

Westmorland and Furness Shadow Authority Meeting

Date **7 March 2023**

Title **Proposed Constitution for Westmorland and Furness Council – Update**

Report from: Linda Jones – Chief Legal and Monitoring Officer

Report Author: Caroline Elwood – Interim Monitoring Officer

Wards: All

Key Decision: No

1.0 Purpose/Summary of report

- 1.1. At the meeting of the Shadow Authority on the 23 January 2023 members agreed to note and refer matters raised by political groups on the Constitution to the cross party Constitution Review Working Group for further review and to report back to Council. This report sets out their recommendations on those matters referred to them and deals with updates to the Constitution in respect of Local Choice Functions and the Statutory and Proper Officer Scheme.

2.0 Recommendation

2.1 It is recommended that the Shadow Authority:

- (1) Approve the list of Local Choice Functions at Appendix 1 to the Report**
- (2) Approve the list of Statutory Officers and Proper Officers at Appendix 2 to the Report.**
- (3) Agrees not to implement a politically proportionate points system for the appointment of Chairs and Vice Chairs of Scrutiny, in view of the specific requirement to appoint an opposition group member as Chair or Vice Chair of standing Overview and Scrutiny Committees, but to agree to keep the matter under review.**
- (4) Agree to amend the current wording in the Constitution in relation to the appointment of Chairs and Vice Chairs of Overview & Scrutiny Committees to;**

The Chairs and Vice Chairs will be appointed by Council annually. Whenever practicable, the Chair of the Corporate Overview and Scrutiny Committee and either

the Chair or Vice Chair of other Scrutiny Committees shall be from a political group other than those members forming the Cabinet or shall be an independent Member.

- (5) Notes the position in relation to the HRA account.**
- (6) Agrees the recommendations in relation to other matters raised in respect of the Constitution as set out at paragraph 8.2 and 8.3 of this report.**
- (7) Agrees to establish an informal Member Development Steering Group on a cross party basis to deal with Member Development and Training issues.**

3.0 Background and Proposals

- 3.1 At the meeting of the Shadow Authority on the 23 January 2023 the first draft of the new Constitution for Westmorland and Furness was adopted to take effect from 1 April 2023. It was agreed that to note and refer any matters which had been raised by any of the political groups to the cross party Constitution Review Working Group for review and to recommend any appropriate action to the next meeting of the Shadow Authority in March 2023.
- 3.2 The Working Group met on the 15 February 2023 and have made a number of recommendations including outstanding matters relating to the allocation of Local Choice Functions and the designation of roles within the Statutory and Proper Officer Scheme.

4.0 Local Choice Functions

- 4.1 Regulations made under the Local Government Act 2000 made provision for certain functions (known as "Local choice functions") to be either executive or non-executive functions and it is for each individual Council to make that choice.
- 4.2 The covering report to the Shadow Authority meeting in January 2023 made clear that Part 2 Section 3 of the Constitution, which sets out the Responsibility for Local Choice Functions, was blank pending review by the Constitution Review Working Group.
- 4.3 Members of the Working Group met on 15 February 2023 to review and confirm the provisional allocation made by Officers and Appendix 1 to the report is now recommended for approval.

5.0 Statutory and Proper Officers

- 5.1 Many legislative provisions require the appointment of a designated officer, known as a Statutory or Proper Officer, tasked with undertaking formal responsibilities on behalf of the Council. Part 2 Section 5 Part 4 of the new Constitution sets out the list of Statutory

Officers and Proper Officer Appointments which was only partially completed when the document was submitted to the January 2023 meeting of the Shadow Authority.

- 5.2 It has now been substantially completed and agreed by the relevant officers, although the substitute column is in a general format pending the finalisation of staffing structures. In one or two instances the designated officer remains blank pending appointments to certain posts.
- 5.3 Members of the Constitution Review Working Group met on the 15 February 2023 to review the provisional allocation made by Officers and Appendix 2 to the report is now recommend approval. Please note that since the review of the Appendix the role of Caldicott Guardian has been added for completeness.

