impact the Contract Procedure Rules.

2. Policy Context

- 2.1. The Council wishes to ensure that its Constitution is kept up to date and reflects best practice as regards decision making, transparency and the involvement of citizens in decision making.

3. The Proposal

- 3.1. There are a number of areas of the Constitution which need to be considered at this point.

Outcomes of the last review

- 3.2. The Constitution Review culminated in a new streamlined Constitution being adopted by Council on 18 October 2022 (Minute 21 refers).
- 3.3. The purpose of this review is to evaluate the new Constitution and make adjustments where necessary, as well as address some of the outstanding work from last year.
- 3.4. Prior to the 2022 review, the Constitution of the Council had not been substantively reviewed for some years. In addition to the Constitution, the Council maintained an extensive “Delegations Register” with detailed delegations to officers often based on specific statutory powers. It was a difficult document to update and maintain the accuracy of the Delegations Register which ran to some 220+ pages. It was also difficult for officers to know what powers were delegated to them.
- 3.5. As part of the 2022 review the scope of officer delegation was significantly broadened and a new definition of a ‘Key Decision’ was agreed. Basically, the new Key Decision definition described those decisions that members wished to reserve to themselves in Committee and by default officers were allowed to determine other matters.
- 3.6. In addition, and around the same time, LGA Peer Review noted and endorsed the Council’s intention to review the Constitution as part of a simplification and streamlining of governance arrangements. The Peer Review did not recommend any fundamental change to the governance of the Council and also highlighted the positive engagement between the leadership of the Administration and senior officers.
- 3.7. In making decisions which are not Key Decisions, officers do not have to use their delegated powers. They can ask the Committee that delegated the power to them to make the decision. Therefore, when exercising a delegation, officers must take into account its sensitivity and political importance when determining the appropriate decision-making arrangements. The provisions therefore allow for sensitive matters to be determined by Committee even if they fall outside of the strict definition of Key Decision.
- 3.8. Following the introduction of the new Constitution and scheme of delegations, officers were invited to training sessions run by the Legal Services Manager and Democratic Services Manager on the implications and application of the new system.
- 3.9. The training provided an opportunity for officers to ask questions about the main features of the new decision-making arrangements.
- 3.10. A procedure was also introduced to prompt officers to consult with Lead Councillors on forthcoming officer decisions so that Lead Councillors would have the opportunity to advise on those matters which ought to be directed to Committee even if they are outside the Key Decision criteria.

- 3.11. Following the introduction of these features, a revised Officer Decision Notice (ODN) procedure was implemented for recording delegated decisions. The ODNs are published online – see the Library section of the Committees area on the Council's website.
- 3.12. ODNs are used to (i) record those delegations exercised based on a specific authorisation of a Committee or (ii) which materially affect the financial position of the Council. (The level of materiality is £100,000 which means that Officer decisions above £100k but below the £500k per annum Key Decision criteria will be published online as Officer decisions and decisions over £500k per annum will be published online if an express authorisation was provided to an officer to implement them.)
- 3.13. To embed the new procedures and provide an ongoing resource for officers to find all the information they need, a dedicated area has been set up on SharePoint. Training for officers on how to work the new procedures has also been provided and is on-going.
- 3.14. Further training and development of assistance for officers will continue for the foreseeable future. In addition, the next phase of the Constitutional Review will seek to cascade the decision-making system into the work of departments to ensure that where Assistant Directors have delegated their powers to other officers, appropriate documentation exists to record this, and that those officers are trained in the ODN procedures if they are required to publish their decisions online.
- 3.15. At this stage the changes made in 2022 look to be working satisfactorily, and there have been no issues during the last year where decisions appear to have been made incorrectly or without the appropriate level of member or senior officer scrutiny. It is not proposed to make any changes to the Key Decision Criteria or alter the nature of the scheme of delegation to officers. The Key Decision criteria will be kept under review by the Monitoring Officer. Continued training and support for officers will continue to be provided to embed the systems which have been put in place as a consequence of last year's review.

