

Subject: Six Month Review of the Constitution

Date of Meeting: 30 April 2009
Governance Committee 10 March 2009

Report of: Director of Strategy & Governance

Contact Officer: Name: Elizabeth Culbert Tel: 291515

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 On 18th November 2008 Governance Committee approved the methodology for a six month review of the Council's Constitution. This report presents the outcome of the review and seeks views on initial proposals for amendments to the Constitution.

2. RECOMMENDATIONS

- 2.1 That the Committee notes the responses received to the invitation for feedback on the six month review of the Constitution;
- 2.2 That the Committee agrees to recommend to Cabinet the proposals set out at paragraph 4 of the report save those reserved to Full Council for decision at 2.3 below;
- 2.3 That the Committee agrees to recommend to Full Council the proposals for amendments to the Constitution set out at 4.2, 4.3, 4.4.4, 4.4.6, 4.4.7, 4.4.9.
- 2.4 That the Committee authorises the Head of Law to make the necessary amendments to the Constitution to reflect the above proposals once approved by the relevant body.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The Council's new Constitution was approved by Full Council in May 2008 and at that time Members agreed to review how it was working after six months and in more depth after the first year.

- 3.2 The Governance Committee has overseen the methodology for the six month review and on 18th November 2008 approved the wording for an article in City News and for questionnaires to the public, partner organisations, Members and Officers.
- 3.3 The City News article appeared on 12th December 2008, inviting responses to Legal Services. Questionnaire packs were placed in libraries and other public buildings and the material was also placed on the Council's website.
- 3.4 On 5th and 7th January 2009 questionnaires were sent to Officers (all first, second and third tier Managers) and Members. On 5th January a letter was sent to partner organisations, seeking their views on what has worked well and the challenges presented by the new constitution. The closing date for all responses was 19th January 2009.

Responses from the Public

- 3.5 There were twenty six responses from members of the public who completed the questionnaire. There were a further two responses by way of one email and one letter. An analysis of the public responses is attached at Appendix 1, including the full text of the responses to the open questions.
- 3.6 Whilst a range of views are expressed, it is possible to draw some themes that arise from the public responses. The perception of a number of those who responded was that the new constitutional arrangements are less democratic and that the public are more distant from the decision making process. A difficulty in accessing and influencing decisions was reported. 73.9% felt that they were not able to have an input into decisions taken by the Council under the Leader and Cabinet system and of those that tried to have an input 88.9% felt that their input was not listened to and considered.
- 3.7 In the response to the open questions, the issue of consultation was raised by four respondents, requesting an improved public consultation process. A proposal to establish area committees or neighbourhood forums was also raised by four respondents.

Responses from Partners and other Organisations

- 3.8 The following Partners and Organisations were contacted directly to seek their views on the new Constitution:-
- LSP (each LSP member received an individual letter)
 - Brighton and Hove Chamber of Commerce
 - Brighton and Hove Federation of Disabled People
 - Black Minority Ethnic and Community Partnership
 - Spectrum

- Interfaith Contact Group
- Older People's Council
- Youth Forum

- 3.9 Responses were received from the PCT, the Older People's Council and the Federation of Disabled People. Brighton & Hove Arts Commission and Eco-Logically also provided comments. The full text of the responses received are attached at Appendix 2.
- 3.10 Each organisation that responded had its own specific issues to raise and suggestions for improvement. What is clear from the responses is that the organisations wish to work with the Council and would welcome the opportunity to discuss further their opportunities for involvement within the current structures.

Responses from Officers

- 3.11 Feedback from Officers has been collated on an ongoing basis since the Constitution was approved last year. In addition, specific questionnaires were sent out to Managers in January 2009. A summary of the issues raised is attached at Appendix 3.
- 3.12 A number of officers have suggested a review of the meetings cycle. In particular, the number of Cabinet Member meetings, Sustainability Committee meetings and Licensing Committee meetings was raised and it was suggested that these should be reduced.
- 3.13 There was also feedback on technical issues and proposals to amend/clarify aspects of the constitution where, for example, legislation has changed and delegations need to be updated or where the wording has led to confusions and needs reworking. All of these issues are picked up in the list of proposed technical amendments, set out in the recommendations below.

Responses from Members

- 3.14 On 7th January 2009, Members were sent individual questionnaires, in the form previously agreed by the Governance Committee. 13 responses were received and a summary of these responses is included at Appendix 4. In addition to the individual responses, Groups were offered a session at one of their Group Meetings, to express their views on the Constitution. Officers attended the Labour Group meeting on 13th January and Conservative Group meeting on 19th January and met Paul Elgood on 29th January 2009.
- 3.15 A number of common themes arose from the Member responses:-
- Cabinet/Cabinet Member meetings – from the responses received there was a common view that there should be more debate at Cabinet/Cabinet Member meetings and that this would be assisted

by all parties having a seat at the table and the right to speak, rather than relying on the exercise of discretion.

