

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Council
17 November 2021

Report Title: Updating the Constitution

Submitted by: Monitoring Officer

Portfolios: One Council, People and Partnerships

Ward(s) affected: N/A

Purpose of the Report

To authorise amendments to the constitution to address anomalies and legislative changes. To re-convene the Constitution and Member Support Working Group, on a politically proportionate basis, to oversee the process of redrafting the constitution in time for adoption at Annual Council in 2022.

Recommendation

That

1. the updates to the constitution described in paragraphs 2.5, 2.11 and 2.13 of the report be made
2. the Constitution and Member Support Working Group be re-convened on a politically proportionate basis (either 2:1:0 or 4:2:1), chaired by the Leader of the Council and meeting on an ad hoc basis to oversee the process of redrafting the constitution in time for adoption at Annual Council in 2022

Reasons

To ensure that the Council's constitution remains fit for purpose. To redraft the constitution to make it more modern, accessible and less prone to anomalies or falling out of date.

1. **Background**

- 1.1 The council's constitution is the corner stone of its operations. It is a living document which must change to reflect the needs of the Council and those it serves, and changes in legislation. Having an up to date, clear, accessible and modern constitution is essential to the smooth and efficient running of the council, and for accountable, democratic decision making.
- 1.2 Council regularly receives reports about the need to make amendments to the constitution. Since its last report, the need for 3 further amendments has been identified.
- 1.3 In addition, work has been going on since at least 5 May 2018 to undertake a more substantial re-drafting of the constitution. Members will recall a resolution at Council on 5 May 2018 to reconvene the Constitution and Member Support Working Group (CMSWG) to carry out a proper review of the constitution to ensure that it was fit for purpose.

- 1.4 A number of meetings of the CMSWG followed, but of note are discussions at its 9 May 2019 meeting in relation to an intention to move to a more up to date format that is clearer, more accessible or user friendly, written in plain English.
- 1.5 Whilst competing priorities and the Covid-19 pandemic did operate to slow progress, work has nevertheless been proceeding to update the format and style of the council's constitution. This has, been done on a holistic, rather than sectional approach, based on the design principles discussed at CMSWG at its 8 May 2019 meeting. The result will be a more modern, more resilient document less prone to anomalies or becoming rapidly out-dated. That in turn makes for a more efficient council, with a constitution requiring less amendment, remaining clear and relevant and better able to respond to changes in how services are structured and delivered.

2. Issues

Updates

- 2.1 Since the previous rounds of updates considered at Council, a need has been identified to make three more minor amendments to the constitution.

Contract Procedure Rules

- 2.2 The first amendment stems from a need to align changes made to Key Decision thresholds, with a provision in the Contract Procedure Rules that deals with recording the outcome of tender evaluation processes.
- 2.3 Members will recall that financial limit for a "Key Decision" used to be set at £50,000 in respect of both capital and revenue expenditure/savings. This was changed to £250,000 in respect of Capital and £100,000 in respect of revenue on the advice of the previous Interim Director for Resources and S151 Officer. Members will recall that at Council on 23 September 2020 (Agenda Item 13), a change was made to the constitution to update a reference in the Financial Regulations which erroneously still referred to the old limits. Another similar error has been identified.
- 2.4 Paragraph 31.1 on page 248 of the Constitution requires that:-

"Acceptance of tenders over £50,000 in value (whether payable by or to the Council) must be recorded in the minutes of the Cabinet or appropriate Committee".

- 2.5 There is a foot-note to paragraph 31.1 which reads:-

"this paragraph should be read with: Part 2: Appendix 12; Section 13: para 13.2 (a to e) – relative to key decisions".

- 2.6 It is clear that paragraph 31.1 relates to a procedure which assumes a key decision limit set at £50,000, where contract awards at or in excess of that value would be considered at, and so recorded in the minutes of, Cabinet. This needs to be updated to reflect the fact that this is no longer the case.
- 2.7 If this change is not made, there remains a situation where officers have delegated authority to award contracts up to £250,000 (capital) and £100,000 (revenue) but are still (strictly speaking) under a requirement to take a formal report to Cabinet so that the award can be "recorded in the minutes of the Cabinet". It would defeat the purpose of increasing the key decision limits, which was to reduce the need for Cabinet reports in respect of lower

value spend, if those lower value awards need to be taken to Cabinet nevertheless because of paragraph 31.1.

- 2.8 The purpose of recording the evaluation process and award is to ensure that there is an adequate audit trail of the process of assessing and choosing tenders in the event that a procurement process is challenged. That is the case irrespective of value, and there is no need for that record to reside in a Cabinet minute. It would be sufficient to amend paragraph 31.1 to simply require that:-

“Officers shall record the outcome of the evaluation of each tender and the rationale for the award of tender to the successful tenderer. The records shall be kept for the applicable retention period.”

Officer Delegations – Issuing Taxi Licence Warnings

- 2.9 Members will recall that Council amended the officer scheme of delegation in respect of issuing warnings in taxi licensing matters. It did so at its 20 November 2019 meeting (Agenda Item 11).
- 2.10 The report considered by Council (and Licensing and Public Protection Committee before it) was asking for authority for officers to be able to issue warnings “in line with policy”, instead of having to trouble a licensing sub-committee with all such cases. The authorisation was granted (and is working well) but it was only recorded in the scheme of delegation in respect of warnings issues to a “dual driver”. The intention was for that delegation to apply to the full range of recipients of a warning, but this is too narrowly expressed in the constitution. The effect of this is that when officers are minded to issue warnings to vehicle or operator license holders, in line with policy, they find the scheme of delegation is not sufficiently explicit to enable them to do so.
- 2.11 The amendment sought is to clarify (in line 457a of the Scheme of delegation) that the officer delegation extends to issuing warnings, in line with policy, to vehicle and operator licence holders as well as taxi driver licence holders.

