

# REPORT FOR DECISION



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| <b>DECISION OF:</b>   | <b>STANDARDS COMMITTEE</b>  |
| <b>DATE:</b>  | <b>1 July 2020</b>  |
| <b>SUBJECT:</b>   | <b>Constitution Review</b>  |
| <b>REPORT FROM:</b>   | <b>Deputy Chief Executive</b>   |
| <b>CONTACT OFFICER:</b>   | Marie Rosenthal / Janet Witkowski   |
| <b>TYPE OF DECISION:</b>  | Committee   |
| <b>FREEDOM OF INFORMATION/STATUS:</b>   | This paper is within the public domain  |
| <b>SUMMARY:</b>   | To inform the Committee of the pending review of the Council's Constitution to ensure that it is up to date and fit for purpose |
| <b>OPTIONS &amp; RECOMMENDED OPTION</b>   | The Committee is asked to agree the proposed terms of reference, scope and time scale for the Constitution Review               |
| <b>IMPLICATIONS:</b>  |   |
| <b>Corporate Aims/Policy Framework:</b>   | Do the proposals accord with the Policy Framework but will need approval of Full Council.<br>Yes                                |
| <b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b> | There are no financial implications   |
| <b>Equality/Diversity implications:</b>   | There is no impact on equality matters at this stage but the terms of reference for the review will require this.               |
| <b>Considered by Monitoring Officer:</b>  | <b>Yes</b>  |
| <b>Wards Affected:</b>  | All   |
| <b>Scrutiny Interest:</b>   | Not applicable  |

## TRACKING/PROCESS

## DIRECTOR:

| Chief Executive/<br>Strategic Leadership<br>Team | Cabinet<br>Member/Chair | Ward Members | Partners |
|--|-------------------------|--------------|----------|
| 22 June 2020                                     | 18 June 2020            | N/A          | N/A      |
| Scrutiny Committee                               | Cabinet/Committee       | Council      |          |
| N/A  | <b>Standards</b>        | <b>N/A</b>   |          |

## **1. INTRODUCTION**

- 1.1 The Constitution sets out how the Council operates; how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The Council has a legal duty to publish an up to date Constitution and it should be reviewed annually with any necessary changes being normally considered at the annual council meeting. The Council made a number of changes to the Constitution at its annual meeting in May 2020 and agreed to a further full Review during 2020/21 as a priority.
- 1.2 The report to Council in May indicated that the current scrutiny arrangements needed review alongside arrangements for meetings and decision making generally.
- 1.3 Members and Officers have also raised the following issues which have prompted the need for review:
  - (a) A document which has grown over years and is not internally consistent;
  - (b) Setting up of the integrated Bury Health and Social Care One Commissioning Organisation in October 2019  
Concern at legal compliance and extensive statutory references;
  - (c) An unwieldy document that could be simplified and made more accessible for on line viewing;
  - (d) Opportunities to reduce bureaucracy, that also helps members and officers to take decisions more robustly with more clarity over who takes which decisions;
  - (e) An LGA peer review in 2018 recommended a review of the current scrutiny arrangements.
- 1.4 Under Article 9.03 of the Constitution, the Standards Committee is responsible for oversight of the Constitution.
- 1.5 The Council has established a cross party Democratic Arrangements Forum comprising the four Political Group Leaders and the Council Chair to consider proposed changes to ensure the Constitution is kept up to date.
- 1.6 The purpose of this Report is to propose terms of reference and methodology for the Review.

## **2. BACKGROUND**

- 2.1 A Constitution Direction was issued by the Secretary of State in December 2000 that requires around 80 matters to be included within council constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area.
- 2.2 The Council's Constitution currently comprises 322 pages organised into 7 Parts (many divided into a number of sections). The document is difficult to navigate as the contents page does not number the sections and there is no Index. A member of the public who did not already know which part to look in would find it difficult to

locate a specific section of the Constitution as there is a very limited search facility.

### **3. INDEPENDENT HEALTH CHECK REVIEW**

- 3.1 It is suggested that the first phase of the Review comprise an independent review of compliance with legislative provisions and best practice undertaken by the Strategic Advisor Marie Rosenthal.
- 3.2 This first phase would bring forward options for members to consider with a view to developing a clearer, more succinct Constitution which better reflects the present values of the Council, is accessible, up to date and will incorporate changes to modernise the document and make it easier to use.

### **4. ROLE OF DEMOCRATIC ARRANGEMENTS FORUM (DAF)**

- 4.1 It is proposed that the DAF steer the work of the Constitution Review on a regular informal basis over the summer with a view to bringing proposals to the Council meeting on 25 November.
- 4.2 The DAF will ensure that the outcome of the review will allow members and the public to have a better understanding and clarity around decision-making, including who takes decisions and how.
- 4.3 Where possible, it is suggested there should be more use of flow charts and diagrams in the Constitution outlining decision-making bodies and where possible hyperlinks to enable easy navigation. The Introduction should properly explain how the council takes decisions lawfully in respect of the Council's functions.
- 4.4 The Terms of Reference for the Review by the DAF would be:
  - develop a shortened, streamlined and improved Constitution for Bury Council
  - review the decision making process to be explained and set out in the new Constitution
  - review the Overview and Scrutiny arrangements across the Council
  - provide political and social policy direction.
  - carry out a survey of all members and stakeholders on how the Constitution can be improved
  - approve the text of amendments to the Constitution to give effect to Council policy.
  - Ensure that the partnership arrangements with the CCG are reflected in the new Constitution
  - steer the Constitution Review to completion.
  - Recommend to full council a revised version of the Constitution by December 2020(25 November Council)
  - agree a programme of training and development for members and officers on the new Constitution during 2020/21.