6.0 Allocation of Chair and Vice Chair Roles

- 6.1 At the meeting of the Shadow Authority on the 23 January 2023 it was agreed to note and to refer to the Constitution Review Working Group any issues which political groups would wish to see reviewed.
- 6.2 The Labour Group raised the following issue on the allocation of Chairs and Vice Chairs:

We would like to see some further development of the element of the constitution in relation to the allocation of Chair and Vice-Chair roles, particularly the Scrutiny ones and others that attract SRAs. The County Council operate a politically proportionate points system to allocate the Chair and Vice-Chair positions, which ensures a fair allocation of senior non-executive roles across the different political groups. We would welcome the inclusion of such a tool within the Westmorland and Furness constitution.

- 6.3 The Council Procedure Rules for Cumbria County Council states:

Appointment of Chairs and Vice-Chairs of Scrutiny

The following system is to be used for making appointments on a politically proportionate basis:

- (i) *Each position of Chair and Vice-Chair will be given a weighting which is then multiplied by the number of positions on the Council to give a total points score. The point scores below are included for illustrative purposes only, and the actual points scores will be calculated by reference to the number of panels the County Council decides to establish at the time of its annual meeting.*

	<i>Weighting</i>	<i>Points Score</i>
<i>Chair of Scrutiny Advisory Board (x3)</i>	6	18
<i>Vice – Chair of Scrutiny Advisory Board (x3)</i>	3	9
<i>Chair of Health Committee</i>	6	6
TOTAL		33

- (ii) *The total points score will be divided between the political groups on the Council in proportion to the number of seats that each group has on the Council as a whole, so as to give a points score for each political group.*
- (iii) *Discussions will then take place between the political groups as to the positions which should be allocated to each group based on each group's points score and the weightings in the table above.*
- (iv) *For the avoidance of doubt, a political group may, if it wishes, nominate within its own points score a member who is not a member of a political group to a position of chair or vice-chair.*

6.4 The extract below is from the Appendix 3 of the Supplementary Report which went to Cumbria County Council's Annual Meeting in April 2022. It sets out how the weighting works in practical terms and the key points are:

Appointment of Chair & Vice Chair - Overview & Scrutiny Boards and Health Scrutiny Committee:

Based on the rules set out in the Constitution the weightings and points scores for the Overview & Scrutiny Boards and Health Scrutiny Committee are set out below:

	<i>Weighting</i>	<i>Points Score</i>
<i>Chair of Scrutiny Advisory Board (x3)</i>	6	18
<i>Vice – Chair of Scrutiny Advisory Board (x3)</i>	3	9
<i>Chair of Health Committee (x 1)</i>	6	6
TOTAL		33

Based on the current seats, the 33 points divide between the three political groups as follows:

	<i>Points Score</i>
<i>Conservative</i>	15
<i>Labour</i>	11
<i>Liberal Democrat</i>	7
TOTAL	33

It is on the basis of these points' scores that the groups will need to consider nominations for Chairs and Vice-Chairs of Overview and Scrutiny Advisory Boards and the Chair of the Health Scrutiny Committee following Council.

- 6.5 Members will note that it is only the Scrutiny Chairs which are weighted within the County Council Constitution.
- 6.6 There is no weighting within the current draft of the new Westmorland and Furness Constitution and this is not commonly seen as a mechanism in the other Council Constitutions. However, it does specifically state within the new Constitution at Part 2 Section 5 "Functions of Committees" at paragraph 6.3 under the "Composition of Overview and Scrutiny Committees"

"The Chairs and Vice Chairs will be appointed by Council annually. Either the Chair or the Vice Chair for each Committee shall be a member of a minority political group, or an Independent Member"

