

<b>Council</b>	
<b>Meeting Date</b>	15 November 2023
<b>Report Title</b>	<b>Constitution amendment: Various</b>
<b>EMT Lead</b>	Robin Harris – Monitoring Officer
<b>Head of Service</b>	
<b>Lead Officer</b>	
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<p>Council is asked to:</p> <ol style="list-style-type: none"> <li>1. <b>Agree</b> the amendments at Appendix I and <b>adopt</b> those amendments into the Constitution.</li> <li>2. <b>Delegate</b> the Monitoring Officer to make the necessary amendments to the Constitution.</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 This report introduces a number of changes to the constitution to correct errors, provide clarity and generally improve the document. The report asks Council to agree the proposed amendments for adoption, following consideration by the Constitution Working Group and the Policy and Resources Committee.

## 2 Background

- 2.1 Council voted unanimously in October 2021 to move to a committee system of governance from the 2022/23 municipal year. At the same meeting, Council requested the cross-party working group which had been established to consider this governance change to continue its work in overseeing the detail of the new constitution. Following the election in May 2023 there were changes in membership of the working group, which now comprises Cllrs Baldock (chair), Palmer, Gibson, Harrison, Bowen, Whiting, Perkin and Lehmann.
- 2.2 Since May 2023, the group had not met, but a number of issues with the constitution had been raised with the Monitoring Officer, which were logged. The working group then met at the beginning of October 2023 to review the issues log. The group proposes to meet monthly for the rest of the year to consider the issues log and any other pertinent matters.
- 2.3 It is inevitable when setting out to draft a new constitution that once adopted, over time, errors will be noted and the opportunity arises to put in place improvements and learnings. The amendments proposed, as set out in Appendix I have been raised as issues because they are either/or in error, could have greater clarity, make decisions more robust and improve efficiency.

### 3 Proposals

- 3.1 The constitution working group reviewed the proposals in Appendix I and were satisfied that the amendments to the constitution should be made.
- 3.2 Appendix 1 details the proposals and the reasons for the proposal.
- 3.3 The Policy and Resources committee has **recommended** that Council agree the proposed amendments at Appendix I and **adopt** into the constitution.

### 4 Alternative Options Considered and Rejected

- 4.1 Council could decide to not make the proposed amendments, but this is not recommended as errors would remain and improvements would not be made.

### 5 Consultation Undertaken or Proposed

- 5.1 The cross-party constitution working group has given detailed consideration to the proposed amendments set out at Appendix I. Consultation has also taken place with the officers, who are responsible for administering the work in the areas affected.
- 5.2 The Policy and Resources Committee approved the proposed changes at their meeting on 18<sup>th</sup> October 2023.

### 6 Implications

Issue	Implications
Corporate Plan	Adoption of improvements to the constitution and the removal of errors support the fourth corporate priority of renewing local democracy and making the council fit for the future.
Financial, Resource and Property	No direct implications identified at this stage.
Legal, Statutory and Procurement	The Council is required to have a constitution.

Crime and Disorder	No direct implications identified at this stage.
Environment and Climate/Ecological Emergency	
Health and Wellbeing	
Safeguarding of Children, Young People and Vulnerable Adults	
Risk Management and Health and Safety	
Equality and Diversity	
Privacy and Data Protection	

**7 Appendices**

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Proposed amendments

**8 Background Papers**

8.1 [Agenda for Policy and Resources Committee on Wednesday, 18 October 2023, 7.00 pm \(swale.gov.uk\)](https://www.swale.gov.uk/agenda-for-policy-and-resources-committee-on-wednesday-18-october-2023-7-00-pm)

## Amendment 1

Finance procedure rules (relates to member expenses) Proposed amendments in red and underlined

### Part 5 Member's allowances scheme

#### 4. Travel Allowances

4.1 Councillors will be entitled to claim reasonable travel costs in respect of approved duties specified in Schedule 2 to this scheme and approved attendance at conferences/seminars. Where mileage or expenses are claimed this must be by the shortest available route or on the most economic fare. Distances and fares may be checked. Excessive claims can be rejected. Where a route which is not the shortest route is taken this must be justified within the claim and supported with evidence for example where a road was closed. Councillors cannot claim for expenses that they might alternatively claim from their business or employer. Claims for travel expenses outside of the borough will be only be considered for travel on council business and with reference to Schedule 2.

#### SCHEDULE 2 (~~Executive Minute No. 722/2/06 and Council Minute No. 765(iii)/3/06 refer~~)

1. Councillors are entitled to claim for the attendance at meetings properly called to transact any functions or duties of the Council of which the Councillor is a member or to which he/she is required to attend in order to assist the Committee/Panel/Working Group in its deliberations. (This would include for example, if invited to the Service Committee as a witness). (~~Minute No. 860/1/93 refers~~).
2. Allowances will also be paid for site visits arranged by the Service Committees, a Committee, Panel, or Working Group of the Council. (~~Minute No. 880(3)/1/99 refers~~)
3. Also as an approved duty for payment of travel and subsistence allowances, is the attendance of meetings on the Approved Duties List. (~~Minute No. 709/12/94 refers~~). The approved list comprises of the list of outside body appointments.
4. Chairmen and Spokespersons may claim for attending Chairman's Briefings, or meetings with Officers in connection with a matter relating to their Committee, subject to them being pre-arranged.
5. Members may claim for attendance at meetings with Management Team and Heads of Service, which have been pre-arranged.
6. Members may claim for attendance at Member Briefings or training events organised by the Council, or at Conferences, if their attendance has been approved by the Chief Executive in consultation with their Group Leader.
7. In the case of meetings that are not covered under this scheme, the Chief Executive and the Head of Legal Partnership have delegated authority to determine whether it is an approved duty. Members are asked to seek advice before attending such events.
8. Councillors are not eligible to claim for attendance at political group meetings or for attending parish council meetings in their ward.
9. Councillors are not able to claim for home to work mileage or commuting to work. (This is due to HMRC rules.) Where a Councillor attends a meeting which is on their way home from work, the additional mileage incurred in attending Swale House may be claimed.

