

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
Submitted to:	Constitution and Member Development Committee
Date:	19 December 2024
Title:	Governance Support and the Constitution refresh
Report for:	Information
Status:	Public
Council Plan priority:	Delivering Best Value
Key decision:	No
Why:	Report is for information only
Subject to call in?:	No
Why:	Not an Executive decision

Proposed decision(s)
For information only.

Executive summary
The Committee is asked to note the additional support secured to assist with governance and the steps taken to refresh the Constitution and to consider and provide input into the proposed amendments to the Constitution.

1. Purpose

- 1.1 To update the Committee on progress towards reviewing and updating the constitution following the adoption of a revised Constitution in May 2023.

2. Recommendations

- 2.1 The Committee is asked to note the additional support secured to assist with governance and the steps taken to refresh the Constitution and to consider and provide input into the proposed amendments to the Constitution.

3. Rationale for the recommended decision(s)

- 3.1 To ensure that the Constitution remains up to date and relevant in the governance of the Council's activities.

4. Background and relevant information

Background

- 4.1 During 2022/23 a series of reports were presented to full Council in respect of the improvement of the Council's governance arrangements. The reports set out the Phase 1 and 2 approaches to the Council's corporate governance improvement plan. Those plans were put in place to address the corporate governance concerns identified by Ernst and Young (EY), the Council's External Auditor, on the Annual Audit Results Report, and considered by Corporate Affairs and Audit Committee on 22 July 2022.
- 4.2 Phase One of the improvement journey involved CIPFA being commissioned to provide an independent review of the Council's culture and governance. This was completed and reported to Council on 11 October 2022 along with a report identifying that task and finish working groups would be convened to focus on:
 - 4.2.1 Roles and Responsibilities
 - 4.2.2 Training and Development
 - 4.2.3 The Constitution
 - 4.2.4 Culture and Communications
- 4.3 Phase Two of the governance improvement journey focused on gathering evidence from officers and Members as to:
 - 4.3.1 The Member and Officer Protocol
 - 4.3.2 A People Strategy
 - 4.3.3 Development of a communications protocol for officers and members
 - 4.3.4 Improved Member access to staff outside of formal meetings
 - 4.3.5 Alignment of Executive Member portfolios with officer and scrutiny panel structures;

4.3.6 Inductions.

4.4 On 24 January 2023, the Department for Levelling Up, Housing and Communities (DLUHC) issued a Best Value Notice against the Council. This was formal notification that DLUHC had concerns about the Council in relation to:

4.4.1 Serious concerns highlighted by the external auditor, published in July 2022, around governance arrangements; and

4.4.2 Cultural and governance issues further investigated in the CIPFA review published in September 2022.

4.5 On 18 September 2023, Council received a report that set out the activities of Phase Three of the proposed Corporate Governance Improvement Plan, alongside the associated governance arrangements providing oversight of delivery. It also received a report from the Council's External Auditors which made statutory recommendations in relation to the Council's governance. Phase 3 of the improvement journey focuses on four key themes:

4.5.1 Financial Recovery and Resilience

4.5.2 Cultural Transformation

4.5.3 Social Care

4.5.4 Regeneration / Sustainability.

4.6 On 16 October 2024, Council received a report updating it on the progress made against the action plan put in place in response to the report, as well as an update on delivery against the Corporate Governance Improvement Plan. Members will recall that the improvement plan comprised ten workstreams, each with a milestone delivery plan monitored and reported monthly to the Leadership Team, the Independent Improvement Advisory Board and at each full Council.

4.7 The Council's Monitoring Officer identified that insufficient capacity existed within the Council to deliver some of the actions set out within the improvement plan. Accordingly she identified a budget for focused external support for the governance improvement plan. She considered that the appropriate support would be an experienced local government lawyer with expertise in governance and has now retained a locum Governance Solicitor for this purpose.

Actions

4.8 The Corporate Governance Improvement Plan actions that are being particularly focused on by the locum governance solicitor are as follows:

4.8.1 Refreshing the Constitution to ensure that it is accurate and current.

4.8.2 Updating the Scheme of Delegations to Officers.

- 4.9 Contact has already been made with the Council's Leadership Management Team in respect of issues identified with the current constitution with a view to ensuring that all issues are captured and addressed holistically. The views of Members are now sought through the Constitution and Member Development Committee.

Constitution

- 4.10 Members will be aware that the Council adopted a revised constitution format in May 2023, intended to make the constitution more accessible and user friendly. As this has now been in operation for more than one municipal year, it is appropriate that a review of the current constitution is undertaken. In any event, a council's Constitution is a living document that evolves continuously to reflect the ever changing environment in which the Council operates. The Monitoring Officer therefore has ongoing responsibility for ensuring that the Constitution remains accurate and lawful, and has delegated authority to make such changes, which are then reported to the next meeting of Council.
- 4.11 However, since the updated Constitution was adopted, it has become apparent that there is some duplication in parts, and also some areas which are inconsistent or appear to conflict. It is therefore important that the whole Constitution is reviewed as one coherent document with a view to ironing out any duplication or inconsistency and ensuring that the Constitution appropriately reflects the Council's governance and operating arrangements.
- 4.12 It is proposed that the method of presenting proposed changes to the Constitution takes a number of formats to make it as easy as possible for Members to follow the changes. It is intended that the revisions to the Constitution will be available as:
- 4.12.1 A Microsoft Word document with all text changes identifiable through track changes, allowing Members to determine the extent of revisions that they wish to see;
 - 4.12.2 A tabular side by side comparison of text, with the rationale for amendment sitting between the current text and the proposed text.
 - 4.12.3 "Clean" copies of the proposed constitution and the current constitution to enable Members to compare the old and new versions however they see fit.

It is not proposed that substantial volumes of copies of the draft constitution are printed however members views are sought on which, if any, of the above methods is the most preferred to show demonstrate the changes to the constitution.

Scheme of Delegation

- 4.13 Officers are able to act on behalf of the Council only in accordance with the authority delegated to them. This should be recorded within a Scheme of Delegation, which sets out which body has delegated what function to each Chief Officer of the Council. Provided they are not prohibited from doing so, each Chief Officer may then document how they wish to sub-delegate those functions to their officers in a scheme of sub-delegation.

- 4.14 To date, there appears to have been little consistency in respect of the presentation of the Scheme of Delegation, or the sub-schemes of delegation. Accordingly, it is proposed that a corporate Scheme of Delegation is adopted, developed in consultation with the new Chief Executive, to ensure that officers, Members and the public can identify:
- 4.14.1 which function is the responsibility of which Directorate;
 - 4.14.2 whether the decision is executive or non-executive in nature; and
 - 4.14.3 to whom the function has been sub-delegated. T
- 4.15 The Schemes of Delegation will be published and officers encouraged to ensure they proactively consult the Scheme when identifying the appropriate decision making process to use.

Governance Improvement

- 4.16 Once the Constitution is update and the Schemes of Delegation are appropriately populated, officers and Members will be provided with the opportunity to attend awareness raising sessions to become familiar with the operation of the updated provisions.
- 4.17 To improve confidence and awareness, individuals will be sought to act as champions or points of contact in relation to the constitution in the hope that Members and officers will build the confidence to use the Constitution as their first point of reference, rather than seeking advice from the Monitoring Officer.
- 4.18 Having clear and consistent approaches to matters such as questions, motions and petitions should ensure that less officer resource is spent interpreting the Constitution, thus also freeing up some senior officer and democratic services capacity.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Not applicable – report for information only		

Appendices

Presentation to the committee to follow.

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