

From: Ben Watts, General Counsel
To: **County Council – 17 Oct 2019**
Subject: Structural Revision of the Constitution
Classification: **Unrestricted**

Summary:

The purpose of this report is to seek authority to adopt and re-issue the Constitution in a restructured format, with the associated changes.

The substantive content of the current Constitution is carried over into the revised version presented today but it has been streamlined and made more accessible to the reader and user.

This is the first stage in the project to overhaul the Constitution to ensure it is fully fit for purpose and takes into account changes in the financial, legal and operating environment of Kent County Council and local government more broadly.

Once adopted, work will commence on a detailed review of different parts of the Constitution and Council governance. This will ensure that the commissioning model adopted by the Council is fully and explicitly reflected in this governance, including the oversight of arms-length companies. In the light of events in other authorities, such as Northamptonshire County Council, reports from the National Audit Office of local authority governance and the Review by the Committee on Standards in Public Life into Local Government Ethical Standards, it is an appropriate time to carry out this work. It is also appropriate that Members be fully engaged in this process and a Members Working Group will be established to drive this forward.

The future results of this work will be more easily adopted into the Constitution in the proposed restructured format presented today.

Recommendation:

That the County Council agree the adoption of the revised version of the Constitution.

1. Introduction

1.1 The Constitution has served the Council well since it was first written in 2001. It has gone through a significant number of iterative versions driven by ad-hoc legislative and regulatory changes required of all local authorities and the changes that have been consequential from decisions that are taken by the Council.

- 1.2 Importantly, the Constitution has not been significantly reviewed and updated since KCC began the process of becoming a Strategic Commissioning Authority. Whilst the move to an operating model that focusses on commissioning does not fundamentally change the formal decision-making process, committee procedures or wider statutory requirements set out in the Constitution, it has changed KCC business model in important ways. Similarly, the Member role in commissioning has matured significantly. The roles of bodies like the Commissioning Advisory Board have been important in driving forward the Member role in commissioning.
- 1.3 The operating environment for the Council has changed significantly in recent years. That environment and reducing budgets has led to an increased focus on new operating models and different types of service delivery.
- 1.4 One of the clearest lessons of the experiences of the local government sector in recent years has been that a well-run Council has clear governance. Reviewing the Constitution is necessary to reflect the reality of the operating model of the Council, but also to protect the interests of the Council, its Members and Officers.
- 1.5 Members have expressed a strong view that they would like to have a Constitution that is dynamic and capable of moving better with the organisation's changing needs. Members have also recognised that whilst legally sound, the Constitution document is currently long and could benefit from a review to consider what improvements could be made to benefit those who might read and use it, including elected Members, our partners, residents and staff.
- 1.6 The General Counsel and staff in Governance, Law and Democracy have been undertaking a review process that has responded to these concerns with a draft revised Constitution which is fit for purpose and more able to be updated as and when necessary while remaining easy to use.
- 1.7 The draft revised Constitution accompanies this report.

2. The Draft Revised Constitution

- 2.1 There is a both a legal requirement for Kent County Council to have a Constitution and for it to contain specific sections, such as the Members' Allowance Scheme and procedural rules. Within these parameters, there is flexibility around style and content.
- 2.2 The draft revision does not contain any significant change to the substantive content of the Constitution. As explained above, the legal framework around Committees and decision-making has remained largely the same since 2001 and this is reflected in the draft revision. In effect, the current substantive content has been revised and rearranged. Duplication has been reduced and content that could be made available elsewhere has been. Overall the result has been the production of a smaller document that is easier to use without losing any key content.
- 2.3 Whereas the current Constitution has developed over time with changes being made piecemeal within the current structure, the proposed revision is a

completely new structure. This means that while much of the content is either identical or modified slightly, it is in a different order and grouped differently to the current Constitution. For example, the Terms of References and Procedures for Cabinet Committees are about 40 pages apart. In the proposed revision, they are together so that users of the Constitution have all the information on Cabinet Committees in one place.

2.4 For this reason, a version showing the changes marked up (track changes) would not be practical. Set out below are the main changes with an explanation of why the changes have been made.

Table 1: Changes to the Constitution

Change	Description	Rationale
Articles of the Constitution	The first five sections of the revised Constitution set out the basic rules governing the Council's business along with the core principles that underpin its operations.	The current Articles are a combination of core principles and summaries of content that appears later in the Constitution. This is unnecessary duplication and risks causing misunderstanding when only the summaries are read. The revised articles distil the current core principles and remove the duplication.
Procedures for changing the Constitution	Section 6 of the revised Constitution brings together in one place the procedures for changing the Constitution and where the authority lies for doing so.	The current Constitution has dispersed references to the method and authority for changing the Constitution and so is not transparent. The language is also ambiguous in places leaving the Council open to challenge.
Improvements in Comprehensibility	While the substantive content has not been changed, the way the information has been set out and presented has been rewritten with a view to making it less jargon bound and simpler to comprehend and thus interpret. For example, most of Appendix 4 Part 6 has been rewritten as Section 12 on Decision-Making.	Large parts of the Constitution as we currently have it were written prospectively, ahead of being put into practice. While the legislation and procedures have not changed, this is an opportunity to make clear how the Council operates and so promote consistency and transparency.
Standardised referencing system	A simple system of 26 Sections and sub-divisions gives each part	The current Constitution is largely made up of multi-part appendices.

