

From: Petra Der Man, Monitoring Officer

To: Selection and Member Services Committee, 7 May 2026

Subject: Constitution: Update Options

Status: Unrestricted

Future pathway of report: County Council, 21 May 2026

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## 1. Introduction

- a) An aspect of the role of Monitoring Officer is to keep KCC's Constitution under review. With Local Government Reorganisation on the horizon, rather than a full-scale review and rewrite, I have been looking at areas where smaller scale updates and amendments may be needed to the Constitution so as to hopefully improve how KCC undertakes its business.
- b) Oversight of the Constitution is a reserved power of County Council, as set out in legislation. With some small exceptions, it is County Council which needs to approve substantive changes to the Constitution. Input from across the whole membership of the Council therefore needs to feed into the process. The role of this Committee is to review proposed amendments to the Constitution so as to make agreed considered recommendations to County Council. It will then be County Council that will have the final determination.
- c) The power of County Council to amend the Constitution is not unlimited. There is legislation prescribing much of the content and/or limiting the options available to Members. Accordingly, any proposals for amending the Constitution that would put the Council in breach of its statutory duties, or expose the Council to significant legal risk, cannot be presented as legitimate options. There is also a need to take into account recognised best practice in terms of the Council's governance, and suggestions made by audit or as a result of other reviews. Governance is a core area where our compliance with the national 'Best Value' duty is assessed externally on an annual basis and so failure therefore to demonstrate compliance with this duty increases the risk of any central government intervention.

## 2. Requests for Amendments

- a) As Monitoring Officer, I have recently requested suggestions from the different KCC Political Groups for proposed amendments. The Constitution for legal reasons must be politically neutral. In line with the above considerations, it has not been possible to simply present all the suggestions for Members to discuss as not all of the suggestions were capable of being turned into constitutional amendments for legal and/or constitutional reasons. However, where it is not possible to include the proposals within the Constitution, wherever possible an alternative route is proposed so as to give lawful pragmatic effect to the proposal. In such instances the alternative route(s) is/are noted within the

report and is/will be given separate effect to wherever practically and legally possible.

- b) Some suggestions need further development with input from KCC officers, or are the responsibility of a different KCC Committee to develop. This is set out where applicable within the report.
- c) The recommendations for Members of this Committee are consolidated and set out with numbered references for ease of reference within section 13 at the end of the report .

### **3. County Council – General Proposals**

- a) The suggestion has been made that the Chairmanship of the Council alternate between a Member drawn from the ruling Group, and from opposition Groups.
- b) Aside from a prohibition on Executive Members being Chairman or Vice-Chairman of the Council, there is no legal restriction on which Group the Chairman/Vice-Chairman of the Council belongs to. This is a choice for County Council.
- c) The practice at KCC has been that the Vice-Chairman for one year becomes Chairman the following year. If the proposed change (at 3a) above) is adopted and the practice were to then continue, this would need to be taken into account when electing the Vice-Chairman. If proceeding with this option (at 3a) above), then in order to give effect to it, Members may wish to choose to include a provision that this change may only take effect from the point Members are able to elect a Chairman and Vice-Chairman from different Groups.
- d) Several suggestions were made which were aimed at improving the way County Council meetings are managed, namely:
  - i. Increasing the deadline for submitting County Council questions to ten days ahead of meetings. This is so as to facilitate Cabinet Members in providing more meaningful answers to questions posed. It will also very much reduce pressure upon officers providing factual support to portfolio holders.
  - ii. Decreasing the time available to each opposition group to respond to the Leader's report by one minute respectively. This is so as to keep the meeting proceeding being mindful of duration of the entirety of the meeting.
  - iii. The Leader sharing a summary of their report ahead of the meeting to ensure replies relate more closely to it.
  - iv. In addition to the specific restrictions on the content of questions Members ask as a formal County Council Question, the Chairman of the Council has some flexibility to rule other questions inadmissible. It has been suggested that this discretionary power for this of the Chairman is removed. However, rigid rules cannot capture every conceivable question which may be asked by a Member, and so some flexibility is required. No recommendation is made on this at this time, but further review may certainly be carried out if Members consider this a substantive issue.