Financial Regulations

- 3.16. There has been progress on the revision of the Financial Regulations, but they are not currently ready for this committee cycle. The Finance team have prioritised the catch-up with outstanding audits and the implementation of the new financial system. It is anticipated that the Financial Regulations will be presented to a forthcoming Policy Committee and then to Council in January 2024.

Contract Procedure Rules

- 3.17. A revision of the Contract Procedure Rules (CPRs) prepared by the Assistant Director of Procurement has been considered at Audit and Governance Committee on 27 September 2023 (Minute 18 refers). A link to the full report to Audit & Governance Committee can be found [here](#).
- 3.18. The Audit and Governance Committee endorsed the revised CPRs and resolved to recommend their adoption by Council. The revisions to the CPRs aim to ensure the Council modernised the way it procures goods, services, and works, and that correct due diligence is in place to ensure that value for money is achieved. A copy of the proposed CPRs is attached to the report at Appendix 1.
- 3.19. The CPRs are mandatory for all service areas and procurement staff and form a fundamental part of the Council's Constitution. The main adjustments are highlighted in the Audit & Governance Committee report and aim to:
 - simplify and improve consistency of terminology;
 - set out the legislative and Public Policy obligations;
 - prepare for the implementation of the Procurement Bill;
 - define officers' practical obligations in establishing a contract, the procedural steps for undertaking a procurement and the required content of contracts;

- explain that a written contract is required for all goods, materials, equipment, and vehicles or for the execution of works or services; and
 - clearly define the exceptions to the requirements for competition.
- 3.20. A web-based supplementary Procurement Manual for staff containing procedural and practical help with the processes will be produced to support use of the CPRs and would be further embedded by an Awareness Programme. The Manual will sit outside of the Constitution and would therefore be easier to amend in response to changes in procurement practice.
- 3.21. The report is also seeking a delegation to allow the Assistant Director of Procurement and Contracts in consultation with the Chief Executive and Executive Director of Resources to make appropriate amendments to ensure that the CPRs align with the terminology included within the new Procurement Bill when it is introduced in autumn 2024.

Audit and Governance Committee Terms of Reference

- 3.22. On 10 July 2023, Policy Committee considered a report from the Chief Internal Auditor on proposed revised Terms of Reference for the Audit and Governance Committee (Minute 14 refers). These recommendations arose from CIPFA (The Chartered Institute of Public Finance and Accountancy) practical guidance for Local Authorities on Audit Committees, which included resources for Audit Committee members, a supplement for those responsible for guiding the committee, and a self-assessment of good practice. The guidance was issued partly in response to the Redmond Review.
- 3.23. The proposed Terms of Reference would remove the decision-making powers of the Committee in relation to the approval of the annual financial statements, which would therefore revert to Council.
- 3.24. There is also a recommendation to Council that the Audit & Governance Committee report annually in a public report on how it has complied with the CIPFA position statement, and discharged its responsibilities, including an assessment of its performance.
- 3.25. The Audit & Governance Committee also received the report on 27 September 2023 (Minute 17 refers) and concurred with Policy Committee to recommend the changes outlined above to Council for adoption. A full report on the proposals can be found elsewhere on this agenda.

Revised Article 12 of the Constitution

- 3.26. Article 12 was last revised in 2021 to take into account the restructure which created the Deputy Chief Executive post and designated that role as Deputy Head of Paid Service.
- 3.27. The expectation at the time of making those amendments was that Personnel Committee would continue to exercise all appointments for Chief Officer posts, with the appointment of the Chief Executive being reserved to Council. The Chief Officer posts in the current Article 12 are listed as follows:

(b) Chief Officers

The Council will confirm the appointment of the Chief Executive (Head of Paid Service) and the Personnel (Appointments) Committee will make appointments to the following posts (or such other similar posts as it may decide from time to time), who will be designated chief officers:

- Deputy Chief Executive
- Executive Director of Resources
- Executive Director of Adult Care and Health Services
- Executive Director of Children's Services
- Executive Director of Economic Growth & Neighbourhood Services

- 3.28. The revised Article 12 will reflect a change in the Directorate structure, which brings together Adult Social Care & Public Health and Housing & Communities into the same

Directorate. Consequentially, the Executive Director of Adult Care and Health Services' title will be updated to 'Executive Director of Community and Adult Social Care' to indicate the new responsibilities of the Directorate.

