

24 January 2024

## REVIEW OF THE COUNCIL'S CONSTITUTION

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Exempt / confidential / not for publication	<b>No</b>
Council Plan reference	<b>Not in Council Plan</b>
Wards affected	<b>All wards</b>

### Executive summary

The review of the Council's constitution in this council year is predominantly an exercise in ensuring legislative, consequential and other updates are reflected bearing in mind the comprehensive review of the Constitution in 2019. The bulk of changes identified were agreed by Full Council at its [November 22 meeting](#) and remaining proposed changes will come to Full Council once they have been considered by the relevant Committee, for example the Social Media Guidance for Councillors is under review by the Standards Committee.

This report brings forward the last significant change identified by the review which is to amend the Council Procedure Rules to ensure consistency with the Council's adopted Code of Conduct for Councillors in relation to how Councillors participate when they consider they have an Other or Non registrable interest. As it stands, there is a conflict between what the Code of Conduct and the Council Procedure Rules require a councillor to do. The proposed change addresses this by reflecting the position set out in the Code of Conduct: that a councillor may choose to address the meeting if the public are allowed to do so before leaving the room.

In accordance with Rule 21 of the Council Procedure Rules as this change is an amendment to the Council Procedure Rules, the report will be proposed and seconded without debate and stand adjourned until the next Meeting of the Full Council when it can be voted on.

The Council's Constitution and associated documents are available in full on the [Modern.gov](#) pages of the Council's website. Proposed revisions to Council Procedure Rules are set out in full in **Annex A** (amendments are shown as tracked changes for ease of consideration).

## 1. Decision/s to be made

1.1 That in accordance with Council Procedure Rule 21.2, the following recommendation, having been proposed and seconded, stand adjourned to the next ordinary meeting of the Council:

- a) That revised Rule 19.5 of the Council Procedure Rules (shown with track changes), be agreed (**Annex A**)
- b) That all councillors will attend mandatory refresher training in interests before the end of May 2024.

## 2. Background

2.1 Prior to being brought forward for consideration, Leaders of Political Groups were consulted upon the change proposed in this report.

2.2 The law prohibits any form of participation where a councillor has a Disclosable Pecuniary Interest (DPI). That is reflected in the Constitution via the Code of Conduct already, and includes meetings where the councillor holding a DPI is not a decision maker at that meeting.

2.3 The proposed change addresses the circumstance where a councillor considers that they have an Other Registerable Interest (ORI) or Non Registerable Interest (NRI) in a matter. The Council's adopted Code of Conduct for Councillors (which replicates the Local Government Association's [LGA] model Code on this point, allows a Councillor to speak where they have an ORI or NRI if members of the public are allowed to do so. In contrast, section 19.5 of the Council Procedure Rules currently does not allow speaking where a Councillor has a Personal Interest (no longer relevant terms in the Code of Conduct but the principles are similar to an ORI or NRI).

2.4 It is recommended that section 19.5 is aligned to reflect the Code of Conduct for Councillors noting that this is what is also reflected in the LGA Model Code. As this is a change which directly affects participation of councillors, it is recommended that refresher training of all councillors should follow and be completed no later than the end of May 2024.

## 3. Why is the decision needed?

3.1 There is a conflict between Council Procedure Rules and the Council's adopted Code of Conduct. The basis of the position in the model LGA code is that there should be a high bar to prevent a Councillor from participating in a decision, and therefore the approach should be to allow the same participation rights afforded to members of the public, unless there is a good reason.

3.2 If this proposed change is made, it will reflect that is not an inherent misuse of position for a councillor holding an NRI or ORI to utilise any speaking rights afforded to members of the public and then leave a meeting. As a member of the local authority, Councillors are provided with certain opportunities, responsibilities, and privileges, and make choices all the time that will impact others. However, they should not take advantage of these opportunities to further their own or others' private interests or to disadvantage anyone unfairly.

3.4 The Code of Conduct applies to Councillors even when utilising public speaking rights at a meeting. The Code would not be disengaged, and so the principles and standards

of behaviour required by Councillors would still apply. It would be a question of fact whether a councillor was acting in their capacity or not.

- 3.5 Councillors exercising speaking rights afforded to members of the public (where they have an ORI or NRI) would also be bound by the same rules – for example, giving notice in advance or abiding by time limits. There is no opportunity to speak if the public are not allowed to address the meeting on that item. This does not remove the option for another councillor who does not have NRI or ORI to make any relevant case or to represent the wider views of constituents of a councillor with a NRI or ORI.
- 3.6 A Councillor exercising a prerogative to speak as a member of the public would still need to declare the nature of the interest before proceeding. Each councillor is personally responsible for deciding whether or not to disclose an interest and it is also important that the public, and Councillors who are decision makers or committee members know about any interest that might have to be disclosed. This helps to ensure that public confidence in the integrity of local governance is maintained.
- 3.6 The change will reflect that Councillors must withdraw after speaking and must not be present in the room during the discussion or vote on the matter. This would take effect at a committee meeting, for example, even if a Councillor were not a member of the committee but was simply attending as a member of the public. By staying in the room, even if not permitted to speak or vote, it is a long-held doctrine of case law that a Councillor may still influence the decision or might gather information which would help in the furtherance of his or her interest. It is therefore in the public interest that a Councillor, after having made any representations, should withdraw from the room, and explain why they are withdrawing.

#### 4. Timetable for implementation

- 4.1 Once seconded and proposed, this report and its recommendations stand adjourned until the next Full Council meeting when it can be debated, voted on and, any amendments agreed, take effect then.

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#### Annexes

Annex A Draft Changes to Council Procedure Rule 19.5

#### Background papers

None.