

# CONSTITUTION COMMITTEE AGENDA



**Friday 7 July 2017**

**at 10.00am**

**in Committee Room “C”, Civic Centre, Hartlepool**

**MEMBERS: CONSTITUTION COMMITTEE:**

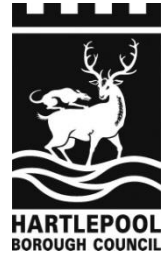
Councillors C Akers-Belcher, S Akers-Belcher, Barclay, Beck, Cook, Cranney, Martin-Wells, Tennant and Thompson.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. ITEMS REQUIRING DECISION**
  - 3.1 Business Report – *Chief Solicitor and Monitoring Officer*
- 4. ITEMS FOR DISCUSSION / INFORMATION**
- 5. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**



# CONSTITUTION COMMITTEE

7 July 2017



**Report of:** Chief Solicitor and Monitoring Officer

**Subject:** BUSINESS REPORT

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## 1. FURTHER REVIEW OF THE COUNCIL'S CONSTITUTION

- 1.1 A report was tabled before Council at its meeting on the 22<sup>nd</sup> June 2017 which requested that three items be remitted to the Constitution Committee for further consideration, which items originally arose through the debate in the Council meeting on 23rd May, 2017. Those matters arose from an amendment to a motion, which stated as follows;

*'That supplementary questions be reinstated and that 25% of Committee meetings be held on an evening and a 15 minute segment be scheduled at the commencement of Council meetings for the Leader of the Council to respond to questions'.*

- 1.2 A copy of the report to Council is appended herewith for the committee's general information (**Appendix 1**). In relation to a quarter of committee meetings being held on an evening, there was the suggestion that some degree of consultation be initiated and again a format of potential questions is also appended herewith, on this topic (**Appendix 2**). The earlier Cabinet Office document 'Consultation Principles; Guidance' clearly indicates that the length of consultation should be proportionate and directly referable to the subject matter. Therefore it is suggested that consultation in the instant case should be for a four week period but possibly extending to six weeks, but the observations of the committee is requested on this particular point.
- 1.3 The Council's current procedure rules do not provide for supplementary questions arising from public questions. The previous DETR Guidance 'New Council Constitutions – Modular Constitutions for English Local Authorities (December 2000)' did provide for one supplementary question which directly arose from the original question to be given. The Council subsequently extended this to two supplementary questions arising from one public question and then following the introduction of the Council's new governance arrangements public questions were increased from one to two questions, but without supplementary questions. This is again a matter for determination of the committee. In formulating its recommendations to Council, the committee may wish to receive the details of the practices of other Local Authorities in

relation to the issues raised. This information could be further considered at the committee's next meeting.

- 1.4 In relation to questions to the Council Leader, Members will be aware that the Council's current procedures allow for questions to the Leader but only in his capacity as Chair of Finance and Policy Committee. There has never previously (even under the system when the Council had an elected Mayor and Cabinet model of governance), the allowance of direct questioning to such an individual over an allotted period of Council business. The nearest format was the "State of the Borough" debate which allowed for public engagement but was not a regular feature and certainly not comparable to what is envisaged in the terms of the amended motion. The modular guidance does give an indication of the use of a "State of the Borough" consultation and also indicates that this procedure can have some connection with a Local Authority's budget and policy framework determination. Already, the Leader presents a budget with a presentation which allows Members to raise questions through a debate. It is therefore open to the committee to recommend to Council a number of alternatives on this particular issue but again the committee needs to ensure that any such provision it recommends generally improves this system of governance and is not seen to provide an opportunity as a platform for an individual to espouse any form of political message and conversely for such individual not to be subject to questioning to simply undermine that individual.

**1.5 Recommendations;**

- 1.5.1 That the Committee consider this report and also the form of consultation that should be undertaken on the timings of committee meetings (25% thereof) and over what time period that consultation should take place.
- 1.5.2 Contingent on the recommendation above, the Committee formulates its recommendations to Council on the amended motion as initially presented to Council on 23<sup>rd</sup> May 2017.

**2. CONSTITUTIONAL ARRANGEMENTS**

- 2.1 The Council's Constitution Working Group on the 18<sup>th</sup> April, 2017, requested that a briefing paper on the roles of the chair and vice chair (known in the Council through the titles of Ceremonial Mayor and Deputy Ceremonial Mayor respectively), be received on whether (as is the case in some other local authorities) be essentially "separated" with one individual covering the chairing of council business and a distinct but separate individual covering the more civic /ceremonial functions. That briefing note indicated that there were two charters of particular historical interest which had effectively created a Borough for Hartlepool. The Hartlepool Order 1966 made reference to those earlier Charters and noted that the then corporations of the existing boroughs of Hartlepool and West Hartlepool and the representative body of the parish of Seaton would then be dissolved to form a new "County Borough Council". This County Borough was then dissolved following Local Government

reorganisation in 1974 and thereafter in 1996, through further 'reorganisation', the Council became an "all purpose" Unitary Authority. The important element is that the Council has the status of being a Borough and under Section 245 of the Local Government Act, 1972, it is prescribed that the status of a Borough, has the following effect;