- 6.7 This requirement is in accordance with best practice and guidance that Overview and Scrutiny Chairs should not all be held by the majority party.
- 6.8 The committee structure provides for the following Overview and Scrutiny Committees:
- Corporate Overview and Scrutiny Committee
 - Children Young People and Families Overview and Scrutiny Committee
 - Health and Adults Overview and Scrutiny Committee
 - Communities and Environment Overview and Scrutiny Committee
- 6.9 This means that as a minimum at least 4 Chairs and/or Vice Chairs must be held by a minority political group under the current requirements.
- 6.10 The Constitution Review Working Group met on the 15 February 2023 and concluded that, in view of the specific requirements in the Westmorland and Furness Constitution which does safeguard the position of opposition political parties, it is not considered necessary to introduce a weighting scheme at this point. However, it is suggested that the position should be kept under review. The Working Group did consider, however, after some debate that the wording in the Constitution dealing with the appointment of Chairs and Vice Chairs of Overview and Scrutiny Committees should be altered from the current wording at paragraph 6.6 which refers to "member of minority political group" to read:

"The Chairs and Vice Chairs will be appointed by Council annually. Whenever practicable, the Chair of the Corporate

Overview and Scrutiny Committee and either the Chair or Vice Chair of other Scrutiny Committees shall be from a political group other than those members forming the Cabinet or shall be an independent Member"

- 6.11 This change of wording is intended to deal with the situation where a minority group is in administration in a coalition, which may have the effect of preventing the appointment of other opposition group members to these roles. The phrase "whenever practicable" allows for any unusual circumstance where, for whatever reason, it is necessary to depart from the normal rule, an example might be where opposition groups decline to take the Chair/Vice Chair when offered.

7.0 HRA Account

- 7.1 At the meeting of the Shadow Authority on the 23 January 2023 the Labour Group also raised the following point:

We would also like to challenge the element of the constitution that awards power to the Cabinet to oversee the Revenue and Capital Budgets for Housing, plus the Tenants Forum Budget – we believe that powers over all Revenue and Capital Budget setting should be reserved to Council and not Cabinet.

- 7.2 This was reviewed by the Constitution Review Working Group on the 15 February 2023 with advice provided by the Council's external solicitors.
- 7.3 The Housing Revenue Account (HRA) is a separate ring-fenced account and is exclusively for the income and expenditure associated with the Council's functions associated with its housing stock. Whilst the HRA may not directly impact on the Council's wider budget or on the level of council tax, it remains within the Council's General Fund and is an integral part of 'the overall Council budget'. As such, it is to be agreed at Council at the same time as the rest of the budget and the setting of the council tax requirement as a part of those calculations.
- 7.4 Income to the HRA is primarily received through the rents and other charges paid by tenants and leaseholders. Whilst the setting of housing rents is technically a Cabinet function, it is nonetheless seen as such a singularly core part of the HRA budget that it is commonly referred by Cabinet to Council for approval as a distinct element of agreeing the HRA budget. This is the approach taken in the recommendations to Council in the current budget report.
- 7.5 The Working Group requested a briefing on the HRA account for members which will be made available shortly.

8.0 Other Issues Raised

- 8.1 During the meeting of the Shadow Authority on the 23 January 2023 Members raised a number of points in the debate which are captured below and were brought before the Working Group for a decision. The recommendations from the Working Group are set out in column three.

Issue	Comment	Working Group Decision
Cabinet Minutes to Council	<p>A query as to whether it is intended that Cabinet minutes will go to Council routinely.</p> <p>This is standard practice currently at Cumbria CC but practice varies in other Councils.</p> <p>Matters to consider include:</p> <ul style="list-style-type: none"> • Cabinet papers and minutes are published and available for call in on matters of concern • The Cabinet Procedure Rules allow 20 minutes for questions to be put to Cabinet members by Councillors with no need to give advance notice • The Council Procedure Rules allow 30 minutes for questions. Written notice is required but the Chair has the discretion to take questions without notice if any time is left at the end. 	Recommended that Cabinet Minutes should be included on the Council Agenda
Dalton-in-Furness	<p>A request that Dalton-in-Furness be included at paragraph 1.2 in the Introduction to the Constitution as it is the 5th largest town in the Borough. The paragraph currently refers to "a number of major towns including</p>	Recommended that the description was limited to the 3 main towns in alphabetical order

