

CABINET – 7TH APRIL 2022

**Report of the Monitoring Officer
Lead Member: Councillor Margaret Smidowicz**

Part A

ITEM ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION

Purpose of Report

To enable the Cabinet to consider and recommend to Council amendments to the Constitution following the annual review.

Recommendation

That it be recommended to Council that the changes to the Constitution set out in appendix 1 to this report be made, to be effective from the new Civic Year 2022/23.

Reason

To ensure the Constitution is kept up to date and fulfils its intended purposes.

Policy Justification and Previous Decisions

Section 2.4 of the Constitution requires the Monitoring Officer to monitor and review the Constitution. These reviews are undertaken annually with the last such review being considered by the Cabinet on 8th April 2021 (Minute 108 refers) and at Council on 26th April 2022 (Minute 132 refers).

The Member Conduct Committee was consulted and asked for any amendments to the Constitution relating to the role of the committee, namely the Members' Code of Conduct and the Monitoring Officers Protocol.

The Member Conduct Committee on 13th December 2021 made recommendations to Council relating to the 'Other Council Meeting Procedures' (Plans Committee Procedures) and the 'Planning Code of Conduct' and these are set out in this report.

The Member Conduct Committee on 13th December 2021 also made recommendations to Council about the new Members' Code of Conduct and this was approved by Council on 17th January 2022 and will be effective from the new civic Year 2022/23.

Relating to the new Members' Code of Conduct, the Member Conduct Committee also considered a report of the Monitoring Officer setting out differences between Charnwood's agreed procedure for dealing with Member conduct complaints, and the Local Government Association's

recently produced Guidance on Member Model Code of Conduct Complaints Handling (the 'LGA Guidance'). The Committee made recommendations to Council as part of the annual review of the Constitution.

Implementation Timetable including Future Decisions and Scrutiny

The proposed changes to the Constitution require Council approval and will be submitted to Council on 25th April 2022. Changes will come into effect from the new Civic Year 2022/23.

A small change to the Executive delegations to officers has been identified during this year's review. This will be the subject of a separate report to the Leader, who has the authority to make such changes. Any changes made will be reported to Council.

Report Implications

The following implications have been identified for this report.

Financial Implications

There are no costs associated with making the recommended changes to the Constitution.

Risk Management

No specific risks have been identified in connection with this report.

Key Decision: No

Background Papers: None

Officers to Contact: Adrian Ward
Head of Strategic Support and Monitoring Officer
01509 634573
adrian.ward@charnwood.gov.uk

Karen Widdowson
Democratic Services Manager and Deputy
Monitoring Officer
01509 634785
karen.widdowson@charnwood.gov.uk

Part B

Background

1. In line with good practice, the Council reviews the Constitution annually. As part of the review consultations have taken place with officers and councillors both individually and through meetings with Group Leaders, the Chair of the Plans Committee and the Member Conduct Committee. The remainder of this report describes the recommended changes to the Constitution and the proposed amendments are set out in appendix 1 to the report.

Proposed changes to the Constitution

Housing Management Advisory Board (HMAB) – Councillor Substitutes

2. The Council has established a Housing Management Advisory Board to promote tenant and leaseholder engagement in decisions relating to the Council's housing stock.
3. The Housing Management Advisory Board currently comprises:
 - six tenants/leaseholders, selected by a panel comprising the Strategic Director, lead officer for tenant participation, a representative of a recognised independent tenant participation organisation and other Borough Council officers if deemed appropriate by the Strategic Director, appointed for a period of three years providing the person continues to be a tenant/leaseholder;
 - three Councillors, who must not be Cabinet Members, appointed annually on the basis of political balance;
 - one person who is independent of the Council, selected by a panel comprising the Strategic Director, lead officer for tenant participation, two representatives from the Charnwood Housing Residents Forum and other Borough Council officers if deemed appropriate by the Strategic Director, appointed for a period of three years and confirmed annually by the Board.
4. It is proposed that Chapter 3 of the Constitution be amended as set out in the appendix to enable Councillor substitutes to be appointed. The reason for this suggestion is to ensure the quorum threshold is met and enables greater flexibility for Councillors. Currently the quorum for the meetings of the Board is five members with at least two of whom must be tenants/leaseholders. The tenant Chair of HMAB has been consulted and is in agreement to this proposal.

