



Classification: Open

Item No.

Meeting:	Standards Committee
Meeting date:	12 October 2020
Title of report:	Bury Constitution Review
Report by:	Deputy Chief Executive Lynne Ridsdale
Decision Type:	This is not a Key Decision
Ward(s) affected	All

Executive Summary:

At its last meeting on 1 July 2020, the Committee agreed the terms of reference, scope and time scale for the Constitution Review to be led by the Democratic Arrangements Forum (DAF). DAF has been meeting over the summer to carry out the review in 5 phases. This included a Technical Review to ensure the Constitution was legally compliant with all relevant legislation. This Report updates the Committee on the work of the review and the emerging recommendations to improve the Constitution in line with legislation and best practice.

The Review report and final recommendations will be presented to Cabinet on the 11 November and the Council on 25 November 2020.

Recommendation

That: The Report is noted

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 2020 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 document which has grown over years and is not internally consistent;
 - Setting up of the integrated Bury Health and Social Care One Commissioning Organisation in October 2019
 - Concern at legal compliance and out of date statutory references;
 - Recognition that the constitution is not best serving the interests of the Council to deliver consistent, efficient and effective decision making;
 - An unwieldy document that could be simplified and more accessible;
 - Need to reduce bureaucracy, to help members and officers take decisions more robustly with more clarity over who takes which decisions;
 - LGA peer review in 2018 recommended a review of the current scrutiny arrangements.
 - CIPFA advice in March 2020 on strengthening the role of the Audit Committee
- 1.4 Under Article 9.03 of the Constitution, the Standards Committee is responsible for oversight of the Constitution.
- 1.5 At its last meeting in July 2002, the Committee agreed the terms of reference, scope and time scale for the Constitution Review to be led by the Democratic Arrangements Forum (DAF), comprising the 4 political group leaders and chaired by the Mayor .DAF has been meeting to carry out the review in 5 phases. This included a Technical Review to ensure the Constitution was legally compliant with all relevant legislation.

2. BACKGROUND

- 2.1 A Constitution Direction was issued by the Secretary of State in December 2000 that requires 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 325 pages organised into 7 Parts (many divided into a number of sections). In total there are 54 sections and schedules. The document is difficult to navigate as the contents page does not number the section and there is no Index. A member of the public would find it difficult to locate a specific section of the Constitution as there is a very limited search facility.

3 **ROLE OF DEMOCRATIC ARRANGEMENTS FORUM (DAF)**

3.1 DAF have been meeting in accordance with the agreed Terms of Reference to:

- 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 to the Constitution Review by the Interim Monitoring Officer/Strategic Advisor.
- 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.
- assist the Interim Monitoring Officer/Strategic Advisor in recommending 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.

4 **ALL MEMBER SURVEY**

4.1 During July and August 2020, DAF commissioned an all member survey to alert councillors to the Review and to seek ideas for improvement. 17 members agreed to participate. The Survey consisted of a series of questions designed to test agreement to the 7 purposes of the Bury Constitution set out in Article 1. The results are set out in the Table below.

Question	Agree	Disagree	Neither Agree nor Disagree
The Bury Council Constitution provides guidance on how the Council provides leadership to the community and partnership with citizens, businesses and other organisations.	9 (52.9)	4 (23.5%)	4 (23.5%)

The Bury Council Constitution supports the active involvement of citizens in the process of council decision making; it is easy to understand and is up to date	8 (47.1%)	5 (29.4%)	4 (23.5%)
The Bury Council Constitution helps Councillors to represent their constituents more effectively.	8 (47.1%)	8 (47.1%)	3 (17.6%)
The Bury Council Constitution enables decisions to be taken efficiently and effectively.	5 (29.4%)	4 (23.5%)	8 (47.1%)
The Bury Council Constitution ensures that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decision	7 (41.2%)	5 (29.4%)	5 (29.4%)
The Bury Council Constitution creates a powerful and effective means of holding decision makers to public account.	5 (29.4%)	5 (29.4%)	7 (41.2%)
The Bury Council Constitution ensures that proposals and decisions are effectively and fairly reviewed.	10 (58.8%)	2 (11.8%)	5 (29.4%)
The Bury Council Constitution provides a means of improving the delivery of services to the community.	6 (35.3%)	2 (11.8%)	9 (52.9%)

4.2 The Survey also asked participants to comment on their answers and identify ways in which the constitution could be improved. The Table below sets out member's comments. The new Constitution will deal with many of the criticisms

about the current document. The suggestions for improvement will be addressed in the new Constitution with diagrams and visual descriptions; new rules on question time; a new Section showing the current cabinet members, committee chair and details of senior officers.

