

Manchester City Council Report for Resolution

Report to: Constitutional and Nomination Committee – 30 November 2022
Council – 30 November 2022

Subject Constitution of the Council

Report of: The City Solicitor

Summary

To enable the Constitutional and Nomination Committee to consider, and the Council to adopt, proposed amendments to the Constitution of the Council.

Recommendation – Constitutional and Nomination Committee

The Constitutional and Nomination Committee is requested to note the report and recommend that the Council agree the recommendations below.

Recommendations – Council

The Council is requested to:

1. Adopt, subject to recommendations 3 and 4 below, the attached revised Sections of the Constitution of the Council, namely:
 - a) Part 1
 - b) Part 2
 - c) Part 3: Sections A, B, C and F
 - d) Part 4: Sections A, B, E and F
 - e) Part 5: Sections B, D (to be redesignated as C) and E (to be redesignated as D) and in doing so delete the former Section C
 - f) Part 6: Sections D and F
 - g) Part 7
 - h) Part 8
2. Re-adopt the remainder of the Constitution.
3. Note in relation to Part 3 of the Constitution that responsibility for the discharge of executive functions and the delegation of such responsibility rests with the Leader of the Council and that the recommended delegations of executive functions set out in Part 3 (Sections A, B and F) are for the information of the Council only.
4. Note that, as the Licensing Committee has statutory responsibility for the discharge and delegation of certain licensing authority functions, the proposed delegations of such functions set out in Part 3 (Sections A, C and F) will require

the approval of the Licensing Committee and to that extent are for the information of the Council only.

Wards Affected: All

Environmental Impact Assessment - the impact of the decisions proposed in this report on achieving the zero-carbon target for the city
Not Applicable

Our Manchester Strategy outcomes	Contribution to the strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Not Applicable
A highly skilled city: world class and home-grown talent sustaining the city's economic success	Not Applicable
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Not Applicable
A liveable and low carbon city: a destination of choice to live, visit, work	Not Applicable
A connected city: world class infrastructure and connectivity to drive growth	Not Applicable

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Background Documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy, please contact one of the contact officers above.

Constitution of the Council – as amended in April 2021

1. Background

- 1.1 Section 9P of the Local Government Act 2000, requires the Council to prepare and keep up to date a Constitution. The City Solicitor is required to monitor and review the operation of the Constitution on an on-going basis and, where necessary, bring forward amendments to the Council. The City Solicitor is, under Article 15 of the Constitution, also authorised to make minor changes to the Constitution, provided that they do not materially affect the Constitution.
- 1.2 This report details certain matters that have arisen since the Council considered the last review of the Constitution set out in the City Solicitor's report to the Council meeting on 3 February 2021. Attached to this report, and summarised below, are revised versions of certain sections of the Constitution that the City Solicitor brings forward for approval. The attached revised sections of the Constitution show proposed amendments as "track-changes" and new wording appears in bold text for additional clarity.
- 1.3 It should be noted that under the Leader and Cabinet form of executive governance, responsibility for the delegation of executive functions, including those local choice functions which the Council has designated as executive functions, does not rest with the Council, but is the responsibility of the Leader. The Leader may determine to exercise executive functions personally or to delegate their discharge to the Executive, a Committee of the Executive, an Executive Member, an area committee or an officer of the Council (without prejudice to the Leader's ability to exercise such functions personally). Consequently, the recommended delegations of executive functions set out in Part 3: Sections A, B and F of the Constitution are for the purpose of information only; recommended delegations of non-executive functions set out in those sections remain (subject to paragraph 1.4 below) a matter for the Council.
- 1.4 It should further be noted that (with limited exceptions) the discharge of the functions of the Council as licensing authority under the Licensing Act 2003 and the Gambling Act 2005, and the further delegation of those functions to officers, is the statutory responsibility of the Licensing Committee. Consequently, the recommended delegations of such licensing authority functions set out in Part 3: Sections A, C and F of the Constitution (aside from the aforementioned exceptions) are for the purpose of information only; recommended delegations of other non-executive functions set out in those sections remain, however, a matter for the Council.

2. Part 1 of the Constitution – Summary and Explanation

- 2.1 A number of minor changes are proposed to Part 1 of the Constitution – Summary and Explanation, involving:
 - Removal of the opening remark that it is a new Constitution;
 - Amending the list of Articles to ensure that they use the same heading as in each Article; and

- Removal of reference in the 7th bullet point to citizens having the right to participate in the Council's question time, which in practice they do not.