- v. There were suggestions relating to submitting and sharing proposed amendments, but these relate to practices as opposed to being part of the Constitution itself. This cannot therefore be put forward as a general recommendation.

#### **4. Budget County Council meetings / finance matters**

- a) Several suggestions were made about the rules regarding the annual Budget County Council meetings. This included looking at the structure of the Budget Meeting, its Agenda, and the possibility of having the Chairman determine duplication of formal proposed amendments to the Budget and having the power to determine the format of the Annual Budget Meeting. Because passing the annual budget is such a significant matter in legal terms, there are specific rules. Due to time constraints in preparing this paper, it has not been possible to discuss these suggestions with colleagues in Finance, specifically the s.151 Officer. It is also the best part of a year until the next Budget County Council meeting, and it is important to ensure any related changes to the Budget County Council meeting are obviously going to be lawful and will add value to the process. It is therefore recommended that proposals are worked up following further internal consultation.
- b) There has been a further suggestion regarding the treatment of general receipts. This too will be separately picked up and discussed with the s.151 officer as part of this overall financial review.
- c) There were suggestions relating to the requirement for decisions to have due regard to the Council's commercial strategy. The commercial strategy is not on the Policy Framework, which would be the appropriate way to do this. This would involve a wider conversation with the relevant Officers and so a specific recommendation is not made here; but the Group proposing this change is invited to contact the Monitoring Officer for further discussion on this.

#### **5. County Council – Additional Specific Practices**

- a) The suggestion has been made that each County Council meeting commences with the Lord's Prayer. Under section 138A(1) of the Local Government Act 1972 – "The business at a meeting of a local authority in England may include time for — (a) prayers or other religious observance, or (b) observance connected with a religious or philosophical belief."
- b) The 2015 Local Government (Religious etc Observances) Act allows but does not mandate Councils to hold prayers. So, it is a legal choice. There may be some Members and / or officers who would choose or prefer not to participate nor have their beliefs displayed publicly. There is a legal right to privacy of religious views under the UK GDPR legislative provisions. These legislative provisions relating to religious or philosophical beliefs are classified as "special category data" and require heightened protection due to their sensitive nature.
- c) The option is therefore available that County Council meetings could include a prayer – the Lord's Prayer/religious observance as a regular part of the meeting. That part could be held either at the beginning or end of a public

Council meeting and “off” camera or even in a separate room for those who may choose to be involved on any particular day or meeting.

- d) For the legal reasons set out at (b) above, the Constitution would not be able to oblige Members or officers to participate, and would need input with practical issues relating to webcasting which would be needed to strictly ensure that no particular Members nor officers can ever be identified during prayers.
- e) It is also necessary to bear in mind that County Council meetings are open to members of the public, including the press, to attend. There is a need to make sure that the practices of KCC do not discriminate against any section of the public, nor make them feel excluded (as having meetings in public is part of the democratic process). For the legal reasons noted here, there would be several practical issues still to be considered and worked through.
- f) I confirm that choosing to participate or not, will have no effect upon the legal meeting attendance records for any Members.
- g) One further alternative could be for any persons choosing to participate in prayers – the Lord’s Prayer / religious observances to do so immediately ahead of and outside of the meeting itself. This would not require any amendment to the Constitution.
- h) A suggestion has been made that the national anthem be sung at the conclusion of each County Council meeting.
- i) Similar legal risks apply to the suggestion about including prayers in meetings. This is simply because different views on the monarchy and the singing of the anthem may be legitimately/lawfully held, and so there is no justification for putting Members, officers or members of the public, in a position where they are compelled to reveal their differing personal opinions. Neither the public nor Members or officers can be compelled to participate, nor should their non/participation be recorded.
- j) So, if Members are minded to agree to have the national anthem sung at the conclusion of every County Council meeting, then it will be “off” camera.
- k) For this reason, a possible approach, if adopted, would be to provide the opportunity for Members and officers to choose to participate or not in the singing of the national anthem, after the meeting has formally closed, allowing sufficient time for Members and officers who do not wish to participate to leave the Council Chamber. Webcasting/recording will also have ceased by this time.
- l) A suggestion has been made to ban face coverings of persons in the Council Chamber.
- m) What people wear in Council meetings is not a matter for a Council Constitution. The 2001 Local Authorities (Standing Orders) (England) Regulations, prescribe that a Council’s Constitution is there to regulate the workings of meetings, proceedings, good governance, roles of statutory officers and include a Code of Conduct.

