

Council

17 October 2024

Review of the Constitution

Portfolio Holder: Councillor Vince Maple, Leader of the Council

Report from: Bhupinder Gill, Assistant Director Legal and Governance

Author: Phil Watts, Chief Operating Officer
Wayne Hemingway, Head of Democratic Services

Summary

This report sets out a review of the constitution, for consideration and approval of the recommended changes to the financial limits at chapter 3, part 5 and the rules at chapter 4, parts 3 and 6.

1. Recommendation

1.1. The Council is asked to approve the changes to the Constitution as set out in Appendices 1 – 3:

- Financial limits (chapter 3, part 5)
- Budget and policy framework rules (chapter 4, part 3)
- Financial rules (chapter 4, part 6)

2. Budget and policy framework

2.1. The proposed changes to the Constitution set out in the report are a matter for decision by the Council.

3. Background

3.1. The Constitution is reviewed and updated on an on-going basis to ensure it remains fit for purpose including compliance with legislation, in accordance with Article 14 of the Council's Constitution.

3.2. As part of the on-going requirement to review the Constitution, the Chief Operating Officer has recently reviewed the Council's budget and policy framework rules, financial rules and financial limits, which had not been reviewed for many years.

- 3.3. The following sections have been reviewed as part of this exercise and some proposed amendments put forward for approval by Council, as laid out in the appendices to this report:
- Financial limits (chapter 3, part 5)
 - Budget and policy framework rules (chapter 4, part 3)
 - Financial rules (chapter 4, part 6)
- 3.4. The Constitution was last subject to a full review in 2016, with minimal changes to the sections now reviewed by the Chief Operating Officer, therefore, some parts will date back to the approval of a new Constitution in 2001 when the Leader and Cabinet model of executive arrangements were adopted. It is fair to say that some of the language is difficult to comprehend and parts of the budget and policy framework rules unnecessarily complicated.
- 3.5. More importantly, most of the financial limits have not been increased for many years and if they had been subjected to inflation over the intervening period would be two or even three times higher than they are currently.
- 3.6. With regards to the specific proposals on increasing the financial limits, it is recommended that these are increased as follows:
- 3.6.1. Land acquisition and disposal – with regards to acquisitions, to remove the limit of authority for the Chief Executive and Directors to act so long as there is provision within the capital or revenue budget approved by full Council and which are not contrary to the policy framework. For disposals, to increase authority for the Chief Executive and Directors to act from £100,000 to £500,000 with disposals above this value to be agreed by Cabinet. Only disposals to be reported to Full Council for information, the minimum value to be increased from £500,000 to £1,000,000.
- 3.6.2. Budget virements to be increased for the Chief Executive and Directors to be increased from £250,000 to £500,000 (revenue items) and from £500,000 to £1,000,000 (capital items). With regards to Cabinet, the same limits to be increased from £500,000 to £1,000,000 (revenue items) and £1,000,000 to £2,000,000 (capital items). Anything above these limits will be reported to full Council for decision.
- 3.6.3. Writing off irrecoverable debts – Directors' limits to be increased from £5,000 to £25,000. The Chief Operating Officer shall have unlimited authority with regards to council tax and business rates within the approved provision held within the accounts of the Council. The Chief Operating Officer shall also have authority to write off other debts up to £100,000, an increase from £25,000. A new debt write off, in respect of Adult Social Care client debt, to be introduced subject to the approved provision held within the accounts of the Council.
- 3.6.4. Other financial limits to be increased including an increase for the Chief Executive and Directors to award ex-gratia payments to staff from £250 to

£1,000, and the same increase for ex-gratia payments to Members. The Assistant Director Legal and Governance to be authorised to make payment in respect of claims against the Council from £5,000 and £10,000 to £25,000 and £50,000 depending on the level of consultation required. The Director of Place's limit of authority to authorise dayworks based contracts in case of urgency to be increased from £5,000 to £25,000. The Director of Place's limit of authority in respect of variations to terms of leases or sub-leases etc, including surrenders and renewals etc, to be increased from £10,000 per annum on any single transaction to £25,000. Finally, the Chief Operating Officer's limit of authority to settle complaints against the Council, including Ombudsman complaints, to be increased from £5,000 to £25,000.

3.6.5. These proposals are set out in Appendix 1 as tracked changes.

4. Advice and analysis

- 4.1. There are two main reasons for bringing forward these proposed amendments.
- 4.2. Firstly, the constitution should support the Council to exercise good governance and ensure that there is transparency and accountability over the decisions it makes. This objective is not achieved if the rules are overly complex and barely intelligible to those that must abide by them.
- 4.3. Secondly, the financial limits should serve to facilitate sound financial control over the Council's finances, but they should not be so low that they create an overly bureaucratic framework, that thwarts the Executive and its officers from making perfectly reasonable every day decisions within the Council's budget and policy framework.
- 4.4. This report puts forward proposals to remove some of the complexity from the rules at chapter 4 and increase the limits to a more reasonable level to continue to protect the Council, but at the same time free Directors and the Cabinet to do their jobs more effectively.

5. Consultation

- 5.1. Corporate Management Team has been consulted and are supportive of the changes.
- 5.2. In addition, Group Leaders have been informally consulted on the recommendations and no adverse comments or objections have been raised

6. Financial, legal and risk management implications

- 6.1. There are no financial implications arising from this report.
- 6.2. Section 9P of the Local Government Act 2000 ("the 2000 Act") requires a local authority to prepare and keep up to date a Constitution which contains a copy of the Council's standing orders, a copy of the Council's Code of Conduct,

such information as the Secretary of State may direct and such other information as the Council considers appropriate. The Constitution must also include certain mandatory standing orders with respect to staff and the regulation of specified aspects of the proceedings and business of the Council.

- 6.3. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

Lead officer contact

Phil Watts, Chief Operating Officer, T: 01634 332220, E: phil.watts@medway.gov.uk

Wayne Hemingway, Head of Democratic Services, T: 01634 332509
E: wayne.hemingway@medway.gov.uk

Appendices

Appendix 1 – Tracked changes to the financial limits (chapter 3, part 5)

Appendix 2 – Tracked changes to the budget and policy framework rules (chapter 4, part 3)

Appendix 3 – Tracked changes to financial rules (chapter 4, part 6)

Background papers

None