

Committee(s): Policy Resources and Economic Development	Date: 13 th July 2022
Subject: Membership Constitutional Working Group	Wards Affected: All
Report of: Amanda Julian Corporate Director (Law & Governance) and Monitoring Officer	Public
Report Author/s: Name: Amanda Julian Telephone: 01277 312500 E-mail: amanda.julian@brentwood.gov.uk	For Decision

Summary

The Council has a statutory duty to maintain an up to date Constitution, Local Government Act 2000, the Constitution must cover standing orders, delegations and code of conduct for members, it can also have local conditions and rules that reflect its own area and how to make decisions.

The Monitoring Officer (MO) has the responsibility to ensure that the Council's Constitution is up to date. To facilitate this the Council under Article 12 has convened a Constitution Working Group (CWG) which is a cross party working group that consults with the MO on changes necessary to ensure an effective and up to date Constitution is maintained by the Council.

Recommendation(s)

Members are asked to:

R1. Agree the nominations for the Constitutional Working Group set out in paragraph 9 for the next municipal year.

Main Report

Introduction and Background

1. The Local Government (Access to Information) Act 1985 lays down how meetings of the Council should be advertised and how the public should have access to information and meetings.

2. The question asked is could a working group exist outside the committee system and therefore there is no need for it to be politically balanced or open to the public, or as asked should it be proportionality represented under Widdecombe rules.
3. The matter was addressed in *R v Eden District Council ex parte Moffat* (1989) by the Court of Appeal. The Court accepted the concept that a working group is acceptable in law. There is no reason not to have a panel or body that could be tasked to think what the best way would be to do things.
4. The primary consideration is the intention of the Council the was addressed in *R v Warwickshire District Council ex parte Bailey* (1991) which decided as long as there was nothing inherently unlawful behind the intent of the working group then as long as intended to be a working group that was what it was. In this case there was no delegated authority to make decisions.
5. The Local Government Act 2000 places a duty on local authorities to have a written Constitution that must cover standing orders, delegated processes and the code of conduct for members, it can also have local conditions and rules that reflect its own area and how to make decisions.
6. The Monitoring Officer (MO) role includes ensuring that the Constitution is kept up to date. The MO can make minor changes to the Constitution without consultation with the Constitutional Working Group (CWG) or Audit and Scrutiny Committee if necessary, by law or to correct errors, see Article 12 of the Constitution. In all other cases the CWG or Audit and Scrutiny Committee will have due regard to the advice of the MO prior to submitting a report to Full Council for approval. The MO may submit an independent report of the CWG or Audit and Scrutiny Committee does not accept their advice.
7. To facilitate changes to the Constitution the CWG has been set up as a working group the group has no delegated authority to make decisions and but is tasked to take heed of the advice of the MO to what changes to the Constitution would facilitate decision making, transparency and good governance of the Council.
8. The Council's Constitution at part 2 paragraph 2.1.18 requires the Committee to consider a report from the MO at the beginning of the Municipal Year, for the Committee to appoint the membership of the CWG.

Issue, Options and Analysis of Options

9. Group Leaders have been consulted regarding nominations for appointment to the CWG and have nominated the following member for appointment:

Cllr C Hossack
Cllr G White
Cllr J Laplain
Cllr Dr T Barrett

10. Should there be a need to change the membership of the CWG during the municipal year, this should be approved by the Committee following nominations from the Group Leaders.

Reasons for Recommendation

11. The Council has a statutory duty to have a written Constitution which sets out how the Council will operate and make decisions. The Constitution must be kept up to date and must be published.
12. The principle of proportionality is key to making decisions in that the action must be proportionate to the desired outcome due consultation and the taking of professional advice from officers; respect for human rights; a presumption in favour of openness; and clarity of aims and desired outcomes.
13. The Council has agreed that in order to promote good governance that there should be a CWG which reports to Council to recommend changes to the Constitution.

Consultation

14. None

References to Corporate Plan

15. Will enhance an effective and efficient Council by promoting strong governance and effective decision making.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Director of Corporate Resources

Tel/Email: 01277 312500/jacqueline.vanmellaerts@brentwood.gov.uk

There are no direct financial implications.

Legal Implications

Name & Title: Amanda Julian, Director of Law & Governance and Monitoring Officer

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The legal implications are within the body of the report.

Economic Implications

Name/Title: Phil Drane, Director of Strategic Planning

Tel/Email: 01277 312500/philip.drane@brentwood.gov.uk

There are no direct implications for economic development.

Equality and Diversity Implications

Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager

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By having applying the principles of proportionality the Council will have due regard to its public centre equality duty under s149 in all decisions in makes when applying the principles within the Constitution.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

None

Background Papers

None