- The agendas for some CMMs were perceived to be thin and a review of the number of meetings was suggested.
- Council – the procedure for Notices of Motion was requested to be clarified.
- Overview and Scrutiny – there was a consensus among those responses received and collated at Group meetings that the role of Overview and Scrutiny still needs to be embedded and that further development for Members and Officers in this area would be beneficial, including looking at models from elsewhere which are working well.

3.16 Other issues that were raised by Members include:

- A concern that the Community Affairs and Inclusion portfolio has no obvious place for dialogue;
- A desire for clarification of the rules governing Special Meetings;
- The lack of public questions at CMM and Cabinet Meetings and the fact that most of these appear to be coming to Full Council.
- Concern that the way in which scrutiny issues are identified for investigation has led to duplication and a high workload without adequate filtering.
- The view that the Forward Plan is not giving enough information early enough to allow the pre decision scrutiny that was envisaged.
- A suggestion to remove Cabinet Member Meetings and for Executive decisions to be made by Cabinet or the Executive Member and then reported to Cabinet.

4. Recommendations

Based on the views reported above, the Committee is asked to recommend the following proposals for approval by Full Council and Cabinet (where appropriate).

4.1 Cabinet/Cabinet Member Meetings and Portfolios

- 4.1.1 To extend speaking rights and a seat at the table at Cabinet and Cabinet Member Meetings to the Leader/Convenor (or their nominated spokesperson) of all opposition parties;

- 4.1.2 Opposition parties to have access to an Officer briefing for Cabinet (one briefing per Group);
- 4.1.3 Clarify the procedure for Special Meetings by:
- extending the procedure that applies to Committee and Sub-Committees regarding calling special meetings under Council Procedure Rule 19.2 to the Cabinet, a Committee of the Cabinet and Cabinet Member Meeting and include the same in the Cabinet Procedure Rules
 - extending the procedure for deputations, petitions, Member and Public questions to special meetings of the Cabinet, a Committee of the Cabinet or Cabinet Member Meeting providing the subject matter of the deputation, petition or questions is on the agenda for the special meeting.
- 4.1.4 Add Community Affairs and Inclusion as an item on the Cabinet agenda at least every six months and invite community representatives to those meetings;
- 4.1.5 Officers to consider the format of the Forward Plan and look at examples from a range of authorities to ensure it is as effective as possible.
- 4.1.6 That the proposed changes to the Delegations to the Cabinet Member for Central Services and to Officers shown in Appendix 5 be approved. These propose substantive decision making powers in the area of property, contracts and ICT for the Cabinet Member for Central Services and some changes to Officer delegations regarding property.

4.2 Council Meetings

- 4.2.1 The Monitoring Officer to issue guidance clarifying the Notice of Motion procedure to address:-
- relevance and timing of amendments;
 - the ability to request Cabinet to consider proposals;
 - limiting issues to those that directly affect the well-being of inhabitants of Brighton & Hove;
 - the prohibition on Notices of Motion relating to live planning or licensing applications.
- 4.2.2 Seek co-operation from all Parties to limit the number of Member questions;
- 4.2.3 Members Services to issue clear guidance to the public explaining the time limit for public questions, the restrictions on supplementaries and that those questions not taken will be referred to the relevant Cabinet/CMM meeting;

4.2.4 Provide all Members with an email link to the decisions list in addition to the Forward Plan.

4.3 Overview and Scrutiny

4.3.1 Amend the Overview and Scrutiny procedures to relax the rule regarding conflicts so that it is clear that only those Members who have led or taken a prominent role in a campaign or pressure group are excluded from scrutinising that issue;

4.3.2 Officers to identify models of best practice for Overview and Scrutiny and report back to Cabinet and OSC.

4.4 Technical amendments

4.4.1 Update Officer delegations to incorporate changes to legislation and structure as follows:-

- Transfer of the Risk Management function from the Director of Strategy and Governance to the Director of Finance & Resources;
- Transfer the Council's functions regarding Communities (Voluntary Sector & External Unit) from the delegations to the Director of Cultural Services to the Director of Strategy & Governance (Policy Team). This will allow for the city council's services to the sector including neighbourhood management and community engagement to be co-located in one service area;
- Include in the Director of Environment delegations powers and duties under the Consumer Protection from Unfair Trading Regulations 2008;
- Include in the Director of Environment delegations functions which came in force in April 2008 regarding the management of traffic and carrying out street works under the Traffic Management Act 2004.