Loughborough Area Committee – Widening Functions

5. The Council has established the Area Committee with the following advisory functions:
 - To carry out a consultative role in relation to budgetary and financial issues which either solely or predominantly affect the Loughborough town area.
 - To carry out a consultative role in relation to matters of policy and strategic direction which relate to or affect the Loughborough town area
6. The current Vice-Chair of the Loughborough Area Committee has requested that the terms of reference be widened to enable it to:
 - (a) Commission Officer reports;
 - (b) Request specific relevant supporting information
7. The Constitution states ‘the Committee cannot commission or request reports from officers, other than as may be required to assist it with business being undertaken in its consultative roles’. It is considered that the Constitution is sufficiently clear, and this matter was only reviewed in September 2020. In addition, any Councillor may, by giving notice to the Head of Strategic Support initiate a Councillor Call for Action under Scrutiny Procedure 11.10 (d). There is no change is recommended on this point.

Audit Committee – Composition

8. The Audit Committee comprises an Independent Chair plus six councillors. No members of the Cabinet can be members of the Committee.
9. It is proposed that Chapter 12 of the Constitution be amended as set out in the appendix so that the size of the Committee is increased from six to seven councillors to assist with the quorum requirements. The quorum requirement works out as four councillors for either six or seven councillor members.
10. Of note is that councillors are allowed to substitute for Members of the Audit Committee using the usual substitution procedures set out in the Constitution and they must have attended mandatory training, or its equivalent, in the current council term.

Members Planning Code of Good Practice and Other Committee Procedures (Plans Committee)

11. The Member Conduct Committee on 13th December 2021 (Minute No. 24 2021/22 refers) considered a suggestion from a Plans Committee member about requiring Members to attend Plans Committee or appoint some other ward member to represent them when they have Called-in a planning application.

12. The Member Conduct Committee recommended the following changes;

Chapter 12 (Section 12.12 (c)) – Other Meeting Procedures (Plans Committee Procedures)

Replacement of the word ‘expected’ to ‘must’ in the sentence ‘Ward councillors who call-in a planning application are ‘expected’ to attend the Plans Committee meeting at which it is considered’.

Chapter 24 (Section 7.2) - Planning Code of Good Practice

Insertion of the paragraph ‘Where a ward councillor has called in an application to Plans Committee, they will attend the meeting to explain why it has been called in and their concerns. If they are unable to attend, they should nominate a substitute to stand in for them and express their views, or submit a written statement’

13. Following consideration of this matter with Group Leaders, it is proposed that Chapter 12 be not amended and the current wording of “expected” remain. Furthermore, the Group Leaders suggested a strengthening of Chapter 24 to the effect that if a ward councillor is unable to attend a Plans Committee, they must nominate a substitute to stand in for them and express their views or submit a written statement which can be read out within five minutes.

14. It is proposed that Chapter 24 of the Constitution be amended as set out in the appendix.

Member Conduct complaints process

15. The Member Conduct Committee on 13th December 2021 (Minute No. 27 2021/22 refers) considered a report of the Monitoring Officer setting out differences between Charnwood’s agreed procedure for dealing with Member Conduct complaints, and the Local Government Association’s recently produced Guidance on Member Model Code of Conduct Complaints Handling (the ‘LGA Guidance’). The Committee recommended that a requirement for investigations to be completed within 6 months and potential further sanctions be introduced.

16. It is proposed that chapter 18 of the Constitution be amended as set out in the appendix.

Petitions Scheme

17. The Council has in place a petitions scheme to enable residents to let the Council know about any concerns. The current Petitions scheme only makes reference to paper copies and it suggested that the scheme be updated to reflect that petitions can also be submitted electronically.

