



Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	COUNCIL – 20 SEPTEMBER 2023
Subject	AMENDMENTS TO THE CONSTITUTION – REPORT OF THE CONSTITUTION WORKING GROUP
Wards affected	All
Accountable member	Councillor Joe Harris, Leader of the Council Email: <a href="mailto:joe.harris@cotswold.gov.uk">joe.harris@cotswold.gov.uk</a>
Accountable officer	Angela Claridge, Director of Governance & Development Email: <a href="mailto:angela.claridge@cotswold.gov.uk">angela.claridge@cotswold.gov.uk</a>
Report author	As above
Summary/Purpose	To consider proposals from the Constitution Working Group for amendments to the Constitution to i) create a Standards Sub-Committee, ii) recruit up to two town or parish Councillors to advise Members in respect of hearings where the subject member is a town or parish councillor, and, iii) a change to the call-in arrangements for Cabinet/Individual Cabinet Member Decisions to reflect a the Council's political balance arising from the May 2023 local elections.
Annexes	None
Recommendation(s)	That Council resolves to:  <i>1) Agree to establish a Standards Hearing Sub-Committee (of the Audit and Governance Committee). This would be a politically balanced 3-member sub-committee with membership appointed by the Committee each year.</i>  <i>2) Instruct the Director of Governance &amp; Development (Monitoring Officer) to recruit up to two town and parish council representatives to act as a non-voting consultee(s) at hearings to determine whether a town or parish councillor has breached their council's code of conduct.</i>  <i>3) Authorise the Director of Governance &amp; Development (Monitoring Officer) to update i) Part B, Article 8 of the Constitution with consequential amendments to the Audit &amp; Governance Committee's membership</i>



	<p>4) <i>Authorise the Director of Governance &amp; Development (Monitoring Officer) to update Part D6, paragraph 4.13, Overview &amp; Scrutiny Procedure Rules.</i></p>
Corporate priorities	<ul style="list-style-type: none"><li>• Deliver the highest standard of service</li></ul>
Key Decision	NO
Exempt	NO
Consultees/ Consultation	<p>Elected Members of the Constitution Working Group (Cllrs M Evely, D Fowles, J Harris, J Layton, N Robbins and L Wilkins) Local Management Team; Business Manager, Democratic Services, and; Interim Head of Legal Services.</p>



## **1. EXECUTIVE SUMMARY**

**1.1** The Constitution Working Group has reconvened for the 2023/24 municipal year with revised terms of reference. Following the Group's meeting of 27 July 2023, this report makes the following recommendations to Council:

- i) create a Standards Sub-Committee to hear allegations that an elected member has breached their respective Council's Code of Conduct – if the allegations reach the hearing stage,
- ii) recruit up to two unpaid town or parish Councillors to advise members in respect of hearings where the subject member is a town or parish councillor, and,
- iii) a change to the call-in arrangements for Cabinet/Individual Cabinet Member Decisions to reflect the Council's political balance arising from the May 2023 local elections.

## **2. BACKGROUND**

**2.1** 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.

**2.2** The Constitution must contain:

- the Council's standing orders/procedure rules;
- the members' code of conduct;
- such information as the Secretary of State may direct;
- such other information (if any) as the authority considers appropriate

**2.3** Members of the Constitution Working Group have considered a number of proposals and now recommend the following amendments to the Constitution to the Council.

## **3. CREATION OF STANDARDS HEARINGS SUB-COMMITTEE**

**3.1** The Council's Audit and Governance Committee is responsible for promoting and maintaining high standards of conduct and for determination of complaints regarding conduct of Members including town and parish councillors. The majority of code of conduct complaints do not progress to a hearing stage as they are either dismissed with at the assessment stage or dealt with by way of a local resolution.

**3.2** Currently, if a code of conduct complaint progresses to the hearing stage (which hasn't happened for over two years) the complaint would be determined by the Audit and Governance Committee, which comprises seven members, plus an Independent Person attending as a consultee without voting rights.

**3.3** A Committee of seven members plus an Independent Person is a very large body for conducting a code of conduct hearing, which could lead to any hearing being unwieldy.



Attendance at a hearing can be intimidating for attendees present providing evidence and/or answer questions at a hearing, regardless as to whether they are subject members, complainants or witnesses. A larger committee membership only serves to amplify this effect.

**3.4** The Constitution Working Group, at their meeting on 27 July, 2023, considered four options:

1. Standards Hearing Sub-Committee (of the Audit and Governance Committee). This would be a 3-member sub-committee plus 1 non-voting Independent Person, with membership appointed by the Committee each year. The current political balance on a 3 member sub-committee is 2 Liberal Democrat, 1 Conservative. Substitutions would be allowed from any member of the Audit and Governance Committee provided they have undertaken the relevant hearings training.