3. Part 2 of the Constitution – Articles

- 3.1 Changes to Articles 9.2(e) and 9.5, concerning quoracy of the Standards Committee and its sub-committees, are proposed to clarify that (as per the Council Procedure Rules) only the voting members present are counted for the purposes of determining whether the meeting is quorate. The requirement that a (non-voting) Independent Member is also present if certain specified matters are to be considered is retained.
- 3.2 A change to Article 11(5) is proposed to add a reference to the Greater Manchester Integrated Care Partnership as being amongst the joint committees that the Council is a party to.
- 3.3 A change to Article 14(4) is proposed to align the contractual threshold where written contracts are required with the corresponding threshold in the proposed revised Contract Procurement Rules. Some wording is also proposed to be added to align the position in relation to Authorised Signatories with that in those revised Rules.
- 3.4 A new Article 14(6) is proposed to enable the move to electronic signing and sealing.
- 3.5 A change to Article 16(3)(a) is proposed so that new Members will be given access to an electronic version of the Constitution rather than a printed copy.

4. Part 3 of the Constitution – Responsibility for Functions

- 4.1 A number of changes are proposed to the following sections of Part 3 ("Responsibility for Functions") of the Constitution:
 - Section A ("Local Choice Functions");
 - Section B ("Executive Functions");
 - Section C ("Non-Executive Functions"); and
 - Section F ("Scheme of Delegation to Officers")
- 4.2 Minor changes are proposed in Sections A ("Local Choice Functions") and B ("Executive Functions") in relation to typographical errors and/or numbering.
- 4.3 A number of changes are proposed to Section C ("Non-Executive Functions"). Some of these are to reflect the transfer of delegated responsibility for the discharge of particular non-executive functions from one officer to another (with these changes in turn being reflected in the revised Section F ("Scheme of Delegation to Officers")). Changes are also proposed to reflect recent amendments to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Finally, a small number of typographical errors are proposed to be corrected.

4.4 A number of amendments to the Scheme of Delegation to Officers (Part 3, Section F of the Constitution) are proposed. Given the number of proposed changes, it is not intended to list all amendments here (although all are fully shown in the appended revised Part 3, Section F). Proposed amendments of particular note are as follows:

- a) Throughout Section F any references to consultation by officers with a particular Executive Member are amended to refer to the Executive Member's portfolio responsibility rather than the Executive Member's title, so as to future-proof against changes to portfolio responsibility or title made by the Leader;
- b) The Assistant Chief Executive is added to the list of Chief Officers in Chapter 3 of Section F to reflect their position as a Chief Officer;
- c) Changes to the introductory wording to some officer entries in the scheme, so that a consistent approach is taken for all officers;
- d) Amendments to reflect changes made to the job titles of a number of officers;
- e) Additional wording in Paragraph 6 of the Introduction to make it clear that officers can authorise other officers to act on their behalf in respect of all delegations made to them under Part 3 (Responsibility for Functions) and not just those delegations contained in Section F (Scheme of Delegation to Officers) of Part 3;
- f) General delegation 33 is amended to provide clarity as to when the approval of a further Chief Officer (in addition to the agreement of the Deputy Chief Executive and City Treasurer) is needed to accept tenders for the carrying out of works etc for the Council of above £250,000 in value (and to align with the corresponding provision in the revised Contract Procurement Rules);
- g) Delegations in relation to Facilities Management and Operational Estate Management are transferred from the Strategic Director (Growth and Development) to the Deputy Chief Executive and City Treasurer, following the transfer of responsibility for those functions. While responsibility for the management of the operational estate is transferred to the Deputy Chief Executive and City Treasurer, the Strategic Director (Growth and Development) will retain responsibility for any acquisitions or disposals relating to the Council's interests in such operational land.
- h) Various delegations relating to the Council's responsibilities as a Local Housing Authority are transferred from the Strategic Director (Growth and Development) to the Strategic Director (Neighbourhoods) to reflect Housing Operations being based within the Neighbourhoods Directorate. While responsibility for the management of land and

property acquired or held for the purposes of the Council's functions as a Local Housing Authority is transferred to the Strategic Director (Neighbourhoods), the Strategic Director (Growth and Development) will retain responsibility for any acquisitions or disposals relating to the Council's interests in such land.