- 3.29. All other appointments of senior posts (essentially Assistant Directors, Deputy Directors etc) will be delegated to the Chief Executive as Head of Paid Service but with the continued involvement of the appropriate lead councillors in a consultative capacity. This arrangement saves calling an appointments committee for AD etc appointments but still allows councillors to express opinions on the appointment of those senior roles.
- 3.30. However, the wording in Article 12 is ambiguous to achieve this intended outcome. It currently says as follows:

12.1.1 The authority may appoint and employ staff under Section 112 of the Local Government Act 1972. Staff are employed by the authority. Appointment of staff below deputy chief officer level must be the responsibility of the Head of Paid Service or his/her nominee.

- 3.31. The word "deputy" in the second line needs to be removed.
- 3.32. A further issue arises in that there is no Deputy Chief Executive post since the previous incumbent was promoted to Chief Executive in September 2022. A further slight revision needs to be made to allow for a Deputy Head of Paid Service to be designated. It is proposed to change the wording as follows:
- 3.33. Currently:

The Council has designated the following Deputy posts as shown:

- Deputy Chief Executive – Deputy Head of Paid Service
- Financial Planning and Strategy Manager – Deputy Chief Finance Officer and Deputy Section 151 Officer

- 3.34. It is proposed:
- Deputy Chief Executive or Executive Director for Resources (as appropriate) – Deputy Head of Paid Service
- 3.35. Members may wish to note that the appointment of a Deputy Monitoring Officer is a personal duty of the Monitoring Officer and not a Council appointment. The Legal Services Manager (Shaidah Ramzan) was appointed as Deputy Monitoring Officer in January 2023.

Specific Officer Delegations

- 3.36. Some minor adjustments are required to Part 3 to deal with circumstances which have arisen during the year.

Sealing

- 3.37. A number of requisitions have been raised by the Land Registry about documents sealed by the Council, principally about the people delegated to seal on behalf of the Council. These are not serious matters, they are merely inconvenient as they require the lawyers to address and explain the sealing provisions to the Land Registry. To try and simplify this process a change to the delegation is proposed. This should make no practical difference, as all the sealing of documents takes places in Legal Services under the supervision of the Assistant Director of Legal and Democratic Services. We also wish to seal electronically with the DocuSign tool.
- 3.38. Current wording is as follows:

27. Sealing of Documents

(1) The Common Seal of the Council must be kept in the custody of the Assistant Director of Legal and Democratic Services.

(2) Any documents which need to be sealed before a decision of the Council or a Committee or Sub-Committee can be put into effect, must be sealed with the Common Seal of the Council.

(3) The Seal shall be attested by either the Head of Paid Service, Assistant Director of Legal and Democratic Services, or any other officer of the Council nominated by the Head of Paid Service

(4) The Assistant Director of Legal and Democratic Services must enter the details of each document that has been sealed into a Seal Register. He/she must also record the date on which this was done.

3.39. Proposed wording is as follows:

27. Sealing of Documents

(1) The Common Seal of the Council must be kept in the custody of the Assistant Director of Legal and Democratic Services.

(2) Any documents which need to be sealed before a decision of the Council or a Committee or Sub-Committee can be put into effect, must be sealed with the Common Seal of the Council, **and may be sealed electronically.**

(3) The Seal shall be attested by **a single officer**; ~~either the Head of Paid Service,~~ Assistant Director of Legal and Democratic Services, or any other officer of the Council nominated **delegated** by the ~~Head of Paid Service~~ Assistant Director of Legal and Democratic Services **to seal on his/her behalf.**

(4) The Assistant Director of Legal and Democratic Services must enter the details of each document that has been sealed into a Seal Register. He/she must also record the date on which this was done.

