

Constitution and Governance Committee

Monday 12 September 2022

2.00 pm Luttrell Room - County Hall,
Taunton



SUPPLEMENT TO THE AGENDA

To: The Members of the Constitution and Governance Committee

We are now able to enclose the following information which was unavailable when the agenda was published:

Item 5	Constitution Review - Report (Pages 3 – 8)
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Item 6	Review of Disclosures and Barring Service (DBS) checks policy for Somerset County Councillors – 2022 – Report (Pages 9 - 12)
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Democratic Service Team, County Hall, Taunton, TA1 4DY

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Somerset County Council

Constitution & Governance Committee

– 12 September 2022

Report of the Monitoring Officer – Development of the Constitution for the new Somerset Council

Cabinet Member: All

Division and Local Member: N/A

Lead Officer & Author: Scott Wooldridge - Monitoring Officer and Strategic Manager for Governance & Democratic Services

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1. Summary

- 1.1 At its Annual General Meeting in May 2022, the Council agreed an interim Constitution for 2022/23 and recognised that there would be a comprehensive review of the Constitution during 2022/23 through the Constitution and Governance Committee, culminating in the proposed Constitution for the new Somerset Council being recommended to the County Council meeting in February 2023 ahead of vesting day on 1 April 2023.
- 1.2 The Constitution and Governance Committee will complete a phased review and development of the Constitution for the new Somerset Council over a series of meetings. The Committee's work programme will be designed to ensure that priority areas are completed ahead of the Constitution being finalised in February 2023 to recommend to the County Council for approval.
- 1.3 The review includes best practice from other councils and reviewing the Constitutions of recent local government reorganisations in Buckinghamshire and Dorset, along with the constitutional work being done by North Yorkshire and Cumbria.

2. Recommendation(s)

2.1 The Committee is asked to:-

- (1) Endorse the proposed phased approach to developing the Constitution for the new Somerset Council set out in this report; and**
- (2) Consider and comment upon the potential approaches to developing the Constitution for the new Somerset Council set out in paragraphs 3.5 and 3.6.**

3. Background

3.1 Developing the Constitution for the new Somerset Council

Under Section 9P of the Local Government Act 2000, the Council is required to prepare and keep up to date a Constitution containing the standing orders of the Council and such other information as is required or desirable.

The preparation and review of the Council's Constitution is undertaken and reported by the Monitoring Officer for approval by the Council at its Annual General Meeting each May. In between the Annual General Meetings, the Constitution and Governance Committee considers any proposed amendments and can make any recommendations to the Council. The approval or amendment of the Constitution is a non-executive function and is a function for the County Council and not the Executive. Nevertheless the Executive will want to be a key consultee on proposals since it incorporates the Executive arrangements.

The Constitution was therefore recently reviewed in May 2022 and a number of revisions agreed for the transitional year 2022/23 ahead of the establishment of the new Somerset Council on 1 April 2023. Those revisions related to technical changes, legislative changes including functions as a result of the Somerset Structural Changes Order 2022, Members Code of Conduct, Member and Officer Protocol, Recording and Webcasting of meetings Protocol, Whistleblowing Policy and several guidance documents to aid transparency and compliance.

3.2 The Council operates a Leader and Executive model of governance in accordance with legislative requirements. The Council has operated this model of governance since 2001. The Leader and Executive model places the majority of functions carried out by the Council as the responsibility of a specified number of councillors (maximum of 10) operating as an 'Executive' or 'Cabinet'. The Leader has responsibility for agreeing the Executive arrangements and the executive decision-making arrangements for members and officers across the Council.

3.3 At its Annual General Meeting in May 2022, the Council agreed an interim Constitution for 2022/23 and recognised that there would be a comprehensive review of the Constitution during 2022/23 through the Constitution and Governance Committee, culminating in the proposed Constitution for the new Somerset Council being recommended to the County Council meeting in February 2023 ahead of vesting day on 1 April 2023.

3.4 Principles and approach to developing the proposed new Constitution

Principles

It is proposed to use the following principles to underpin the development of the new Constitution and council decision making:

- Accountability
- Transparency
- Efficiency

Accountability

It is important that everyone can see who makes which decision and where appropriate can hold the decision maker to account. It is therefore important that where possible only one person (where it is an individual member or officer) or one committee makes a decision.

Transparency

The Constitution should continue to be published on the council's website and made available upon request. It should set out the democratic and decision making arrangements. Meetings of the Council should be open to the public and reports and papers published for public inspection (except where specific exemptions are necessary). Proper Officers and any officer delegations should be set out in the Constitution.

Efficiency

Democratic arrangements and decision making should aim to be efficient. Papers and documents should be relevant to the decision under consideration and unnecessary material should be avoided. Paperwork should be minimised, and digital options (e.g. publication on the council's website) should be offered where possible.

Proportionality

It is important that the arrangements set out in the new Constitution cover the full range of local authority functions of the new unitary council and comply with the existing wider legislation and the Somerset Structural Changes Order 2022 as well as the guiding principles above.