18. The current scheme also explains that residents can ask their local ward councillor to submit a petition at a meeting of the full Council. It is felt that this worded be strengthened so that it is clear that only ward members can submit a petition relevant to their ward. They cannot submit petitions on behalf of other ward members.
19. It is proposed that Chapter 15 of the Constitution be amended as set out in the appendix.

Deadline for Questions on Notice, Motions and Position Statements – Full Council, Cabinet and other committees

20. Chapter 9 of the Constitution sets out that the deadlines for receiving Council Questions on Notice, Motions and Position Statements is Noon on the **sixth** clear working day before the meeting (i.e., the day of agenda despatch). The deadline for receipt of questions on notice also applies to other Committees such as the Scrutiny Committees and Loughborough Area Committee.
21. Chapter 10 of the Constitution relates specifically to Cabinet and Single Cabinet Member procedures and also has the same deadline of Noon on the **sixth** clear working day before the meeting.
22. Chapter 12 of the Constitution relates to other committees and also has the same deadline of Noon on the **sixth** clear working day before the meeting.
23. There is a suggestion to move the deadline to noon on the **eighth** clear day before the meeting. This then enables officers to be given sufficient time to provide advice to councillors on the content and build in time for responses to be drafted in the case of questions on notice.
24. It is proposed that Chapters 9, 10 and 12 of the Constitution be amended as set out in the appendix.

Charnwood Statement of Community Involvement

25. Chapter 14(1) of the Constitution states that the Policy Framework comprises various documents including the Charnwood Statement of Community Involvement.
26. The Statement of Community Involvement (SCI) is a statutory document that sets out how the Council intends to involve all sections of the community in the planning process and engage with local communities, businesses and other interested parties when developing and reviewing planning documents and determining planning applications.
27. Section 18(3A) of the Planning and Compulsory Purchase Act 2004 states that: “The statement of community involvement must not be specified as a development plan document in the local development scheme”.

28. The Constitution seems to be in accordance with this in making a distinction between the SCI and DPDs. It states that the Budget and Policy Framework includes: "Plans and strategies which together comprise the Development Plan, including Development Plan Documents and the Statement of Community Involvement".
29. The Constitution wording is based on the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). This states that the following is not to be the sole responsibility of the Executive: "Plans and alterations which together comprise the Development Plan". Following the introduction of the 2004 Act the Regulations were amended to clarify that the responsibility of the Executive did not extend to: "Powers and duties relating to local development documents which are development plan documents".
30. It therefore appears that the SCI does not have to be part of the budget and policy framework, but Charnwood have chosen to include it. While it is possible to add policies to the budget and policy framework that are not dealt with by the Regulations (Charnwood have added the Customer Service Strategy and Member Development Strategy).
31. The Head of Planning and Regeneration has highlighted whether it is possible to amend the boundaries set out in the Regulations, i.e., between DPDs and non-DPDs.
32. Practice of other Local Authority's based on legal advice is that the Executive (i.e., Cabinet) can take this decision, with the other key development plan documents going to full Council, including the Local Development Framework setting out the timetable for the local plan review.
33. It is proposed that Chapter 14 of the Constitution be amended as set out in the appendix.

Scrutiny Panels

34. Chapter 11 of the Constitution sets out the procedures for Scrutiny meetings. Currently section 11.2 states "The Scrutiny Commission may establish scrutiny panels to undertake scrutiny of a particular subject over a limited period. Scrutiny Panels will be chaired by either the Chair or Vice chair of the Commission or by a Chair or Vice chair of the other Scrutiny Committees"
35. Following the re-structure of the Scrutiny function this practice is defunct as there are fewer Scrutiny Committees and therefore the Scrutiny Commission has been appointing Panel chairs and vice chairs based on expressions of interest.
36. Furthermore, the Head of Strategic Support has been making appointments to scrutiny panels in accordance with expressions of interest received from Councillors. Sometimes the expressions of interest are very high and to

ensure panels run effectively it is suggested that the maximum number of members on a panel is set at six members.