Member Survey Comments	
What's wrong with the Constitution	How can it be improved
<p>Unsure if it is in date.</p> <p>It's very difficult to understand</p> <p>Too long, not accessible, confusing in places.</p> <p>Not that easy to understand for the average citizen</p> <p>How do residents know of it?</p> <p>Too confusing</p> <p>Given its length and complexity, I don't think it helps us.</p> <p>Not sufficient scrutiny</p> <p>Amount of time allotted for discussion in Council insufficient.</p> <p>As it is so long and duplicative, then it doesn't make decision making efficient.</p> <p>"Not true...I challenge and no responsefrom Senior Officers CEO and the Leader.</p> <p>If they don't like a question ...there is no response ...so no holding to account ...in fact the opposite!"</p> <p>N0 One knows how to influence change</p> <p>As the document is not very accessible, then I don't think it does increase accountability to local people.</p>	<p>Very little about outside orgs</p> <p>It is a long document and contains a lot of detail. It would be useful to have plain English summaries of each section, or links for members of the public to access these.</p> <p>More diagrams and visual descriptions</p> <p>Amount of scrutiny allowed does not let the public have their say at meetings. Follow up questions should always be allowed.</p> <p>I think there is too little public awareness of the constitution and how to apply it in holding the council and councillors to account</p> <p>No one knows who anyone is</p> <p>Better communication needed. I am not convinced that local people know who is responsible for decision making on specific issues.</p> <p>Members of the public are not certain n who is responsible for decision makings and how certain decisions, such as planning are made.</p>

<p>Many constituents deal with issues themselves but after no response turn to me for help ...so the system does not work for all local people including myself .I am afraid Senior Officers and the Leader do not reply to my mails re the concerning issues around the future of Bury Market so do NOT explain / engage well."</p>	
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5. LEGAL HEALTH CHECK

- 5.1 The first phase of the Review comprised an independent review of compliance with legislative provisions and best practice.

6 SCRUTINY REVIEW

- 6.1 In November 2018, the Council invited the Local Government Association (LGA) to undertake a Corporate Peer Review to 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. It was conducted by a team of expert Members and officers from other Councils and was based on

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.

- 6.4 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. "

6.5 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.”

- 6.6 On 2 September 2020, Cabinet agreed to create a new full time democratic services officer post to deputise for the Head of Democratic Services and lead the development and implementation of a new support service for the Council’s overview and scrutiny function. This new post will be responsible for supporting security reviews, improving public participation in the work of scrutiny, collecting evidence and drafting reports making evidence based recommendations to cabinet and the production of annual scrutiny reports. It has also been agreed that the Head of Democratic Services will take on the statutory scrutiny officer role to promote and provide support and guidance to the scrutiny committees.
- 6.7 During September the Overview and Health Scrutiny Committee and the Health Scrutiny Committee have considered updated strategic work plans to guide their work during the Covid 19 pandemic.
- 6.8 The Constitution review has identified the need to update and strengthen the Scrutiny Committee Rules in the Constitution.

7 NEW FORMAT FOR THE CONSTITUTION

- 7.1 It is proposed to simplify Part 1 of the current 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.
- 7.2 The revised Constitution will 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. To do this, the new Constitution will be published as a series of web pages, which will be easier to amend and will be accessible and more user friendly. It will 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 have used the Model Constitution for councils in England created in 2014 for 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 have also reviewed examples of Constitutions 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. PHASE 1 REVIEW OF THE CONSTITUTION

- 10.1 At its first meeting on 16 July 2020, the DAF noted the terms of reference for the review agreed by the Standards Committee on 1 July 2020. DAF also considered a Technical Review including a legal compliance check.

- 10.2 This comprised an independent review of compliance with legislative provisions and best practice. This first phase suggested 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.

11. PHASE 2 REVIEW OF THE CONSTITUTION –INTRODUCTION AND ARTICLES (DEFINITIONS)

- 11.1 On the 5 August 2020, the DAF considered Phase 2 of the review and agreed to recommend to council:

1. A new revised Part 1 – Summary to introduce the Constitution
2. Changes to the Committee Structure but requested a review of membership numbers based on 9, 11 and 13 member committees.
3. Given the lack of business going to the Standards Committee following the enactment of the Localism Act 2011 (the committee has only met three times in the last 5 years), to amalgamate the Standards Committee with the Audit Committee to create a new Audit and Governance Committee.
4. To add an Independent member(s) with specialist audit expertise to strengthen the new Audit and Governance Committee
5. A new simpler definition of Key Decision based on a financial threshold of £500,000.
6. To make no changes to the Scrutiny function at this time other than to recognise the Children's Safeguarding Scrutiny Sub-Committee in the Constitution.