It is recommended that the principles of transparency, accountability and efficiency should be complemented by a principle of proportionality, and that the arrangements wherever possible should be those necessary to deliver transition and the functions of the new Somerset Council.

3.5 Approach

The review is being led by the Monitoring Officer with the support of the Local Government Reorganisation Governance Workstream, which includes the Monitoring Officers of the four district councils. The County Council already has a Constitution and the review will build upon this by reference to best practice from other relevant peer councils to ensure the full range of functions for the new Somerset Council are included.

The options available for developing the Constitution for the new Somerset Council are:

- 1) Expand - Build upon the existing County Council Constitution and with reference to best practice from other relevant peer councils to ensure the full range of functions for the new Somerset Council are included.
- 2) Develop – Develop a completely new Constitution with reference to best practice from councils who have recently undertaken Local Government Reorganisation and other relevant peer councils

Option 1 links with the County Council being the continuing authority for the new Somerset Council and will require less resources and time to complete the Constitution for the new Somerset Council.

Option 2 will require the leadership and sole focus of the Monitoring Officer for its delivery and other resources to deliver. Compared to Option 1 it therefore requires more resources and time although it has the advantage of providing a new Constitution for the new Somerset Council.

The Committee's views on these options is welcomed in order to steer the review.

3.6 To assist the Committee in relation to Option 2, a new Constitution would likely be structured into key Parts on the following basis:

- A. Summary and Explanation
- B. Public Participation (description of the arrangements for public participation in meetings, petition scheme and access to information)
- C. Council (a description of functions and procedures for Full Council meetings and arrangements for Honorary Aldermen/Alderwomen)
- D. Committees (description of the committee structure and arrangements along with terms of reference and meeting procedure rules)
- E. Executive (description of the Executive arrangements and meeting procedures)
- F. Joint Arrangements (description of any joint authorities and joint committee arrangements)

- G. Scrutiny (description of the overview and scrutiny functions and arrangements)
- H. Members (description of Member roles, Code of Conduct, Protocol on Member and Officer relations and Scheme of Members Allowances)
- I. Officers (description of management arrangements, Scheme of Delegation to Officers, list of Proper Officers, Employee Code of Conduct, Officer Employment Procedure Rules, Whistleblowing Policy, Contract Procedure Rules and Financial Procedure Rules)
- J. Appendices – supporting guidance and protocols

3.7 Subject to the views of the Committee on the proposed approach to developing the Constitution for the new Somerset Council, the proposed phased review and development of the Constitution through the Committee's meetings is as follows:

- 1) Part A - September
- 2) Part B and Part C - October
- 3) Part D (including planning and Local Community Networks) – ***November (consider as part of Work Programme agenda item whether the Committee requires an additional meeting)***
- 4) Part E (following consultation with the Leader and Executive), F and G – December
- 5) Part H and I and overall Constitution for recommendation to Council – January

As can be seen above, this highlights the significant work associated with developing a new Constitution compared to expanding the existing Constitution which would instead focus mainly on Parts A, B, C, D and I. Nevertheless, the Council has external legal advisors which could be directed towards developing Option 2 if required.

The safest option to ensure the Council can definitely have a Constitution in place for the new Somerset Council is Option 1 and for further work to be undertaken during 2023/24 to review and refine the Constitution to meet the needs of Somerset Council.

4. Implications

4.1 Legal & Risk:

This report complies with all legal requirements. The only risk to the Council would result from the Council failing to fulfil its legal obligations.

The Council's Constitution sets out the legal framework within which the Council takes decisions and fulfils its functions and responsibilities. It needs

to be kept up to date and legally compliant.

Financial, equalities, sustainability and community safety implications:

There are no direct equalities implications arising from any of the proposals in this report. There are also no anticipated direct sustainability or community safety implications associated with the proposals in this report.

Option 2 would require more resources and capacity with a greater requirement for use of external legal advisors in order to meet the February 2023 deadline.

5. Background Papers

- 5.1 Council's Constitution
Monitoring Officer report to Council in May 2022
Somerset Structural Changes Order 2022
Local Government Acts 1972 and 2000

Review of Disclosures and Barring Service (DBS) checks policy for Somerset County Councillors – 2022

Lead Officer: Scott Wooldridge – Monitoring Officer

Author: Jamie Jackson – Scrutiny Manager

Contact Details:

Executive Member: Councillor Tessa Munt

Division and Local Member: N/A

1. Summary/link to the County Plan

- 1.1.** The Disclosure and Barring Service (DBS) helps prevent unsuitable people from working with vulnerable groups, including children. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).
- 1.2.** At the meeting of the County Council in November 2017 the Council accepted the recommendation of the then Standards Committee that all members whose duties bring them into contact with young children or vulnerable adults should have an enhanced DBS check. This included: the relevant Executive members; members of the Scrutiny Committees for Children and Families and/or Adults and Health; members of the Adoption and Foster Panels; any member who partakes in a visit to a Children's home and whose Corporate Parenting responsibilities involve interaction with children; and members appointed to Panels or working groups relating to education or adult social care services.

In addition, it was agreed that all other members were required to have a Basic DBS check and this policy was based on an assessment of the legislative and practical requirements at the time.