- i) Most of the delegated responsibilities of the Executive Director of Adult Social Services relating to homelessness are transferred to the Strategic Director (Neighbourhoods), to reflect that the Homelessness Service is based in the Neighbourhoods Directorate.
- j) The transfer of a number of licensing functions from the Strategic Director (Neighbourhoods) to the Director of Planning, Building Control and Licensing, to better reflect where operational responsibility for those matters rests.
- k) The requirement for the escalation of objections and representations in respect of proposed granting of licences under Section 115E of the Highways Act 1980 (including table and chairs licences) to the Strategic Director (Neighbourhoods) for consideration and determination (in consultation with Executive Member for Environment, Planning and Transport) is removed.
- l) The Deputy Chief Executive and City Treasurer is given delegated authority to discharge the Council's functions as Billing Authority in relation to Business Improvement Districts ("BIDs"). However, it is anticipated that, other than exceptionally, the practice of taking any newly submitted BID proposals to the Executive for consideration will continue.
- m) Amendments to various entries to add clarity or update legislative references;
- n) Changes have been made to delegation numbering, alongside removal of empty delegation entries, to result in clear sequential numbering of delegations within each entry in the Scheme.

5. Part 4 – Rules of Procedure

5.1 The following amendments are proposed to the Council Procedure Rules (Part 4 Section A) of the constitution:

- New Rule 1.4A – To provide that any requirement in the rules requiring a document to be signed may be signed by way of an electronic signature;
- New Rule 10.8 - Convening Meetings – To detail how the summons for a meeting is to be served;

- Rule 13.3(a) (previously Rule 13.3(b)) – Order of Business at AGM – To provide that the election of the Lord Mayor is to be the first item on the agenda for the Council’s Annual Meeting, as required by the Local Government Act 1972;
- Rule 13.3(b) (previously Rule 13.3(a)) – Order of Business at AGM – amended to clarify that special business of the Lord Mayor includes urgent business;
- Rule 14.2 - Notices of Motion – amended to make it clear that an email from the supporter of a notice of motion, sent from the Member’s Council email address, shall suffice as their signature;
- New Rule 18.7(h) – to provide that all amendments submitted at Council must not have the effect of wholly negating the original motion;
- Rule 21.4 - Speeches at Council – To make it clear that Members can speak on both a substantive motion and on each amendment to it;
- Rule 23.2A - Questions regarding GM joint committees – The Greater Manchester Integrated Care Partnership is added to the list of Greater Manchester bodies in respect of the work of which questions may be asked of the Leader or relevant member of the Executive.

5.2 A number of amendments are proposed to the Access to Information Procedure Rules (Part 4, Section B) of the constitution. While some of these are minor and for the purposes of clarity or better mirroring of legislative requirements, the following are of more significance:

- Addition of a further exemption (as Rule 15.2(viii)) to the key decision definition, so that implementation of decisions in respect of already approved and budgeted for capital projects are not treated as further key decisions by virtue of the level of expenditure/saving involved;
- Amendments are made to Rules 26.4 and 26.5 so that “need to know” requests by Members are considered by the City Solicitor rather than the Chief Executive.

5.3 The following amendments are proposed to the Scrutiny Procedure Rules (Part 4, Section E) of the constitution:

- Additional wording to Rule 1.2 to clarify that, notwithstanding the requirement to have 10 Members on each Scrutiny Committee, where a scrutiny committee comprises less than 10 elected members it shall not be prevented from discharging its functions, provided that when it meets the meeting is quorate;
- New sub-paragraph 13(5)A added to Rule 13 to clarify that members who have called-in a decision can attend the relevant Scrutiny Committee when the call-in is considered (including where the public

are excluded) and make submissions in accordance with the call-in procedure adopted by the committee.

- 5.4 An amendment is proposed to Rule 10 of the Officer Employment Procedure Rules (Part 4, Section F) of the Constitution. This relates to the definition of 'Senior Officers', which has been amended from an officer on spinal column point 32 to an officer on spinal column point 26. This is to take account of changes made to the NJC salary scales in April 2019, with scale point 26 under the new scale being equivalent to scale point 32 under the old scale.