Officer Delegations – Electrical Safety Standards

- 2.12 The final amendment sought is an amendment to the officer scheme of delegation consequent upon the coming into force of the Electrical Safety Standards in Private Rented Sector (England) Regulations 2020.
- 2.13 The regulations require certain standards of electrical safety and seek to control that through an inspection and remedial notice/fine regime. Local authorities are charged with enforcing the regime so there is a need, for the avoidance of doubt, to ensure that there is a reference to the same under the housing delegations in the constitution.

Redrafted Constitution

- 2.14 A process of fundamentally reviewing the constitution had been instigated by the CMSWG, which last met on 17 March 2020. This process followed the 5 May 2018 Council resolution referred to above. The view expressed at the 8 May 2019 CMSWG meeting was to arrive at a draft in a user-friendly and interactive format, using plain English and clarity of text. Subsequent meetings of the group proceeded to review discreet sections of the constitution.
- 2.15 Whilst competing priorities and the Covid-19 pandemic did operate to slow progress of the review, work has been proceeding to update the format and style of the council’s

constitution. This has, been done on a holistic, rather than sectional approach, based on the design principles discussed in the 8 May 2019 meeting.

- 2.16 The purpose of the review has been to update the format of the Council's constitution, which follows a format that is now 21 years old, to restructure it into a format which is more succinct, clearer and accessible. It does this by reverting to a plain English drafting style, but also by setting out its content in more logical format, grouping all provisions that relate to a single function or issue in the same place. The approach taken also aims to simplify how delegations and functions are set out, which significantly reduces the likelihood of the sorts of anomalies Council has had to deal with in recent times (including those above) occurring.
- 2.17 There is now a need to reconvene the CMSWG on a politically proportionate basis. Whilst proportionality is important, there is also a need to keep the membership of the CMSWG to an appropriate level, to avoid the delays that can occur when trying to convene committees of larger memberships, and to try and avoid the delays that can occur when "drafting by committee". That is to say delays that can occur settling matters of semantics.
- 2.18 CMSWG can either be reconvened on a 2:1:0 or 4:2:1 basis. The larger ratio would afford all groups representation on the committee.
- 2.19 Because CMSWG would meet on "ad hoc" basis, it should continue to be treated as an "ad hoc" committee, thus not impacting on the overall number of seats taken into account for the purposes of the seats allocated and appointed to at each Annual Council. That is to say it would not (as present) be one of the committees appointed to at each Annual Council nor included for the purposes of calculating total seat numbers for allocation in that process. Instead the seats would be filled by nomination from group leaders, as is currently the case.
- 2.20 Additionally, given the profile of its work, it is considered that CMSWG should be chaired by the Leader of the Council.

Proposal

- 3.1 That the updates to the constitution described in paragraphs 2.5, 2.11 and 2.13 of the report be made, and the Constitution and Member Support Working Group be re-convened on a politically proportionate basis (either 2:1:0 or 4:2:1), chaired by the Leader of the Council and meeting on an ad hoc basis to oversee the process of redrafting the constitution in time for adoption at Annual Council in 2022.

4. Reasons for Proposed Solution

- 4.1 To ensure that the Council's constitution remains fit for purpose. To redraft the constitution to make it more modern, accessible and less prone to anomalies or falling out of date.

5. Options Considered

- 5.1 The alternative option would be to continue with a review on a sectional basis, however this has been underway (in earnest) since at least 5 May 2019. The approach now suggested would enable significant progress to be made on a timeline that accommodates and supports the work being undertaken through the One Council initiative.

6. Legal and Statutory Implications

- 6.1 Councils are required to have a constitution which sets out things such as its officer scheme of delegation, delegations to committees, cabinet functions, council functions and rules of debate. There is no prescribed format for a constitution, but most constitutions use the

(then) Department of Transport Environment and the Regions template constitution which dates from 2000.

7. Equality Impact Assessment

7.1 An updated, accessible and user-friendly constitution would encourage better citizen understanding of and engagement in democratic functions, better serving those less able to navigate its current format and content.

8. Financial and Resource Implications

8.1 The significant resource implication here is officer time in redrafting the constitution. Significant savings can be made by adopting examples of best practice elsewhere, but there is still a time commitment that should not be underestimated.

9. Major Risks

9.1 The significant risk is overlooking the inclusion of some statutory requirement, but this is easily mitigated by adopting best practice.

10. UN Sustainable Development Goals (UNSDG)

10.1 As an enabling document which facilitates the efficient delivery of all council functions, a resilient, user-friendly and up to date constitution indirectly supports the attainment of all UNSDGs.



11. Key Decision Information

11.1 This is not a Key Decision

12. Earlier Cabinet/Committee Resolutions

12.1 There have been various Council decisions to adopt incremental changes to the constitution all of which are available via modern.gov from the Council's website. There have been various committee meetings where these changes have been discussed which are also available from the modern.gov system.

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 Reports and minutes of meetings referred to