- 1.3.** In July 2022 the Lead Member for Children and Families requested that the Monitoring Officer present a report to the Constitution and Governance Committee and then at Full Council to revisit the policy with a view to requiring all members to be enhanced DBS checked. It feels timely to revisit the policy given the continuing emphasis on safeguarding and an assessment of DBS policies of other councils in relation to members.

2. Recommendations

- 2.1. That the Committee considers the proposals brought forward and agrees to recommend to Full Council that the existing DBS policy for Councillors be extended to provide:**
 - (a) An extension of the current mandatory requirement to have**

Enhanced DBS checks without barred list checks to: all Executive Lead Members; Associate Lead Members; members of the Adults & Health and Children & Families Scrutiny Committees; members of the Adoption and Foster Panels; members of the Corporate Parents Board; and Members appointed to Panels or working groups relating to education or adult social care services, to ensure that all Members of the Council and co-opted members are required to undergo an Enhanced DBS check without barred list checks. (Option 3 in paragraph 3.1)

- (b) That all DBS checks required above will be carried out by the Council immediately following each Council election to ensure that such checks are renewed halfway through this election period, approximately May 2025. This is relevant as DBS checks are effectively only valid on the day they are issued and this current election period is unusually long.**
- (c) That the Monitoring Officer maintains a register of approved applications.**

2.2. Officers anticipate that the proposals will be welcomed by all members, however the Committee is asked to note that if the amended policy set out in paragraph 2.1 above is agreed by the Council, then any member who refuses an enhanced DBS check without barred list checks under this policy will be in breach of the Members' Code of Conduct for failure to comply with Council policy and will be subject to a potential range of sanctions which can be imposed in these circumstances.

The Committee is also asked to note that the recommendation listed in paragraph 2.1 exceeds legal requirements, for members requiring a DBS check. However there is a view that the role, expectations and reach of a County Councillor has increased considerably since 2017 and will only continue to do so as part of a Unitary Authority. There is a reasonable expectation that all Councillors could be in a position where they are visiting a care home, school or vulnerable resident whilst dealing with casework issues and by agreeing these recommendations, the Council will be providing the greatest level of assurance possible to the public.

There is also the possibility that following May 2023 Annual General Meeting of Full Council there could be a number of changes to the roles Councillors are appointed to and these recommendations would mitigate the need for a further round of ad-hoc Enhanced DBS checks.

3. Background

3.1. The DBS is a non-departmental public body, sponsored by the Home Office. It was formed in 2012 by the merger of the Criminal Records Bureau ("CRB")

and the Independent Safeguarding Authority (“ISA”) under the Protection of Freedoms Act 2012 which made changes to the arrangements for carrying out criminal records checks. The DBS provides access to criminal records and other relevant information for organisations in England and Wales and is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults).

There are various level of checks that can be applied for –

1. Basic disclosure certificate - shows any ‘unspent convictions’ someone may have in the UK. A basic disclosure shows a conviction record at a point in time, so there is no set time that it lasts for. Individuals can apply and pay for a basic Disclosure themselves. This is not the same as a DBS Standard check
2. Standard disclosure certificate - checks for spent and unspent convictions, cautions, reprimands and final warnings.
3. Enhanced disclosure certificate, this includes the same as the standard check plus any additional information held by local police that’s reasonably considered relevant to the role being applied for.
4. Enhanced disclosure certificate with barred list checks, this is like the enhanced check, but includes a check of the DBS barred lists. Under the current legislation no elected member would qualify for this level of check.

3.2. Legislation in 2012 significantly amended definitions of regulated activities with children and adults which impacted on the legal position of DBS checks in relation to members. It is reasonable to say that the legislative requirements allow for a degree of interpretation and this has contributed to policy variations around the country.

3.3 Other points to note

3.3.1 DBS checks carried out by the Council are only relevant for members acting in their capacity as elected members. If members carry out roles outside of this capacity involving work with children or adults (for example, volunteering with the scout movement or in a children’s centre), it is their responsibility to check with the relevant organisation regarding that organisation’s own DBS checking requirements.

3.3.2 Any policy change should apply to checks requested and initiated from the date of the Council’s decision.

3.3.3 In the event that a DBS check raises concerns then the response by the Council will be proportionate. If there is a suggestion of risk to children or

adults then advice will be taken from the Council's safeguarding experts. One option is then to seek an external risk assessment before deciding next steps which could include a referral to the police for investigation through to a decision being taken to restrict the members' appointments on the Council and formal advice being given to, for example, the schools within the members' electoral division and other relevant agencies.

- 3.3.4** The current cost of an Enhanced DBS is £44 and for a Basic Disclosure check it is £25. The estimated cost of undertaking a one-time enhanced check for all members and co-opted members is approximately £5000, compared to the cost of the current mixed approach being roughly £3750. This cost should be capable of being met from within the Members' budget.
- 3.3.5** The ultimate purpose of this report and the recommendations are to revise and amend the Council's DBS policy to enhance the arrangements in place to provide a strong level of assurance to Somerset residents that the Council is taking practical actions to continue to reduce the risk of harm to vulnerable young people and adults.