37. Accordingly, it is proposed that Chapter 11 of the Constitution be amended as set out in the appendix.

Approval of the Calendar of meetings

38. It has been common practice for a number of years now to set the calendar of meetings up to two years ahead to help plan decision making and to assist councillors who have busy schedules. Charnwood's constitution still states the programme for ordinary council meetings for the ensuing year will be undertaken at the Annual meeting of full Council (if not already undertaken).

39. It is not a legal requirement that the calendar of meetings be approved at full Council and indeed it is common practice at other councils to approve the calendar following consultation with the Group Leaders and Whips'. It is suggested that in future years the calendar of meetings be approved this way in order to speed up the process and to book dates into councillor's diary in a timely fashion.

40. Accordingly, it is proposed that Chapter 9 of the Constitution be amended as set out in the appendix

Scheme of Delegation to officers (Council Functions) - Delegation to the Head of Planning and Regeneration – High Hedges

41. The Cabinet meeting held on 8th April 2021 (Minute No. 108 20/21 refers) highlighted that in the 2022 review of the Constitution that "the delegation to Head of Service in respect of complaints regarding high hedges. Exceptions there listed would instead be determined by Plans Committee. A note would be included to make that clear as part of next year's review"

42. Accordingly, it is proposed that Chapter 8 of the Constitution be amended as set out in the appendix.

APPENDIX 1

PROPOSED CHANGES TO THE CONSTITUTION

KEY:

Deleted text shown as struck through

Added text shown in bold and underlined

Item 1 - Housing Management Advisory Board

The Housing Management Advisory Board will be composed of:

- six tenants/leaseholders, selected by a panel comprising the Strategic Director, lead officer for tenant participation, a representative of a recognised independent tenant participation organisation and other Borough Council officers if deemed appropriate by the Strategic Director, appointed for a period of three years providing the person continues to be a tenant/leaseholder;
- three Councillors, who must not be Cabinet Members, appointed annually on the basis of political balance;
- one person who is independent of the Council, selected by a panel comprising the Strategic Director, lead officer for tenant participation, two representatives from the Charnwood Housing Residents Forum and other Borough Council officers if deemed appropriate by the Strategic Director, appointed for a period of three years and confirmed annually by the Board.

In respect of the Councillor appointments only, substitutes can be made. Substitutions must be for the whole meeting. A member cannot take over from their substitute or hand over to them part of the way through. Substitutes cannot appoint substitutes of their own. If a member wants to send a substitute, they must tell the Head of Strategic Support before the meeting

Any member can resign from the Board by giving notice to the Strategic Director. Appointments to vacancies will be made in the same way as the original appointment and will be for the remainder of the resigning member's term of office.

The Chair of the Housing Management Advisory Board will be appointed annually by the Board from among the tenant/leaseholder members. The Board may appoint a Vice-chair from among its members.

The quorum for meetings of the Board will be five members, at least two of whom must be tenants/leaseholders.

Item 2 - Audit Committee – Composition

Chapter 12 - 12.3 Composition

Committee	Size	Quorum	Substitutes
Audit Committee	<p>Independent Chair plus six seven Councillor members. No members of the Cabinet can be members of the Committee</p> <p>The Vice-chair will be appointed by the Committee from among its members.</p> <p>Appointment of the Independent Chair of the Audit Committee to be made by Full Council on recommendation from the S151 officer</p>	Four Councillor members	Permitted

Item 3 - Members Planning Code of Good Practice and Other Committee Procedures (Plans Committee)

Chapter 24 (Section 7.2) - Planning Code of Good Practice

7 The Role of Ward Members

(Application: Plans Committee)

- 7.1 When determining planning matters your duty is to the whole community not just to the people in your Ward area. You must ensure that decisions are impartial, and you should not improperly favour, or appear to improperly favour, any person, company, group or locality, including the residents of your Ward.

(Application: All Councillors)

- 7.2 Councillors who are not members of the Plans Committee may exercise their separate speaking rights as a Ward Member set out in Other Committee Procedure 12.12. However, if you have a disclosable pecuniary interest or an interest leading to bias you will not be able to do this even under paragraphs 4.3 and 4.14 of the Members' Code of Conduct. If you do exercise speaking rights:

- advise the Head of Planning and Regeneration that you wish to speak in this capacity at least 24 hours before the meeting;
- you will not be able to vote on the matter;
- you should seat yourself in the place allocated to those addressing the Plans Committee;
- at or immediately prior to the meeting you should not circulate written information to the Committee.