- n) Legal concerns in this context relate to “Freedom of Expression” (Art 10 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998, and the ‘public sector equality duty’, s. 149 Equality Act 2010).
- o) If face coverings of any type on persons attending a County Council meeting or any KCC meetings, are perceived as being a matter of risk to the safety of any persons within the Chamber or KCC buildings, rooms etc, then requests to remove face coverings from individuals may reasonably be made on a case by case basis through and by KCC security door staff together with, where necessary, the input of the KCC Democratic Services team.
- p) Suggestions were made around formally setting out within the Constitution, rules around the use of flags in the Council Chamber, and the display of a portrait of the Monarch when County Council meets in full session.
- q) Flags and the placing of flags is not a matter for the Constitution.
- r) Reference to having the Union Flag and the KCC flag to be placed in the Council chamber in a safe manner and location is best made to the KCC Democratic Services team. This request will be shared with Officers to action, provided the necessary safety precautions as to location(s) is made. Further, it is understood that officers are in any event currently looking at drafting a general flag policy. Work is already underway to develop such a draft for Member consideration.
- s) The placing of the Monarch’s portrait in the Council Chamber is similar to flags and so would be more a matter of the Chairman liaising with officers with Democratic Services and other appropriate officers, to ensure such a portrait is placed in a safe manner and location.
- t) In addition, there were some suggestions regarding the more administrative aspects of County Council meetings, such as the seating of the media and in particular, for them not to be seated within the “well” of the Chamber itself. It would be challenging to make prescriptions of this, as on occasion County Council meetings have had to be held in other locations, and health and safety or security requirements may require that, on any given day, different practices need to be adopted. These matters should properly be left to officers responsible for managing the building and meetings, in consultation with the Chairman where appropriate on a case by case basis.

## **6. Committee Meetings – General**

- a) Several suggestions were put forward concerning committee rules and practices in general as is set out here in the following sections.
- b) It has been correctly highlighted in several places within the Constitution that Members are required to physically sign an attendance sheet. However, in practice, this is not always complied with by individual Members, though attendance is ultimately formally recorded. It is recommended that the wording of the Constitution be amended so that in future it is clear that Members attending Committee/Council meetings must personally sign the attendance list unless other arrangements have been made, such as the clerk recording the name and presence of the Member.

- c) It has been suggested that that there is a need to be made clearer what happens when a Member ceases being part of a Political Group. It has always been the case that they cease being a member of any Committee where rules on political proportionality apply. However, there could be a new section added to Section 16.9 of the Constitution to make this explicit.
- d) It is crucial that there is a proper record maintained of any changes in Political Group and Committee membership
- e) It has been suggested that the positions of Committee Chair be distributed on a politically proportional basis between Members of different Political Groups.
- f) The rules on political proportionality apply to membership of Committees but do not require that chairing responsibilities be politically proportionate. However, there is also no prohibition. The Council may choose to adopt the practice, and has in fact done so with the Scrutiny Committee. There is also nothing to prevent political agreement to share chairing responsibilities without amending the Constitution.

## **7. Scrutiny call-in**

- a) The Council is legally required to have a call-in mechanism for Executive Decisions after the decision has been taken but prior to implementation (unless it is an urgent decision).
- b) Several suggestions were made about call-in, particularly i) removal of officer consideration and ii) the Scrutiny Chair to be able to call in executive decisions direct.
- c) Rather than come forward now with a change that might introduce unintended consequences, I am recommending that more time be taken to review this issue, consult more widely, and bring forward the results to a future meeting.

## **8. Cabinet Committees**

- a) Cabinet Committees have always had membership drawn from across different Political Groups, but do not formally have to comply with political proportionality rules and do not form part of the proportionality arrangements.
- b) The suggestion has been made that the Constitution be amended to make it a formal undertaking that Cabinet Committees will follow the principles of political proportionality (though the formal political proportionality rules would need to be applied distinctly to the relevant committees).
- c) This is a matter purely for the Leader to determine whether to make it a strict matter of political proportionality or not; hence, there is no recommendation.