12. PHASE 3 REVIEW OF THE CONSTITUTION - FUNCTIONS (TERMS OF REFERENCE OF COMMITTEES)

- 1.3 At its meeting on the 3 September 2020, DAF considered Phase 3 of the review and agreed to recommend a revised Part 2 and a revised Part 3 of the new Constitution including, subject to TU consultation a new Employment Panel to deal with chief officer recruitment and discipline instead of the Human Resources and

Appeals Panel, a new key decision definition and a review of membership numbers for committees.

13. PHASE 4 REVIEW OF THE CONSTITUTION – RULES (STANDING ORDERS, FINANCIAL REGULATIONS, and CONTRACT PROCEDURE RULES)

13.1 DAF will be meeting on the 7 October 2020 to carry out a review of the Rules of Procedure set out in part 4 of the Constitution. These currently comprise 9 sets of rules in Part 4 of the Constitution as follows:

- Part 4 – Section 1 Council procedure rules – Standing orders
- Part 4 – Section 2 Access to information rules
- Part 4 – Section 3 Budget and Policy framework rules
- Part 4 – Section 4 Cabinet procedure rules
- Part 4 – Section 5 Overview and scrutiny procedure rules
- Part 4 – Section 6 Contracts Procedure Rules
- Part 4 – Section 7 Financial regulations
- Part 4 – Section 8 Officer Employment Procedure Rules
- Part 4 – Section 9 – Petition Arrangements

13.2 DAF will consider each set of rules and recommended improvements to ensure legislative compliance, editorial consistency and ease of application.

13.3 COUNCIL PROCEDURE RULES – STANDING ORDERS

13.4 These currently comprise 24 Rules subdivided into various sections and govern meetings of full council, committees and sub-committees. It is proposed to introduce a more comprehensive set of rules which will:

- Be set out in a more logical manner
- Use consistent terminology
- Include custom and practice
- Be more transparent
- use Tables where possible for a quick visual check
- Comply with relevant legislation and case law.

13.4 ACCESS TO INFORMATION RULES

13.5 These Rules are required by legislation to set out how the public and members can access council meetings; agenda and reports. The Rules set out the special processes that apply to cabinet decisions in relation to call in of key decisions, urgency and special urgency.

13.6 The main changes recommended are as follows:

- To update the regulations to note the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- To update other legislative references e.g. Charities Act 2011, information that has to be registered under this act is not exempt.

13.7 BUDGET AND POLICY FRAMEWORK RULES

13.8 These Rules are required by legislation and set out the process for cabinet to develop the council budget and policy framework for recommendation to council. The Rules also set out the process if council disagree with the cabinet's proposals and the right of the cabinet to have extra time to rework proposals. The Rule also requires decisions by the cabinet which may be outside of the annual budget or policy framework.

13.9 The Rules do not require any change apart from updating any references to new parts of the new Constitution.

13.10 CABINET PROCEDURE RULES

13.11 These rules regulate cabinet meetings and cabinet decision making.

13.12 The main changes recommended for DAF to consider are:

- To call them the Cabinet Rules and substitute Cabinet for Executive to make them easier to understand by the public.
- The Rules dealing with decision making and delegated functions have been moved to the Functions Part of the new Constitution. These Rules will now just deal with Cabinet meeting process.
- Rules dealing with appointment of Deputy Leader form part of the new Functions
- These new Rules set out who can attend and speak at Cabinet.
- It is suggested this includes members of the public and elected members who have submitted a written question in advance with a right to a supplementary if they are in attendance.
- It so suggested that question time for the public be limited to 15 minutes and that three working days' notice is given and that answers will be published.
- Similar rules apply to member question with further 15 minute period.
- The Monitoring Officer is given powers to rule inappropriate questions out of order.

- It is suggested this should also include Scrutiny chairs if they are presenting any recommendations to cabinet from their committee.
- It is suggested this includes group leaders and ward members if there is an item affecting their ward
- It also gives the Leader a discretion to invite other members to speak
- The new Rules make it clear that reports are presented by relevant cabinet member with officer support.
- The new rules also deal with seating to make sure it is clear who is on the Cabinet
- It is suggested that the Leader submits a report from cabinet to each ordinary council meeting giving summary of cabinet decisions taken, recommendations on budget and policy framework, any reports required by scrutiny and a summary of any urgent decisions.

13.14 OVERVIEW AND SCRUTINY PROCEDURE RULES

13.15 These rules regulate overview and scrutiny meetings. The existing Rules contain a mixture of topics; rules of procedure, appointment and also terms of reference.