- 2.1.1 The Council or the district should bear the name of the Council or the Borough.
- 2.1.2 The Chairman and Vice Chairman of the Council shall respectively be entitled to the style of Mayor and Deputy Mayor of the Borough.
- 2.1.3 The Local Government Act 1972 prescribes that a "principal council" must appoint at its Annual Meeting a Chair and Vice Chair. Whilst certain County and District Councils have realigned some roles, it is still the case for those Councils that it is only the Chair who can properly and lawfully Chair the meetings of that Local Authority. In that individual's absence, then the Vice Chair would come to the fore, and in their collective absence a person from amongst the elected members would then be appointed to Chair that particular meeting. Hence, the legal position is clear in that the Chair must be elected annually by the Council from amongst its members and his/her election is the first business to be transacted at the Annual Meeting. The Council's procedure rules fully accords with these legal requirements. Further, the Council is also required to appoint a Vice Chair and subject to standing orders, that individual may undertake whatever is required to be done by the Chair.
- 2.1.4 The Local Government (Democracy) (Wales) Act 2013, of note, has an amendment to these provisions (with the insertion of an amendment at Section 24 of the 1972 Act) wherein a Council in Wales may determine to have a "presiding member" who is elected from amongst the councillors and which enables councils to separate the ceremonial/civic functions associated with the Council Chairman / Mayor and those presiding over council meetings. This particular provision has no application to England. If a council fails to elect a Chairman then the council is not fully constituted, it is only the Chair / Ceremonial Mayor who when present at a Council meeting is able to so preside. If that individual is either absent from the meeting or needs to vacate the chair (i.e. they have a disclosable or otherwise prejudicial interest in a matter) then the Vice Chair assumes the chair. This is further reinforced in the case of R v Wolverhampton Borough Council's Alderman Election (1961). It has been stated that "upon taking the chair at a meeting the Chairman (or whoever may be presiding) becomes invested with authority to regulate and control proceedings for the duration of the meeting."
- 2.1.5 It is therefore the Chair / Ceremonial Mayor who must conduct the business of chairing a Council meeting. Given the Council's status as a Borough, it is that individual who is entitled to use the style of "Mayor" and who truly is the "first citizen" of the Borough. Consequently, to "separate" such a role would entail that such an individual would not be able to chair

council meetings, could not use the title of Chair and therefore without the Chair's consent be able to use the style of being the Councils Mayor. Obviously this would also conflict with the tradition and historical influence behind the position of Mayor, which has only over recent years being re-established to accord with this tradition and significance.

- 2.2 It was mentioned at the Working group that the view of Counsel should be obtained and annexed to this report is Counsel's opinion from Mr Jonathan Auburn for member's consideration (**Appendix 3**).

2.3 **Recommendation**

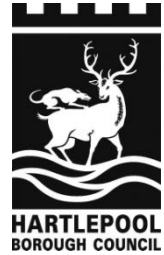
- 2.3.1 That the Committee note and consider the Council's constitutional arrangements in the light of Counsel's advice.

3. **CONTACT OFFICER**

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[Peter.devlin@hartlepool.gov.uk](mailto:Peter.devlin@hartlepool.gov.uk)

# COUNCIL

22 June 2017



**Report of:** Monitoring Officer

**Subject:** FURTHER REVIEW OF THE COUNCIL'S CONSTITUTION

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## 1. INTRODUCTION

- 1.1 At its meeting on the 23<sup>rd</sup> May, 2017, Council received a report from the Monitoring Officer, which followed the deliberations of the Council Working Group, as reported therein. A motion was proposed and seconded that the recommendations of the Working Group in relation to the timing of Council meetings and the recommendations relating to public and member questions before Council, should not be proceeded with and that no changes should therefore be made to these particular Council procedure rules. There was an amendment to that motion moved by Councillor Thompson and seconded by Councillor Black (the minutes of that meeting refer) which canvassed the following;

*'That supplementary questions be reinstated and that 25% of Committee meetings be held on an evening and a 15 minute segment be scheduled at the commencement of Council meetings for the Leader of the Council to respond to questions'.*

- 1.2 The Monitoring Officer was called upon to respond and suggested (as recorded within the minutes) that this request be referred to the Constitution Committee, which Council resolved should be reintroduced into the constitutional framework of the Council. Although there was reference to Council Procedure Rule 24.2 that 'any motion that adds to, varies or otherwise revokes Council procedure rules' will ordinarily stand adjourned without discussion until the next ordinary meeting of Council. That particular provision is not engaged at this point in time, for the following reasons;

- The advice that the proposed changes should be referenced to the Constitution Committee for their further deliberation before a further report is provided to Council, for its consideration.
- Secondly, that a report highlighting the above would be brought to Council on the 22<sup>nd</sup> June, as conveyed by the Monitoring Officer.