## **9. Public Participation in meetings**

- a) Several suggestions were made about allowing some facility for members of the public to participate in Committees, Cabinet and/or County Council meetings in some way, such as having the ability to ask questions directly.

- b) There are some Committees where there are statutory opportunities for members of the public to participate in specific circumstances. There are examples in other councils where they have adopted some form of public participation. However, there is a lot of officer resource involved in the administration of this, and will inevitably add to the length of any meetings where there was public participation. No recommendations relating to this are being made. Officers may look further into this if Members wish and bring back some related suggestions to a future meeting of this Committee. At present, there is no recommendation.

## **10. Kent Code of Members' Conduct**

- a) One large area of focus for suggested amendments either related directly to the Code of Conduct or were suggested amendments to rules relating to "behaviours" within Committees and the linked role of the Chairman, and extended to behaviour by Members outside of formal Committee meetings, including the use of social media by Members. (See 10.c below).
- b) Requests for consideration to give greater express power to Chairs when conducting meetings have been made, including controlling the "pace" and duration of meetings. It is thought that Chairs of all Committees who have sufficient training and experience are more than able to effectively manage conduct during meetings using the existing broad powers available to them within the Constitution; hence, there is no recommendation.
- c) In this context, it is also relevant to state that matters of conduct by Members is in any event, strictly and comprehensively a matter for the Standards Committee. The Standards Committee and its terms of reference is a part of the Council Constitution; hence there is no recommendation.

## **11. Proposed amendment to the express role of the Council**

- a) It is being proposed to amend Section 2(a) of the current Constitution from stating "The role of the Council is to improve the quality of life of the people of Kent", to be replaced with " The role of the Council is, (within its remit and jurisdiction), to seek to ensure the delivery of services to the people of Kent so as to enhance their social and economic well-being".

## **12. Next Steps**

- a) Following discussion and agreement on the recommendations (noted within section 13 of the report below) by this Committee, the ones relevant to take to County Council will form the basis of a paper for discussion at the next meeting. Clear proposed amendments to give effect to the recommendations from this committee will form part of the paper.
- b) Other agreed recommendations will be taken forward as set out in the respective recommendations.

## **13. Recommendations**

- a) The Committee is asked whether to recommend to County Council that the Constitution be amended to require that the Chairman of the Council be drawn from the ruling Group and opposition Groups in alternate years (see section 3a).
- b) The Committee is asked to determine which, if any, of suggestions i-iii in 3d above, are to be recommended to County Council for their approval (see section 3d).
- c) Request that the Monitoring Officer work with Democratic Services and Finance with the s.151 officer, to review the effectiveness of the Budget County Council Meeting arrangements, and present the findings for consideration with proposed recommendations to a future meeting of this Committee (see section 4).
- d) Members are asked to determine between the following options on prayers/religious observance –
  - i. making no recommendation of this issue; or
  - ii. recommend that County Council amend the rules on County Council Meetings to include an item for recital of the Lord's Prayer which is not mandatory and may only happen off camera (section 5a).
- e) Members are asked whether to recommend to County Council that the Constitution be amended to record that, after each formal County Council Meeting, the opportunity to sing the national anthem will be provided, again off camera (see section 5h).
- f) Request that the Monitoring Officer lead on the development of a council flag policy/protocol for discussion at a future meeting (see section 5p).
- g) The Committee is asked to recommend that the Constitution be updated to reflect that Members should always sign an attendance sheet or ensure that the clerk records their presence (section 6b).
- h) The Committee is asked to recommend that the Constitution be updated to make it explicit that ceasing to be a part of a Political Group means ceasing to be part of a Committee where political proportionality applies (section 6c).
- i) The Committee is asked to determine whether to recommend to County Council that the Constitution be amended to require chairing positions be assumed on a politically proportional basis (section 6d).
- j) Request that the Monitoring Officer work with Democratic Services and the Scrutiny Committee, to review the effectiveness of the call-in arrangements, and present the findings to a future meeting (section 7).
- k) Request that the Monitoring Officer work with Democratic Services to review the options for public participation, and present the findings to a future meeting (section 9).



- l) This Committee is asked to recommend the proposal to amend the Constitution as set out in section 11a.

#### **14. Background Documents**

None.

#### **15. Report Author and Relevant Director**

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