2. Standards Hearing Panel (Panel of the Audit and Governance Committee). This would also comprise 3 members based broadly on political proportionality but with membership rotating from hearing to hearing from the members of the Audit and Governance Committee who have undertaken the relevant hearings training, plus 1 Independent Person. It would be possible to articulate the membership arrangements in such a way so that they would not be confirmed annually.

3. Audit and Governance Committee i.e. maintain the current constitutional position whereby the Committee is responsible for conducting hearings in consultation with a non-voting Independent Person. This is not recommended for the reasons given in para. 3.1.

4. A stand-alone Standards Committee which would be politically balanced and appointed at Annual Council. The Committee could comprise 5 members and would take on all responsibilities relating to conduct/standards matters from the Audit and Governance Committee. The officer view is that the volume of workload associated with conduct and standards matters does not warrant the establishment of a stand-alone committee.

**3.5** The Constitution Working Group recommend option 1 - a Standards Hearing Sub-Committee (of the Audit and Governance Committee). Responsibility for promoting and maintaining high standards of conduct would remain with the Audit and Governance Committee. Additionally, Audit & Governance Committee will continue to receive annual reports detailing the numbers of code of conduct complaints received and the outcomes of those complaints, as well as any general learning that can be drawn from the complaints.

**4. TOWN AND PARISH COUNCIL REPRESENTATIVE**

**4.1** A further option for consideration is in respect of hearings where the subject member is a town or parish councillor, an additional non-voting, but advisory, member to the panel



should be a town and parish council representative. This is the case at some other local authorities, is unpaid, and may be considered to be good practice.

- 4.2 The Constitution Working Group is supportive of this approach and Council is recommended to instruct officers to seek nominations for the position of town and parish council representative. Interviews will be conducted by a panel drawn from membership of the Audit and Governance Committee and a recommendation made to Council to appoint the preferred candidates.

## 5. CABINET CALL-IN RULES

- 5.1 The Constitution Working Group are recommending a change to the call-in arrangements for Cabinet/Individual Cabinet Member Decisions following the change in the Council's political balance arising from the May 2023 local elections.

- 5.2 Call-in is the exercise of the power of the Overview and Scrutiny Committee to review a decision in respect of any executive function that has been made but not yet implemented. The current arrangements are:

*“The power of call-in can be exercised by any three Members of the Committee, who must be from either (i) two political groups; or (ii) two from a political group and the non-aligned (independent) Committee Member; or (iii) one from each political group and the non-aligned (independent) Committee Member”.*

- 5.3 The Constitution Working Group recommend that the Constitution should be updated to state *“The power of call-in can be exercised by any three Members, who should be from two political groups or one political group and a non-aligned Member (if one sits on the Overview & Scrutiny Committee)”.*

## 6. ALTERNATIVE OPTIONS

- 6.1 Members are advised to adopt the recommendations for the reasons outlined in the main body of the report.
- 6.2 Not amending the Constitution which would lead to a lost opportunity in terms of improving agile decision making, promoting transparency and ensuring robust governance arrangements.

## 7. FINANCIAL IMPLICATIONS

- 7.1 None specifically arising from this report.

## 8. LEGAL IMPLICATIONS



- 8.1** Full Council, through its responsibilities as set out in the Constitution, recognises the requirement to observe specific requirements of legislation and the general responsibilities placed on the Council by public law, but also accepting responsibility to use its legal powers to the full benefit of the citizens and communities in its area.
- 8.2** The Statutory requirements relating to Standards matters are set out at Chapter 7 of the Localism Act 2011 (the Act). Section 27 (8) of the Act provides that Standards matters as referred to in Chapter 7 are not the responsibility of the Executive and thus all Standards matters are a Non-Executive function (i.e. the responsibility of Full Council). Under Section 101 Local Government Act 1972, Full Council can arrange for the discharge of Non-Executive Functions to a committee or sub-committee.
- 8.3** There is a need for the Council to uphold standards of ethics and probity, receive and deal with complaints that a Member may have breached the Code of Conduct.
- 8.4** Any non-elected Member of the Council included on a Standards Hearing Sub-Committee would be a Co-opted Member of the Council and, by virtue of Section 13 of the Local Government and Housing Act 1989, could not have voting rights.
- 8.5** Additionally, non-elected Members of Council will be obliged to sign a declaration of acceptance of office, register their interests and will be bound by the Code of Conduct.

## **9. RISK ASSESSMENT**

- 9.1** There is a risk of reputational damage that if the Council does not have appropriate arrangements in place for conducting standards hearings, which will be of interest to the local media.

## **10. EQUALITIES IMPACT**

- 10.1** The Constitution is made available to all Members and the Public via the Council's website and has been updated in line with the Accessibility Requirements for Public Sector Bodies Regulations (2018). This means that it can be accessed by as many people as possible including those with impaired vision, motor difficulties or cognitive impairments. Where accessibility difficulties are encountered, the Council can provide a copy of the Constitution in different formats.

## **11. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS**

- 11.1** Not applicable

## **12. BACKGROUND PAPERS**

- 12.1** None.

(END)