	of the Constitution a unique identifier. Where there are cross-references to different parts of the Constitution, links have been added to take users to these sections.	Each has its own numbering system or none. References to the Constitution are often made to an entire Appendix or Part. This makes the Constitution difficult to use and risks errors in taking authority from it.
Removal of duplication	In addition to the streamlining of the Articles, sections that were duplicated were only included once.	One consequence of the current structure of Appendices and Annexes was that the same text is sometimes repeated.
Consolidation	Parts of the Constitution on the same topic have been brought together. For example, Sections 17.46-133 bring together the Terms of Reference of the Scrutiny Committee and other parts relating to the work of the Scrutiny Committee that are currently in Appendix 2 Part 2, Appendix 4 Part 4/Annex C/Annex D and elsewhere.	There is no right or wrong way to structure a Constitution, but to make it a more accessible product for Members, Officers, and the public, the revised version makes it easier to read all the sections on one topic in one place.
Business Continuity	The wording of the current Appendix 2 Part 3, now found in Section 10, Scheme of Delegation, has been updated to make it clear when and how Officers may act on urgent matters.	As part of a review into business continuity and Brexit planning, some potential weaknesses were identified. To protect the Council and ensure business can continue in cases of urgency, these have been addressed in the revised Constitution.
Gender neutrality	The pronouns have been altered with alternatives that do not presume the holder of a given office will be male. The ceremonial title Chairman of the Council remains.	For a modern County Council, it is important to signify the authority's commitments to equality of opportunity in its work.
Single Appendix	The long tables in the current Constitution, Appendix 2 Part 3 and Part 7, have been renamed The Delegation Table and placed in a single Appendix.	The tables dealing with delegations need to be clear and available but do not need to be in the main body of the text. Separating them out makes it possible to

		present the information in different formats, such as Excel, so that it is easier to search and find all delegations relating to a specific Officer, Committee or function.
Minor technical efficiencies	Example - At the beginning of each Budget County Council, Council agrees to first suspend three procedural rules that apply to Council Meetings. Sections 14.48-49 make this automatically for Budget meetings, saving time on the day.	Where practice differs from the strict letter of the Constitution and constitutional procedures are used every time to allow the divergence, these have been written into the revised version to make meetings and other procedures more efficient.

2.5 The following tables lists the sections which are identical to the current Constitution (excepting those which are required to fit the new structure, and which make no substantive changes in themselves). As can be seen from the right-hand column, these sections are not necessarily grouped together currently. Almost all the other sections in the proposed revision have been rewritten with a view to improving clarity and reflecting actual practice

Table 2: Section Wording Identical to Current Constitution

Revised Structure	Current Constitution
Section 13 – Financial Procedures	Pages 146-147, 154-167 (the diagrams have been removed)
Section 18 – Cabinet and Cabinet Committees	Pages 64-65, 108, 128-9.
Section 21 – Members, including the Kent Code of Members Conduct	Pages 5, 102, 138, 168-176, 206-208.
Section 22 – Convention on Member: Officer Relations	Pages 194-203.
Section 23 – Code of Officers Conduct	Pages 185-193.
Section 24 - Management Structure	Pages 12, 209-210.
Section 25 – Personnel Management Rules	Pages 72-77.
Section 26 – Other Provisions	Pages 212-217.

2.6 Once adopted, work will commence on a detailed review of different parts of the Constitution and Council governance. This will ensure that the commissioning model adopted by the Council is fully and explicitly reflected in this governance, including the oversight of arms-length companies. In the light of events in other authorities, such as Northamptonshire County Council, and reports from the National Audit Office of local authority governance and the Review by the Committee on Standards in Public Life into Local Government Ethical Standards, it is an appropriate time to carry out this work.

It is also appropriate that Members be fully engaged in this process and a Members Working Group will be established to drive this forward.

- 2.7 In addition, the intention is to deliver a set of accompanying tools to improve wider understanding of the Constitution. For example, a Constitution Handbook is planned. This will set out the key elements of the Council's governance and referencing the main parts of the Constitution. This will be an introductory guide for Officers unfamiliar with the Constitution, members of the public and anyone needing to gain a better understanding of this area.

3. Authority for Revising the Constitution

- 3.1 The process for making changes to the Constitution is set out in Article 14.2:

- “Changes to the Articles of the Constitution must be approved by the full Council after consideration of the proposal by the Selection & Member Services Committee and appropriate public consultation. Changes to factual references or changes required by a change in the law will be made by the Monitoring Officer. Changes to the Appendices of the Constitution will be published by the Monitoring Officer to reflect decisions duly taken by the Council, Leader, Cabinet, a Committee or Senior Officer.”

- 3.2 On 3 October 2019, the Selection and Member Services Committee agreed to endorse the revised version of the Constitution and agree to recommend

4. Financial Implications

- 4.1 There are no financial implications to the constitutional changes as outlined in this report.

5. Recommendation:

That the County Council agree the adoption of the revised version of the Constitution.

6. Background Documents

Kent County Council (2019), Selection and Member Services Committee, 3 October 2019, <https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=143&MId=8408&Ver=4>

Local Government Ethical Standards by the Committee on Standards in Public Life, January 2019. <https://www.gov.uk/government/publications/local-government-ethical-standards-report>

Northamptonshire County Council Best Value Inspection January – March 2018 by Max Caller CBE, March 2018.

<https://www.gov.uk/government/publications/northamptonshire-county-council-best-value-inspection>

Local Authority Governance by the National Audit Office, January 2019.

<https://www.nao.org.uk/report/local-authority-governance-2/>

7. Contact details

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