

Background

I am grateful to Councillor Patch for bringing to our attention the changes that were made to the constitution sometime last year, apparently without consulting councillors.

This relates to a decision the previous year which councillors did agree to, asking the monitoring officer (the council's solicitor) to "tidy up" the constitution, which at the time was not a single document but a collection of web pages that had been added to in stages without much review. The tidy up was needed, and was not supposed to materially change the content.

This was done, but the new constitution was posted to the web site without consulting councillors again, without drawing attention to it, and the old web pages were discarded.

Councillor Patch claimed that there are "several material changes in the document that erode the rights of Members of the Public and Members of the Council to scrutinise the work of this Council." and he listed these changes.

The old constitution had been deleted, and only exists in paper copies, so I voted to accept the new one, with the proviso that any material changes should be reversed, which is why I am bringing this NOM now.

I have looked in detail at the "material changes ... that erode the rights ...". I see changes of course, but not quite so major as they might be portrayed. On several of the alleged points I can see no material difference at all. I deal with each point in detail below.

The new constitution can be viewed at

<https://democracy.teignbridge.gov.uk/documents/g2988/Public%20reports%20pack%2020th-Nov-2020%20Constitution.pdf?T=10&Info=1>

Images from the old one are in a previous email from Cllr Patch

This document contains paragraphs 1-6 corresponding to the points raised.

Each paragraph has a summary which details the changes, and a summary conclusion.

1. the rights of Members of this Council to present questions to Full Council (Articles 4.3.2 (f); Article 4.7.3): new/extended discretionary powers have been given to the Chairman of the Council and Managing Director, giving them, respectively, greater scope/new powers to reject questions from elected Members (compare with previous Article 4.5 (k));

new 4.3.2 (f) receive and answer questions from Members **which in the opinion of the Chair are relevant to the business of the Council;**

summary: Old version includes stipulation that questions must be within the councils remit. New version does not say "relevant to this meeting", it says "relevant to the council". This seems as before.

2. the rights of members of the Public to present questions to Full Council (Articles 4.3.2 (e); 4.7.1 (f)): new/extended discretionary powers have been given to the Chairman of the Council and Managing Director, giving them, respectively, greater scope/new powers to reject questions from members of the Public (compare with previous Articles 4.5 (j)(vi) and 4.5 (j)(v));

new 4.3.2(e) receive questions from, and provide answers to, the public in relation to matters which in the opinion of the Chair are relevant to the business of the **meeting;**

summary: 4.3.2(e) implies public questions must be relevant to the business of the meeting is this a new requirement? Previously I think public could ask about anything relevant to the business of the council, as worded in 4.3.2(f).

New 4.7.1(f)

question can be rejected if it relates to something that is or **should be the subject of alternative recognised procedures** (for example, staffing issues, complaint, licensing or planning matters)

Old 4.4 j (v)

question can be rejected if it is **a planning matter**

4.4 j (vi)

the chair can reject questions as above **after consultation with the independent person.**

summary:

This is a broadening from rejecting planning, to rejecting anything that should be somewhere else, but seems quite reasonable.

Rejecting after consultation with the independent person is an odd comment. Who is meant by the independent person? It seems the process being dropped was never clearly defined anyway. This seems to be tidying up.

3. the rights of Members of this Council to present Motions on Notice to Full Council (Article 4.9.3): new/extended discretionary powers have been given to the Managing Director (in consultation with the Chair of Council) allowing him to reject Motions on Notice from elected Members (compare with previous Article 4.5 (l)(iii));

new 4.9.3 Scope The relevant motion must fall within the following scope which will be determined by the Managing Director (in consultation with the Chair of Council):

(a) Motions must be about matters which are related to the responsibilities of the Council or which directly affect the District.

(b) Motions may not relate to the personal affairs or conduct of individual Members.

(c) Motions must not include inappropriate or inflammatory language.

Old – I think this should read 4.4 (l) (iii)

reads as above, but with (a) only.

Summary: above parts b and c are added. They seem reasonable.

4. the remit of Overview and Scrutiny Committee 1 (Article 3.6.2): the scope of what of what is covered under Work Area ‘Strategic Direction’ of the Council, and hence what might be scrutinised by this committee, has been restricted/reallocated elsewhere (compare with Resolution of Full Council on 3rd September 2020 – and as still currently recognised on the TDC website for this committee’s Remit: <https://democracy.teignbridge.gov.uk/mgCommitteeDetails.aspx?ID=391>);

New constitution 3.6.2 reads...

3.6.2 Areas of Work: The committee is responsible for policy / strategy development and review and the scrutiny of decisions made in respect to the Strategic Direction responsibilities of the Leader and the following portfolio areas of the Executive: Environmental Health Waste Management (including recycling) Climate Change Emergency Housing Communities IT

OS1 committee page reads...

Strategic Direction

Environmental Health;

Waste and Recycling;

Climate Change Emergency;

Communities; and

Housing and Information Technology

Summary – This looks identical. I do not see that anything has been moved.

5. the powers of Overview and Scrutiny Committees (1&2) to require Senior Officers and Executive Members to attend and explain decision, actions and performance (Articles 3.5.3 (f) & (g)): these powers have been diluted (compare with previous Article 5.5 (a)(i));

New constitution...

3.5.3

(f) question Members of the Executive, committees and Chief Officers about their decisions, views on issues and proposals affecting the area or specific policy proposals and reviews;

(g) ask witnesses to attend committee and informal meetings (and where appropriate require on provision of reasonable notice) to address them on any matter under consideration and may pay to any external advisers, assessors and witnesses reasonable expenses for doing so with the Team Leader (Democratic Services) authorised to approve the level of payment and make payments;

Old

previous Article 5.5 (a)(i)); this reference in Cllr Patch's document appears to be incorrect.

Summary: I have not been able to see exactly where in the old constitution this is thought to be different. The powers in the new one seem reasonable.

6. loss of the power of Group Leaders to veto delegated 'minor' changes to the Constitution that might be "to the detriment of a member of the public or a councillor ..." (Article 2B3 [sic: second 2B3] Section 6 (Schedules Only), Page 5 of 20): the Monitoring Officer has been given the delegated power to make changes "as he [sic] considers appropriate" – without the veto protections previously provided to Group Leaders with respect to what are defined as 'minor' changes (power was previously delegated to Democratic Services Manager – these have been duplicated for the Monitoring Officer, although without the power of veto for Group Leaders – compare with previous Article 4.3 (b) – penultimate row of table on page 15). (In each case the Article No. in the new document is provided – for comparison with the corresponding provisions in the last Adopted version of the Constitution – i.e., the Constitution available prior to 20th November 2020).

New

monitoring officer is delegated

2B3 To make such minor amendments to the Constitution as he considers appropriate (including changes to reflect current legislation, organisational arrangements, to promote clarity and to enable the Constitution to be kept up to date)

Old

Article 4.3 (b)

Path provided a table, but not full text of 4.3(b).

If group leaders agree a change is minor, It can be done by democratic services manager

Summary: It does appear that the consultation with group leaders has been removed but group leaders never had the power to veto a change because they didn't like it. The removed wording is "If group leaders agree a change is minor, It can be done by democratic services manager" The only power being lost is for a Group leader to insist that a change is major if others claim it is minor.

This one deserves a closer look, but at most we should restore the power that group leaders actually had, not bestow a full veto just because it is claimed they had it.