Where a ward councillor has called in an application to Plans Committee, they will attend the meeting to explain why it has been called in and their concerns. If they are unable to attend, they must nominate a substitute to stand in for them and express their views or submit a written statement which can be read out within five minutes.

Item 4 - Member Conduct complaints process

18.5 Investigation of Complaints

(a) Investigation reports

Where a complaint has been referred for investigation, the Monitoring Officer, or another person appointed by the Monitoring Officer to carry out the investigation (the 'Investigator'), will conduct that investigation, **and it will be completed within a maximum period of six months.**

18.8 Hearings by a Panel of Members of the Member Conduct Committee

If the Panel finds against the Member, he/she will be asked if he/she wishes to respond to the finding before the Panel considers whether to impose a sanction. If the Panel finds against the Member, the Panel may impose one or more of the following sanctions:

- (i) issue a formal letter to the Member setting out the breach of the Code which has been identified;
- (ii) censure the Member;
- (iii) make recommendations to full Council to remove the Member from committee(s) and other appointments unless these are subject to political balance requirements;
- (iv) where political balance requirements apply make recommendations to the relevant Group Leader to remove the Member from committee(s) and other appointments;
- (v) make recommendations to the Leader to remove the Member from the Cabinet or from the role of Cabinet Support Member
- (vi) recommend that the Member undertake training or issue an apology.
- (vii) **recommend removal from outside body appointments (for Charnwood Borough Council appointments this would be subject to approval of Cabinet);**
- (viii) **withdraw specified facilities (IT equipment, internet access, email access) for a specified period;**
- (vix) **exclude the Member from council premises for a specified period, except where necessary to attend council or committee meetings.**

Item 5 – Petitions Scheme

15.1 The Councils petition scheme

The Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. The originator of any petition will be sent an acknowledgement within 10 working days of the petition being received by the Council. This acknowledgement will set out what we plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

~~Paper copies of petitions can be sent to:~~

Petitions can be submitted in three ways:

(1) By sending a paper copy to:

Democratic Services
Charnwood Borough Council
Council Offices
Southfield Road
Loughborough
LE11 2TR

(2) By submitting an e.petition through this link on the Council's website;

<https://charnwood.moderngov.co.uk/mgEPetitionListDisplay.aspx?bcr=1>

(3) By asking your local ward councillor to submit the petition at a meeting of the full Council. Only ward members can submit a petition relevant to their ward. They cannot submit petitions on behalf of other ward members.

Item 6 - Deadline for Questions on Notice, Motions and Position Statements – Full Council, Cabinet and other committees

9.9 Questions by Councillors

(a) Questions on notice

A Councillor can ask a question on notice to the Leader or the Chair of a committee about something the Council is responsible for or something that directly affects people in the Borough.

The full wording of these questions must be given to the Head of Strategic Support by noon on the ~~sixth~~ **eighth** working day before the full Council meeting for it to be included on the agenda for that meeting.

9.10 Position Statements

One position statement may be presented to each meeting of the Council by the Leader or any member of the Cabinet in the form of a written report about a significant, topical matter affecting the Council or the Borough. Notice of position statements setting out the subject they are to cover must be received by the Head of Strategic Support no later than noon on the ~~sixth~~ **eighth** working day prior to the meeting at which they are to be considered.

9.12 Motions on notice

(a) Giving notice of motions

Some motions may be moved without notice. These are listed at 9.13. For all other motions, the full wording must be received by the Head of Strategic Support by noon on the ~~sixth~~ **eighth** clear working day before the Council meeting. Notice of a motion can be given by one or more Councillors.