4.4.2 The Council's sustainability team to develop a Sustainability Impact Assessment Checklist and new guidance for report writers on sustainability implications;

4.4.3 Clarify where responsibility for risk management lies within the structure by adding approval of the Risk Management Strategy to the list of Cabinet functions.

4.4.4 Amend the delegations to the Director of Environment to include unopposed licensing applications;

4.4.5 Retain the rights of the Leader to attend all Cabinet Committee meetings but remove the requirement for the Leader or Deputy Leader to be present for a Cabinet **Committee** to be quorate providing the Leader or Deputy Leader agrees the meeting can proceed in their absence. This change will prevent difficulties arising in holding a Cabinet Committee meeting should either the Leader or Deputy Leader be unavailable;

- 4.4.6 Disapply Council Procedure Rule 18.13 in relation to the Standards Committee so that no substitutes are allowed at Standards Committee. This reflects the wishes of the Standards Committee;
- 4.4.7 Disapply procedure rule 24.1 of Council Procedure Rules in relation to Assessment Panel meetings. This will mean that the Panels will not be required to report up to Standards Committee and will accordingly assist in maintaining confidentiality;
- 4.4.8 The Monitoring Officer to issue guidance on how to treat exempt information in the Forward Plan. The guidance will explain the need to include the particulars of a matter –the title and date of the proposed decision - even if the content of the report is exempt itself;
- 4.4.9 Amend the Officer Employment Procedure Rules to provide for consultation with the Executive in respect of senior officer appointments in accordance with the requirements of Local Government (Standing Orders)(England) Regulations 2001.

4.5 Partnerships/Joint Committees

- 4.5.1 Remove City Inclusion Partnership from the Constitution to reflect its status as one of the LSP partnerships, formally constituted and adopted by the LSP. The activities of the CIP will continue to be reported, in particular through Cabinet.
- 4.5.2 Dissolve the Joint Waste Committee – (a separate report will set out the proposed changes in detail);
- 4.5.3 Propose a meeting between the Leader and each of the Partner organisations that responded to discuss the specific issues they have raised and to discuss how to best to ensure lines of communication remain open.

4.6 Consultation/public involvement

- 4.6.1 In response to the concerns raised by members if the public about accessibility and the ability to influence decisions, the Council has recently approved the new Community Engagement Framework . This sets robust standards for carrying out community engagement including consultation, as well as a range of actions for including activity to improve the co-ordination of consultation.
- 4.6.2 It is proposed that the Council takes every opportunity to emphasise and highlight the possibility to ask questions at Cabinet and Cabinet Members Meetings, as well as Full Council to ensure that there is awareness of the ability to raise issues at all of these meetings.
- 4.6.3 As the six month review was intended to be a “light touch” review, it is proposed that the responses in relation to area committees and

neighbourhood forums should be reviewed when the Council looks more in depth at the Constitution at the 12 month stage.

5. CONSULTATION

- 5.1 As set out in the body of the report there has been wide consultation with the public, partner organisations Members and officers in relation to the review of the Constitution. The recommendations of the report have also been the subject of consultation with the Leaders Group.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 There are no direct financial implications arising from the proposed amendments to the Constitution outlined in the report.

Finance Officer Consulted: Patrick Rice Date: 25.02.09

Legal Implications:

- 6.2 Under the Local Authorities (Functions and Responsibilities) England Regulations 2000 (as amended), there are certain functions that are reserved to Full Council for decision and others that are Executive functions. For this reason those recommendations in the report that relate to Council functions are required to be approved by Full Council and those that relate to Cabinet functions are required to be approved by Cabinet.

Lawyer Consulted: Elizabeth Culbert Date: 16th January 2009

Equalities Implications:

- 6.3 The recommendations in the report aim to ensure that Community Affairs and Inclusion Issues are regularly addressed at Cabinet meetings.

Sustainability Implications:

- 6.4 None

Crime & Disorder Implications:

- 6.5 There are no Crime and Disorder implications arising from this report.

Risk and Opportunity Management Implications:

- 6.6 None

Corporate / Citywide Implications:

- 6.7 The amendments to the Constitution are designed to ensure the continuous improvement of the governance arrangements.

SUPPORTING DOCUMENTATION

Appendices:

- Appendix 1 Public responses
- Appendix 2 Interested parties responses
- Appendix 3 Officer responses
- Appendix 4 Member responses
- Appendix 5 Proposed changes to the Cabinet Member for Central Services Portfolio

Background Documents:

None

