

**To:** Council  
**Date:** 26 July 2021  
**Report of:** Head of Law and Governance  
**Title of Report:** Proposed amendments to the Constitution

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	To recommend amendments to the Council's Constitution to reflect changes to the Council's arrangements for the governance of its companies and joint ventures and a proposed new whistleblowing policy.
<b>Cabinet Member with responsibility:</b>	Cllr Susan Brown, Leader and Cabinet Member for Inclusive Growth, Economic Recovery and Partnerships
<b>Recommendation(s): That Council resolves to:</b>	
<ol style="list-style-type: none"> <li>1. <b>Approve</b> the proposed changes to part 3 and 8 of the Constitution as set out in Appendix 1, and the inclusion of the terms of reference for the Shareholder and Joint Venture Group as an annex to Part 3 and the Scrutiny Committee's Operating Principles as an annex to Part 8.</li> <li>2. <b>Note</b> the revised programme of meetings for the Shareholder and Joint Venture Group shown in Table 1;</li> <li>3. <b>Delegate</b> authority to the Head of Law and Governance to replace the current Whistle Blowing Policy with the new Whistle Blowing Policy in Part 25 of the Constitution, subject to the Audit and Governance Committee approving the new policy;</li> <li>4. <b>Note</b> that political groups will be invited to nominate members to form a "Constitution Review Group" to oversee the next annual review of the Council's Constitution.</li> </ol>	

<b>Appendices</b>	
Appendix 1	Proposed amendments to parts 3 and 8 of the Constitution

## Introduction and background

1. The Council's Constitution forms a key part of the Council's governance framework, setting rules, principles and procedures to enable the Council to take decisions and do its work effectively. The Constitution is reviewed annually to ensure that it continues to properly reflect the law and meet the needs of the Council. The current

version of the Constitution was approved at the Budget Council meeting on 17 February 2021.

2. This report recommends amendments to parts 3 and 8 of the Constitution to reflect revised arrangements for the governance of the Council's companies and joint ventures and a replacement Whistle Blowing Policy (Part 25). Due to their timing in response to audit reports, these proposals are recommended to Council outside of the annual review process but a briefing has been shared with group leaders.

### **Review of company governance arrangements**

3. The Council has in recent years established the following companies and joint ventures to undertake specific functions:
  - Oxford Direct Services: Oxford Direct Services Limited (ODSL) and Oxford Direct Services Trading Limited (ODSTL)
  - Oxford City Housing Limited (OCHL) and its subsidiary investment and development companies OCH(I)L and OCH(D)L
  - Oxford West End Development Limited (OxWED) (owned jointly with Nuffield College)
  - Barton Oxford LLP (BOLLP) (a partnership vehicle in which the Council has joint responsibility but no shareholding)
4. The responsibility to represent the Council as shareholder of its wholly and partly owned companies is an executive function under the Council's Constitution (Part 3.7). As such the Leader may determine how this function is discharged. To date this function has been undertaken by the Shareholder and Joint Venture Group (SJVG) (previously "Shareholder Group"), with membership comprising all members of Cabinet.
5. The Scrutiny Committee established the Companies Scrutiny Panel to scrutinise the work and decisions of the SJVG.
6. The Council's arrangements for the governance of its companies have recently been subject to an internal audit undertaken by BDO. The auditor's recommendations and the management response to those recommendations will be reported to the Audit and Governance Committee on 29 July 2021.
7. Having considered the audit report and consulted with officers and members, including the Chair of the Companies Scrutiny Panel for 2020/21, the Leader has confirmed the following changes to the functioning of the SJVG for 2021/22:
  - Membership of the SJVG to be a sub-set of Cabinet membership (previously all members of Cabinet).
  - All members of the Companies Scrutiny Panel to be invited to attend and contribute at SJVG meetings as attendees with speaking rights (Scrutiny members would attend in an advisory capacity with no voting rights).
  - Frequency of meeting cycles to reduce from 4 to 3 cycles per year (e.g. July, November & March).
  - Separate SJVG meetings to be held for ODS and the other three companies and joint ventures in each meetings cycle.
  - Increase in the number of scheduled meetings from 4 to 6 per year (i.e. 3 cycles with 2 meetings per cycle).

8. Some of the changes described in paragraph 7 are in conflict with the Constitution as currently worded. Part 3.7(c) currently states that the SJVG will meet on a quarterly basis with membership comprising all members of Cabinet. Amendments to the Constitution are proposed which are set out in Appendix 1 as track changes. Part 3.7(c) would be amended to state that the SJVG will meet at least twice per year. This would be a minimum frequency to provide for good governance and oversight of the companies without being too prescriptive given that the frequency of SJVG meetings is a matter for the Leader.
9. Council is asked to note revised programme of SJVG meetings shown in Table 1. The programme includes a meeting of the Companies Scrutiny Panel prior to each SJVG meeting although it is anticipated that not all of these panel meetings would be required given that members of the Companies Scrutiny Panel will be invited to attend and participate at meetings of the SJVG:

**Table 1: revised programme of SJVG meetings**

<b>Companies Scrutiny Panel meeting dates</b>	<b>SJVG meeting dates</b>	<b>Companies</b>
20 July 2021	27 July 2021	ODS
	28 July 2021	OCHL, OxWED, BOLPP
24 November 2021	1 December 2021	OCHL, OxWED, BOLPP
13 December 2021	20 December 2021*	ODS
24 March 2022	30 March 2022*	OCHL, OxWED, BOLPP
7 April 2022	14 April 2022	ODS

*\*existing meeting dates*

10. The terms of reference for the SJVG have been updated to reflect the changes described in paragraph 7 and a revised document will be presented to the SJVG meeting on 27 July 2021. To future-proof Part 3.7 of the Constitution and to provide for visibility of the shareholding arrangements it is proposed to include the terms of reference for the SJVG as an annex to Part 3 of the Constitution. These could then be accessed from the Constitution while being amendable in future without requiring a report back to Council.
11. Under the previous shareholding model the individual companies were accountable to the SJVG and the SJVG was accountable to Scrutiny. Parts 3.7(c) and 8.3(b) of the Constitution state that the individual companies will not be directly accountable to Scrutiny. Under the revised arrangements it is envisaged that members of the Companies Scrutiny Panel would be in attendance at SJVG meetings to hold the companies to account directly. It is also considered that the role of Scrutiny should not be limited to scrutinising the decisions of the SJVG, rather that Scrutiny should be able to scrutinise the companies themselves. It is proposed to amend the Constitution accordingly, as shown in Appendix 1.
12. The Scrutiny Committee has had a rule that chairs of standing panels (such as the Companies Scrutiny Panel) and review groups must be members of the Scrutiny Committee. This rule originated from the Committee's operating principles, which are agreed annually, and was later included within Part 8.2 of the Constitution. Members have subsequently made representations to the Head of Law and Governance that this rule is overly restrictive and would rule out members with particular expertise from chairing these bodies if they were not members of the

Scrutiny Committee. Removing this rule would also increase the number of members able to participate in the Scrutiny function. The Scrutiny Committee on 14 July 2021 agreed to remove this rule from its Operating Principles for 2021/22. It is proposed to remove the rule from the Constitution and instead state that the chairs of standing panels and review groups will be accountable to the Scrutiny Committee, as shown in Appendix 1.

13. It is further proposed to include the Scrutiny Committee's Operating Principles within the Constitution as an annex to Part 8 to improve their standing and visibility. The operating principles could then be accessed in the Constitution while being amendable in future by the Scrutiny Committee without the need for a report back to Council.

### **Whistle Blowing Policy**

14. The governance review carried out by the Council's internal auditors, BDO, highlighted the need to ensure that the relationship between the Council and its companies is transparent and accountable. At its meeting on 22 April 2021 the Audit and Governance Committee also considered a report on the lessons learned from Public Interest Reports on Robin Hood Energy Ltd and Croydon Council and conclusions from the MHCLG report on Local Authority Interventions. The lessons learned included an acknowledgement that within councils with a culture of transparency, where staff are actively encouraged to flag concerns or risks, those authorities are better equipped to prevent further failure and welcome reflection when failure does occur. The Council's Whistle Blowing Policy has been reviewed with this in mind and applies equally to the Council's companies.
15. The aim of this Policy is to encourage employees and others who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. A clear whistleblowing policy encourages a culture where wrongdoing can be addressed quickly and potentially before any regulatory action or damage to reputation. The Policy encourages staff to raise any concerns about anything they consider may be illegal, improper, unethical or wrong, done by officers, councillors, co-opted members, partner organisations or contractors and consultants.
16. A refreshed Whistle Blowing Policy has now been produced and circulated to the Council's Head of Financial Services, Head of Business Improvement and to trade union representatives for the Council and Oxford Direct Services Limited, by way of consultation. The new policy will be presented to the Audit and Governance Committee on 29 July 2021. Council is recommended to delegate authority to the Head of Law and Governance to replace the current Whistle Blowing Policy with the new Whistle Blowing Policy in Part 25 of the Constitution, subject to the Audit and Governance Committee approving the new policy.

### **Annual review of the Constitution**

17. It is good governance practice for the Constitution to be reviewed annually. The intention is to begin the review process in autumn 2021. As in previous years, this review process will be overseen by a cross-party group of members. Council is asked to note that political groups will be asked to nominate members to serve on an informal Constitution Review Group.

### **Financial implications**

18. The numbers of meetings held has an impact on officer capacity but there are no financial implications arising directly from this report.

### **Legal issues**

19. The Council is required under the Local Government Act 2000 (Section 9P) to keep an up to date Constitution containing certain required provisions and other information the Council considers appropriate.

<b>Report author</b>	Andrew Brown
Job title	Committee and Member Services Manager
Service area or department	Law and Governance
Telephone	01865 252230
e-mail	<a href="mailto:abrown2@oxford.gov.uk">abrown2@oxford.gov.uk</a>

<b>Background Papers:</b> None

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