### **5. ALL MEMBER SURVEY**

- 5.1 It is proposed that the DAF commission an on line survey to alert all councillors to the Review and to seek ideas for improvement.

## 6. **SCRUTINY REVIEW**

- 6.1 In November 2018, the Council invited the Local Government Association (LGA) to undertake a Corporate Peer Review. The purpose of this was to help understand what the Council was doing well and what areas it could improve.
- 6.2 The review provided an independent external assessment of the Council's capacity to deliver Members' priorities for Bury. The review was conducted by a team of expert Members and officers from other Councils and was based on a wealth of evidence collected from discussions with Members, officers at all levels, residents and partners.
- 6.3 The Peer Review looked at the Council's governance arrangements and suggested:

“Given the significant portfolio of transformation work required the council may also wish to consider reviewing its current scrutiny arrangements to ensure that they are able to achieve the right objectives for the council on the journey ahead. This should include the alignment of scrutiny to the corporate priorities and partnership arrangements as well as the type of member support this requires. This review may wish to check whether an appropriate level of challenge is currently in place and if this is fit for the journey ahead.

The Peer Review found:

“At present, scrutiny is provided with a more limited set of outcome level information rather than the type of detailed service performance information recommended here. As the corporate Performance Management Framework is developed, how this feeds into scrutiny to support effective and transparent challenge should also be considered. “

The Peer Review recommended:

“Scrutiny should be provided with the appropriate performance information and officer capacity to provide effective challenge and assist with policy development.”

- 6.4 Members have requested that the review of Scrutiny be an early aspect of the Review. The current arrangement was introduced in 2000 and has developed ad hoc over time. It is proposed to create a new Scrutiny Committee to oversee the programme of scrutiny work across the council together with a number of new Scrutiny sub committees / panels dedicated to key themes of council business.
- 6.5 It is suggested that 4 new Panels be set up: Children; Environment; Partnership and Corporate; Economy. The existing Health Scrutiny Panel would be extended to also cover Social Care.
- 6.6 The Review will examine these proposals during the summer with a view to bringing recommendations to Council on 9 September 2020.

## 7. **NEW FORMAT FOR THE CONSTITUTION**

- 7.1 It is proposed to simplify Parts 1 and 2 of the current Constitution comprising the Introduction and the Articles of Constitution into a new easier to read introduction. The Introduction will set out the purpose of the Constitution and have on line links to the detail of the Constitution. The Articles are not a legal requirement and repeat many of the points in the

Introduction and elsewhere in the Constitution.

- 7.2 The revised Constitution would be available on the Council's website as a complete document. This will make searching for key terms within the document easier. The new format will also make use of internal hyperlinks to allow a user to navigate quickly across the document
- 7.3 It is important to ensure that the revised Constitution fully meets all accessibility legislation. It is suggested that the new Constitution be published as a series of web pages, which would be easier to amend and would be accessible and more user friendly. It would be easier to read on mobile phones and devices and enable searches and accessibility with no large file to open as is the case now.

## **8. RESEARCHING BEST PRACTICE**

- 8.1 Officers will review the Model Constitution for councils in England created in 2014 by the Lawyers in Local Government Group by the law firm, Womble Bond Dickinson. The intention was to create a user-friendly suite of documents which can be tailored easily by in-house lawyers and constitutional experts to suit any type of council.
- 8.2 Officers will also review examples of Constitutions used across the country especially by councils who have engaged with the NHS to create integrated new arrangements similar to Bury.

## **9. COMMITTEES' TERMS OF REFERENCE**

- 9.1 It is suggested that there should be a diagram showing all the Council's committee and sub-committees and that each Committee has its membership and terms of reference set out in a standard format and includes all sub-committees and Panels.

## **10. CONCLUSION AND RECOMMENDATIONS**

- 10.1 The Standards Committee are asked to consider and approve the proposed approach to reviewing the Constitution.
- 10.2 It is proposed to report to Council on the scrutiny proposals on the 9 September 2020. A more comprehensive Report is proposed to go to Council on 25 November 2020 with recommendations to adopt a new revised Constitution to come into effect on 1 January 2021.

## **11. LEGAL AND FINANCIAL IMPLICATIONS**

Section 37 of the Local Government Act 2000 sets out the duty of the Council to prepare and keep up to date its constitution as follows:

(1) A local authority which are operating executive arrangements or alternative arrangements must prepare and keep up to date a document (referred to in this section as their constitution) which contains— (a) such information as the Secretary of State may direct, (b) a copy of the authority's standing orders for the time being, (c) a copy of the authority's code of conduct for the time being under section 51; and (d) such other information (if any) as the authority consider appropriate.

(2) A local authority must ensure that copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours.

(3) A local authority must supply a copy of their constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

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**List of Background Papers:**

LGA Corporate Peer Challenge Report – November 2019

Lawyers in Local Government Model Form of Constitution  
Created by Womble Dickenson Dees

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