6. Part 5 – Financial Procedures

- 6.1 The following amendments are proposed to the Financial Regulations (Part 5 of the constitution).
- 6.2 The content of the existing Section C of Part 5 (Policies, Risk Management and External Arrangements), is proposed to be split between Sections B (Roles and Responsibilities) and D (Financial Systems and Procedures). Section D is then proposed to be redesignated as Section C. The substantive content is unchanged other than some minor updating and clarification.
- 6.3 The existing Section E of Part 5 (Contract Procurement Rules) has undergone a substantial revision. Section E is also proposed to be redesignated as Section D. The aims of the proposed updates to the Contract Procurement Rules are to:
- increase flexibility for all below the UK threshold procurements and help deliver more streamlined procurements for lower value and lower risk contracts;
 - to clarify the approval process;
 - to include guidance on extension and variation arrangements;
 - to set out permissions for not going out to competition; and
 - generally, to improve the flow and readability of the rules.
- 6.4 The most significant proposed amendments to the Contract Procedure Rules in Section E of Part 5 of the constitution are:
- a) Proposals to renumber some of the Rules;
 - b) Rule 3 (Exemptions, Collaborative and E-Procurement process for all Contract Activity): This rule is proposed to be completely removed with parts of its content included within the Rules that follow it;
 - c) The title of the chapter "Common Requirements" is proposed to be changed to "Procurement Process for all Contract Activity";
 - d) The title of Rule 7 "Advertising, Approved Lists and Framework Agreements" is proposed to be changed to "Advertising". Rule 7.2 (Framework Agreements) is proposed to be removed but with information on framework agreements being added to Rule 6 as a new paragraph 6.2 (Framework Agreements and Dynamic Purchasing Systems);

- e) The chapter title “Conducting Purchase and Disposal” is proposed to be removed;
- f) Rule 8 (Competition Requirements for Purchase, Disposal and Partnership Arrangements): Is proposed to become Rule 6. A number of amendments are proposed to be made to this rule, especially around the award procedure thresholds. A number of additions are also proposed regarding framework agreements, when the Council can award contracts without going through a competition and on key decisions;
- g) Rule 17 (award of contracts and framework agreements and debriefing candidates): This rule is proposed to change to Rule 15. A few amendments have been made to the content of this rule and few additions around requirements for contract reports to record decisions;
- h) Rule 18 (contract documents): A number of amendments are proposed. The main change is one of the thresholds changing from £30,000 to £25,000.
- i) A new Rule (Rule 22) titled “Contract Extensions, Variations or Novation” is proposed to be added because there is currently no reference to contract extensions and variations in the Rules;
- j) A summary of approvals, thresholds and contract formalities table is proposed to be added after Rule 22. This table provides a summary of thresholds around approvals, award procedure and contract completion; and
- k) The definitions section has been updated, including a revised definition of “Authorised Signatory”.

7. Part 6 – Codes and Protocols

- 7.1 An amendment, which was reported to the Standards Committee in June 2022, to paragraph 7 of the Gifts and Hospitality Guidance for Members (Part 6, Section D) is proposed, to provide that the Guidance will be reviewed annually rather than every three years.
- 7.2 An amendment, which was reported to the Standards Committee in June 2022, to paragraph 13.1 of the Member / Officer Protocol (Part 6, Section F) is proposed, to provide that the Protocol will be reviewed annually rather than every three years.

8. Part 7 of the Constitution – Members’ Allowances Scheme

- 8.1 Members Allowances are independently recommended to the Council. It is proposed that there is amendment of the Members’ Allowances Scheme (Part 7 of the Constitution) to give effect to the decision of Council, taken in May 2022, to accept the recommendations of the Independent Remuneration Panel.
- 8.2 The scheme adopted currently refers to the annual uplift for Members allowances to be in line with the annual percentage increase for Manchester City Council employees. This year the National Joint Council for Local Government Staff (NJC) have agreed with the local government unions a cash

lump sum £1,925 pay award with effect from 1 April 2022 (Full Time Equivalent). It was not considered proportionate for members to receive the lump sum, so the proposal is to link the uplift to the percentage increase that an MCC employee will receive at SCP43 (which was the position under the previous allowance scheme), to cater for the recent local government pay award, and to future proof the scheme, as set out below:

- “5.1 The allowances referred to in paragraphs 3, 4 and 8 will be updated annually in line with the annual percentage pay increase given to a Manchester City Council employee at spinal column point 43 (and rounded to the nearest £) as agreed each year by the National Joint Council for Local Government Staff.”

The Independent Remuneration Panel has been consulted on this proposal and have agreed to it.

9. Part 8 of the Constitution – Management Structure

- 9.1 It is proposed that amendments are made to the management structure set out in Part 8 of the constitution to reflect changes to the senior management structure.

10. Recommendations

- 10.1 The recommendations appear at the beginning of this report.