Casual Appointments to Committees

3.40. This is one of the powers previously given to the Monitoring Officer (Council, 16 May 2007) and recorded in the Delegations Register. It is still valid, but it would be best to be recorded in the specific officer delegations in Part 3 of the Constitution for the sake of completeness.

3.41. The current power is:

To make changes to a political group's appointments to non-Cabinet Committees, Panels and Working Parties, during and for the remainder of the Municipal Year in question, on the recommendation of the Group Leader and specifically to fill a casual vacancy which has arisen or to address situations of long-term absence, and subject to:

- (1) *the political balance of the Committee etc or the authority's basket of appointments not being affected;*
- (2) *the Monitoring Officer reporting the change to the next meeting of full Council*

3.42. The updated wording should be:

To make changes to a political group's appointments to ~~non-Cabinet~~ Committees, Panels and Working Parties, during and for the remainder of the Municipal Year in question, on the recommendation of the Group Leader and specifically to fill a casual vacancy which has arisen or to address situations of long-term absence, and subject to:

- (1) *the political balance of the Committee etc or the authority's basket of appointments not being affected;*
- (2) *the Monitoring Officer reporting the change to the next meeting of full Council*

School Admission Forum

3.43. There is no longer a statutory requirement to have a School Admission Forum. The admission arrangements are reviewed by the Adult Social Care, Children's Services and Education (ACE) Committee each year. It is considered that ACE Committee

provides sufficient scrutiny of the admission schemes and therefore it is recommended that the Forum should be discontinued.

Cultural Partnership Board

- 3.44. The Cultural Partnership Board hasn't met in a number of years and its remit is covered adequately by the Arts & Heritage Forum. It is therefore proposed that the Partnership Board should be removed from the list of meetings established and included in the Constitution. The views of participants in the cultural sector have been sought and they are supportive of the proposal to discontinue the Board.

4. Contribution to Strategic Aims

- 4.1. The Council's new Corporate Plan has established three themes for the years 2022/25. These themes are:

- Healthy Environment
- Thriving Communities
- Inclusive Economy

- 4.2. These themes are underpinned by "Our Foundations" explaining the ways we work at the Council:

- People first
- Digital transformation
- Building self-reliance
- Getting the best value
- Collaborating with others

- 4.3. Full details of the Council's Corporate Plan and the projects which will deliver these priorities are published on the [Council's website](#). These priorities and the Corporate Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.

- 4.4. Good governance is essential to the sound running of the Council and delivery of quality services to residents, businesses and visitors. The Constitution is a key part of the Council's governance and the Council wishes to ensure that it remains up to date and relevant to the work of the organisation.

5. Environmental and Climate Implications

- 5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).

- 5.2. There is nothing in this report which is relevant for Climate Change.

6. Community Engagement

- 6.1. No consultation, community engagement or information is required, or has been carried out voluntarily to help report authors consider the views of external people in preparing the report.

7. Equality Implications

- 7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 7.2. An Equality Impact Assessment (EIA) is not relevant to the decision. The recommended decisions will not have a differential impact on people with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

8. Other Relevant Considerations

- 8.1. There are no other relevant considerations.

9. Legal Implications

- 9.1. The Council is required to maintain and publish a Constitution, in accordance with Section 9P of the Local Government Act 2000, setting out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

10. Financial Implications

- 10.1. There are no financial implications arising from this report.

11. Timetable for Implementation

- 11.1. Changes to the Constitution will take effect immediately. The public version of the Constitution will be updated on the website as soon as possible.

12. Background Papers

- 12.1. There are none.

Appendices

1. Revised Contract Procedure Rules
2. Amended Article 12 of the Constitution