13.16 The Rules have been edited and updated for DAF to consider .It is suggested that the old rules dealing with membership and terms of reference be moved to Part Articles and Section 4 Functions of the new Constitution. The new Rules will then deal with rules of procedure at Overview and Scrutiny committee meetings

13.17 The main changes proposed to the existing rules are as follows:

- The definition of quorum will say one quarter of the voting membership or three members whichever is the greater. At present the rule refers you to another part of the Constitution
- It is proposed to have a full section on Task and Finish groups (proposed new Rule 5.5.10) which are a key aspect of the statutory overview and scrutiny function. The existing rule is wholly inadequate and provides one sentence on the matter:
 - Overview project Groups (Project Specific) to scrutinise policy issues as scoped and referred to by the Overview and Scrutiny Committee.
- The existing rule requires that three should be at least 6 ordinary meetings of each Overview and scrutiny Committee each year. The new Rule references the Council's annual schedule of meetings and gives more flexibility to the chair to cancel, postpone meeting and for the committee to agree additional meetings if they consider it necessary.

- The new rules include the statutory Councillor Call for Action which allows any member of the council to include an item on the next available Overview and Scrutiny Committee Agenda.
- The new rules set out the overview and scrutiny role in policy review and development and rules relating to scrutiny reports and that the cabinet must consider them.
- The new rule also set out the duty of persons called to attend a scrutiny committee to attend.
- The Call in Rules are updated to take account of best practice and guidance.
- The new rules also details the scrutiny function relaying to pre-decision call in and the Forward {Plan
- The new Rules also set out a suggested 15 minutes public question time and a 15 minute member question time for the committee meetings.

13.18 CONTRACT PROCEDURE RULES

13.19 These rules regulate contracts and procurement...

13.20 The Rules have been edited and updated and are subject to review by the statutory finance officer and Monitoring officer. It is proposed that the Audit Committee be delegated to approve any further revisions to these rules in the new Constitution,

13.21 FINANCIAL REGULATIONS

13.22 These rules regulate contracts and procurement.

13.23 The rules have been edited and updated and are subject to review by the statutory finance officer and Monitoring officer. It is proposed that the Audit Committee be delegated to approve any further revisions to these rules in the new Constitution,

13.24 OFFICER EMPLOYMENT PROCEDURE RULES

13.25 These rules regulate contracts and procurement.

13.26 No changes are proposed to the existing Rules except to designate the Human Resources and Appeals Panel as the Employment Panel, which it is recommended consists of five members of the council and must include at least one member of the cabinet. It is recommended that the Terms of Reference of the new Employment Panel include the existing terms of Reference for the Human Resources and Appeals Panel including employee appeals against dismissal and grievance, save for restructuring and HR policy matters which are executive functions. The revised Terms of Reference will form part of the Functions part of the new Constitution.

14 FINAL PHASE REVIEW OF THE CONSTITUTION INCLUDING PETITION ARRANGEMENTS

14.1 DAF are scheduled to meet on the 4 November 2020 to complete their work on reviewing the whole constitution. This final review will look at the Codes and Protocols which form Part 5 of the Constitution. It is proposed to add a new Protocol dealing with Public Participation including arrangements for Petition as part of this final piece of work. DAF will then report on their recommendations to the cabinet meeting on 11 November and Council on 26 November 2020.

15. COMMUNITY IMPACT / CONTRIBUTION TO THE BURY 2030 STRATEGY

An up to date Constitution will ensure decision are taken lawfully and in an open and transparent manner.

16. EQUALITY IMPACT AND CONSIDERATIONS:

An up to date Constitution will ensure decisions contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services

17. ASSESSMENT OF RISK:

The following risks apply to the decision:

Risk / opportunity	Mitigation
Legal Challenge	An up to date Constitution will ensure decisions are taken lawfully and in an open and transparent manner.

18. CONSULTATION:

N/A

19. LEGAL IMPLICATIONS:

Section 9P of the Local Government Act 2000 as amended sets out the duty of the Council to prepare and keep up to date its constitution as follows:

(1)A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—

- (a) a copy of the authority's standing orders for the time being,
- (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
- (c) such information as the Secretary of State may direct, and
- (d) such other information (if any) as the authority considers appropriate.

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. 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.

20. FINANCIAL IMPLICATIONS:

There are no financial implications arising from this Report.

21. CONCLUSION AND RECOMMENDATIONS

The Standards Committee are asked to note the work of the DAF in reviewing the Constitution and the progress that has been achieved.

It is proposed to report to Council on 25 November 2020 with recommendations to adopt a new revised Constitution with a phased implementation with some changes to come into effect on 1 January 2021. and those affecting committees to come into effect at the annual council meeting.

REPORT AUTHOR AND CONTACT DETAILS

Marie Rosenthal – Strategic Advisor m.rosenthal@bury.gov.uk

List of Background Papers:

LGA Corporate Peer Challenge Report – November 2019

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

Reports to Democratic Arrangements Forum July to October 2020

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
N/A	