10.7 Questions on notice

Any Councillor or resident of the Borough may ask the Leader a question about the business of the Cabinet so long as notice in writing setting out the question has been given to the Head of Strategic Support. Questions need to be submitted by noon on the ~~sixth~~ **eighth** working day before a meeting to be included on the agenda for that meeting.

12.8 Questions on notice

Any Councillor or resident of the Borough may ask the Chair a question about the business of a committee so long as notice in writing setting

out the question has been given to the Head of Strategic Support. Questions need to be submitted by noon on the ~~sixth~~ **eighth** working day before a meeting to be included on the agenda for that meeting.

The person asking the question may attend the meeting at which the question is asked and may (having received an answer) ask one supplementary question and/or make a statement which must be relevant to and arise directly out of the original question or reply.

The Chair will reply to the question(s) and respond to the statement and may allow other members of the committee to comment and officers to advise.

The answers to questions submitted under this rule will be included in the minutes of the meeting and published prior to the meeting.

The Head of Strategic Support can reject a question on notice from a member of the public if:

- (i) it relates to an application for any permission, licence or other permission from the Council;
- (ii) there is any right of appeal to the Council or other authority is available;
- (iii) it relates to any matter directly relating to an employee of the Council;
- (iv) it relates to any matter which constitutes exempt or confidential information under Schedule 12A of the Local Government Act 1972;
- (v) in the opinion of the Monitoring Officer, it is illegal or improper.

If a question is rejected, reasons must be given.

Item 7 – Charnwood Statement of Community Involvement

14.1 Responsibilities for the budget and policy framework

Full Council sets the budget and policy framework, and the Cabinet and officers must act within it.

The Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of the Council's investments, the control of its capital expenditure and the setting of virement limits.

The policy framework comprises the following documents:

- Corporate Strategy;
- Crime and Disorder Reduction Strategy;
- Customer Service Strategy;
- Plans and strategies which together comprise the Development Plan, including Development Plan Documents and the Statement of Community Involvement;
- Medium Term Financial Strategy;
- Member Development Strategy.

Item 8 – Scrutiny Panels

11.2 Membership and quorum of scrutiny bodies

The Scrutiny Commission may establish scrutiny panels to undertake scrutiny of a particular subject over a limited period. ~~Scrutiny Panels will be chaired by either the Chair or Vice Chair of the Commission or by a Chair or Vice chair of the other Scrutiny Committees.~~

The Scrutiny Commission will make appointments of Scrutiny Panel Chairs and Vice Chairs in accordance with expressions of interest.

The Head of Strategic Support may make appointments to scrutiny panels in accordance with expressions of interest received from Councillors who are not members of the Cabinet. **The size of a Panel will be no more than 6 members.**

Item 9 - Annual meeting of full Council – Calendar of meetings

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the annual meeting will take place in May.

The order of business will be:

- (a) Elect the Mayor
- (b) Elect the Deputy Mayor
- (c) Receive any declarations on interests
- (d) Approve the minutes of the last meeting
- (e) Elect the Leader (in the year in which this is required)
- (f) Review the political balance of appropriate committees (if not already undertaken)
- (g) Appoint any Council committees and scrutiny bodies for the ensuing year (if not already undertaken)
- (h) ~~Approve a programme of ordinary meetings for the ensuing year (if not already undertaken)~~

- (i) Deal with any other items on the agenda; there will be no presentations, Cabinet or committee business, questions on notice, notices of motion or petitions on the agenda unless specifically authorised by the Chief Executive
- (j) Receive any announcements from the Mayor and/or the Chief Executive.

**Item 10 – Scheme of Delegation to officers (Council Functions)
Delegation to the Head of Planning and Regeneration**

High Hedges

34. To determine complaints received under the provisions of the High Hedges Regulations 2005, specify remedial action required to resolve complaints received under the High Hedges Regulations 2005, specify remedial action to resolve the complaints in accordance with the national guidance and initiate enforcement action as necessary, except where the high hedge complaint relates to:
- (i) the Council's own land;
 - (ii) land is occupied by a councillor or Council employee; or
 - (iii) where the complainant is a councillor or Council employee

[Note: The above-mentioned exceptions will determined by the Plans Committee]