	<p>Windermere, Ulverston, Penrith, Kendal, Barrow-in-Furness, Kirkby Stephen and Kirkby Lonsdale "</p> <p>The current list is just intended to give a short summary and description of the area.</p>	
<p>Locality Boards & Local Area Planning Committees</p>	<p>A query regarding the discrepancy in names between the Furness Locality Board and the Barrow-in-Furness Local Area Planning Committee with a request the same names are adopted for both.</p> <p>Matters to consider include:</p> <ul style="list-style-type: none"> • The Furness Locality Board was chosen following consultation with members on the appropriate name for the three Locality Boards. • The Planning Workstream Lead Officer would advise caution in changing the name of the Local Area Planning Committee to Furness as it tends to describe the wider area including Ulverston. This may cause confusion with Ulverston residents assuming the Barrow-in-Furness Committee is dealing with their issues when in fact they would come under South Lakeland Area Planning Committee. 	<p>Recommended to leave the names as Furness Locality Board and Barrow-in-Furness Area Planning Committee</p>

8.3 Following the Shadow Authority meeting both Cllr D Taylor and Cllr P Dew made a number of submissions to the Working Group. These were included in the report to the Working Group for their views and

are set out in the table at Appendix 3 of the Report together with the recommendations from the Working Group.

9.0 Summary

- 9.1 Members are asked to note and approve the proposed changes and amendments to the new Constitution as recommended by the Constitution Review Working Group.

10. 00 Member Development Steering Group

- 10.1 Member Development and Training issues will be a key focus for the new Authority and it is recommended that the Shadow Authority agrees to establish a new cross party Member Development Steering Group to deal with member development issues including induction, IT support and ongoing briefings and development opportunities for all elected members. It is not intended that the Steering Group will have delegated decision making powers and it will be for Group Leaders to nominate members to the Group. It is recommended that the Steering Group is a maximum of 8 elected members and nominations are made on a 3:2:2:1 basis. The intention is that the Steering Group meets on a quarterly basis to review the Member Development Training Plan and provide feedback and support on the programme to date and development needs going forward.

10. Consultation

The draft Constitution as a whole has been the subject of consultation with the cross party member Constitution Review Group, Informal Cabinet, relevant individual Cabinet members and the Overview and Scrutiny Committee. Officers have been consulted from various technical work streams, sovereign Council Monitoring Officers, newly appointed Westmorland & Furness Directors and the Councils section 151 Officer.

11. Alternative Options

The new Council must adopt a Constitution to take effect from vesting day. Various alternatives to the provisions contained within the draft Constitution have been discussed with the Member Constitution Working Group, some of which remain to be finally agreed.

12. Implications

Financial, Resources and Procurement

- 12.1 There are no direct financial or procurement issues arising from this report. However, the Constitution contains both Finance and Contract Procedure Rules which have been approved by the section 151 Officer.

12.2 As part of the 2023/24 budget setting process the financial implications of the costs of the officer leadership structure and support team and the costs of the member allowances scheme will be fully funded.

Human Resources

12.2 There are no direct staffing implications arising from this report.

Legal

12.3 Every Council is required to have a written Constitution and, in so doing, to comply with the Constitutional Direction issued by the Secretary of State under the Local Government Act 2000 (as amended). The draft Constitution follows that Direction and contains a number of elements having due regard to the relevant Statutory Guidance.

12.4 Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 makes provisions for certain functions (known as Local Choice Functions) to be either executive or non-executive functions and therefore a matter of local choice.

Health and Sustainability Impact Assessment

12.5 A Health and Sustainability Impact Assessment is not directly relevant to this decision

Equality and Diversity

12.6 An Equality Impact was completed for the Shadow Authority Constitution and the recommendations incorporated.

Contact Officers

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Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Local Choice Functions
2	Statutory and Proper Officer Functions
3	Comments from Cllr Taylor & Cllr Dew

Background Documents Available

Name of Background document	Where it is available
Report to the Shadow Authority 23 January 2023	<ul style="list-style-type: none">• Published