Reason: To provide greater clarity as to what can be claimed for travel.

## **Amendment 2**

Licensing Issue: (Section to be removed in red and underlined)

Within

PART 2 – RESPONSIBILITY FOR FUNCTIONS

Part 2.4 “Other Committees”

Part 2.4.3 “Licensing Committee”

Under the heading “General Licensing Matters”

Paragraph xiii , on page 16

Description of proposed change:

To remove the following paragraph

To consider enforcement action against Hackney Carriage and Private Hire Vehicle Operators under the Local Government Miscellaneous Provisions Act 1976 and Town Police Clauses Act 1847;

Reason, including referenced documents/acts, for proposed change:

1. The paragraph incorrectly refers to a piece of legislation (the Town Police Clauses Act is from 1847 not 1984)
2. The paragraph references a non-existent concept “a hackney carriage operator”
3. The ability to consider enforcement action against Private Hire Vehicle Operators is dealt with later in the constitution at para 2.4.3.2 which delegates individual licensing decisions to the Licensing Sub Committee.
4. The Council’s Licensing Policy indicates that enforcement against operators will be dealt with by the Licensing Sub Committee, so this paragraph should be removed for consistency

## **Amendment 3**

Homelessness issue: (Proposed amendment in red and underlined)

Delegations to the Head of Housing and Community Services

2.8.18.20 To adopt the power given in the Localism Act 2011 to discharge Homelessness Duty into the Private Rented Sector.

2.8.18.21 To implement the provisions of Part VII of the Housing Act 1996 (as amended) in relation to processing and determining all homeless applications.

2.8.18.22 To implement the provisions contained in the Homeless Reduction Act 2017 in relation to the prevention and relief of homelessness

2.8.18.23 To contract out the homelessness review functions under Section 202 of the Housing Act 1996 (as amended)

Reason: More robust decision making.

## **Amendment 4**

Head of Policy Delegations (~~Deleted post – remove~~)

### **Customer Services**

2.8.13.1 To provide the frontline service for all residents contacting the Council using varying methods of communication and multiple locations.

2.8.13.2 The development of the Council’s Customer Charter, Complaints Strategy and procedures.

~~Move to next available delegations for Director of Regeneration and Neighbourhoods~~

### **Corporate Strategy and Communications**

2.8.13.3 To produce and publish publicity and information material.

2.8.13.4 To manage and co-ordinate press and media relations.

2.8.13.5 To issue press statements following discussion with the relevant Committee Chair, and where appropriate other involved Members.

2.8.13.6 To co-ordinate consultation on behalf of the Council.

~~Move to next available delegations for Chief Executive~~

Reason: Deleted post and reallocation of delegations

## **Amendment 5**

Quasi-Judicial issue: (~~Proposed amendments in red and underlined~~)

3.1.39 Planning Committee Procedure Opening the meeting

3.1.39.1. The Chair will introduce themselves and explain that this is a Planning Committee meeting to be conducted in accordance with the Council’s Constitution (including the Procedure Rules) which is available on the Council’s Website.

3.1.39.2. The Chair will remind those present that the meeting ~~has a quasi-judicial role and~~ determines the rights and obligations of the applicant.

Also:

Social Media policy:

Bias and pre-determination. Members of ~~quasi-judicial regulatory~~ committees should avoid publishing anything that might suggest you don’t have an open mind about a matter you may be involved in determining.

Reason: Quasi-judicial isn’t the correct term, in the strict legal sense.

## **Amendment 7**

Head of Planning delegations: (to add)

What we are looking to introduce under the Head of Planning Delegations is :-

“To authorise the Head of Legal Partnership to delegate all Legal work in exercising all functions relating to public rights of ways (including the creation, stopping up and diversion of footpaths, bridleways and restricted byways).”

Reason: To allow legal services to deal with instructions from SBC Planning on all Public Footpath matters, including stopping up/extinguishment Orders under s.118 & S.119 of the Highways Act 1980. This improves the robustness and efficiency of decision making.

## **Amendment 8**

Audit issue: (Proposed addition in red and underlined)

Update Part 1 of the constitution to state whether the council have resolved to have an overview and scrutiny committee and make clear how scrutiny is embedded in the committee system model.

### 1.4 The Committee System

1.4.1 The Council operates a ‘committee system’ form of governance. This means that decisions are made by Full Council or delegated to Committees, Subcommittees and Officers. Full Council is the meeting of all 47 Councillors and Full Council is ultimately responsible for the exercise of all functions and certain matters are expressly reserved to be taken by a meeting of the Full Council.

1.4.2 The Council does not have an overview and scrutiny committee. In the committee system a cross section of administration and opposition members are involved in the decision-making process and therefore hold the administration to account on their policies as they proceed through the committee system.

Reason: Audit request.