- Thirdly, and more importantly, when considered against the background of public engagement and involvement, some element of public consultation should take place.

1.3 Members are again reminded that although Article 15 has now been amended to incorporate the Constitution Committee, there is a protocol which should be followed in any review and revision of the Constitution which incorporates the following;

- Observe meetings of different parts of the Member and Officer structure;
- Undertake an Audit trail of a sample of decisions;
- Record and analyse the issues raised with the Monitoring Officer, by Members, officers and the public and other relevant stakeholders;
- Compare practises in the Council with any other comparable authorities and/or national examples of best practise.

## 2. SUGGESTED AMENDMENTS

2.1 It was suggested the following amendments to the Councils constitutional arrangements;

- That 25% of Committee meetings be held on an evening
- That supplementary questions be reinstated
- That there be a 15 minute segment scheduled at the commencement of Council meetings for the Leader of the Council to respond to questions.

It was suggested later in the Council debate at the meeting on the 23<sup>rd</sup> May, 2017 that Council utilise 'survey monkey' to determine the views of the public, particularly as regards the timing of committee meetings. The Council are reminded of the Cabinet Office document 'Consultation Principles: Guidance' (July 2012, updated January, 2016) that consultation should; be clear and concise, be informative, be targeted and also 'should last for a proportionate amount of time'. Indeed, it was made comment that 'consulting for too long' would occasion unnecessary delay of policy development. Whilst 'consulting too quickly will not give enough time for consideration and will reduce the quality of responses'. It was also mentioned within this guidance that consultation exercises should not generally be launched during local or national election periods. As Members will be aware, the Council meeting held on the 23<sup>rd</sup> May had been scheduled prior to the announcement of the UK Parliamentary General Election wherein publication of notice election was issued on the 8<sup>th</sup> May and therefore the 'election period' only concluded on polling day (8<sup>th</sup> June 2017).

2.2 The issue of supplementary questions has been raised in previous reports presented to Council by the Monitoring Officer. Council did have such a procedure in place with the allowance for 2 supplementary questions to be given upon each public question up and until the change in the Council's governance arrangements in 2013. The then DETR Guidance 'New Council

Constitutions – Modular Constitutions for English Local Authorities (December 2000)’ did provide for the following;

- ‘A questioner who has put a question in person may also put one supplementary question without notice to the member who has replied to his or her original question’.
- ‘A supplementary question must arise directly out of the original question or the reply.
- ‘The Chairman may reject a supplementary question upon any of the grounds [as specified].

2.3 Again, given its fluctuating mention, the issue of supplementary questions should again be reserved to the Constitution Committee and it might well be the case that the Committee might wish to receive anecdotal or other evidence as to the practises of other Local Authorities on this matter.

2.4 In regards to an opening ‘15 minute segment of Council being reserved questions to the Leader of the Council’, again this is a matter which should be considered by the Constitution Committee.

### 3. SUMMARY

3.1 Council on the 23<sup>rd</sup> May, 2017 resolved to reintroduce Constitution Committee within its constitutional framework. At that meeting, there were 3 matters raised by way of amendment, which the Monitoring Officer advises in the light of the reintroduction of the Constitution Committee be referred to that Committee for further analysis and consideration. Members are reminded of Council Procedure Rule 13.4, which prescribes as follows;

*‘ If the subject matter of any motion comes within the province of any Committee or Committees it shall, upon being moved and seconded, stand referred without discussion to such a Committee or Committees as the Council may determine, for consideration and report. Provided that the Chair may if he/she considers it convenient and conducive to the despatch of the business, allow the motion to be dealt with at the meeting of the Council’.*

### 4. RECOMMENDED

- i) That Members remit to the Constitution Committee the 3 items raised at its meeting on the 23<sup>rd</sup> May, 2017 as referenced herein for further consideration and report.
- ii) That a further report from the Constitution Committee (to be presented by the Monitoring Officer) be provided to Council.



**5. CONTACT OFFICER**

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# Timing of Committee Meetings

The Council has five policy committees which covers a wide range of Council services and functions; Children's Services, Adult Services, Neighbourhood Services, Regeneration Services and Finance & Policy. There is also an Audit & Governance Committee which has as its remit; audit, standards, personnel and statutory scrutiny functions. In addition it has committees to cover its regulatory functions such as planning and licensing. The Council would like to find out if you were aware of these meetings, particularly the policy committees and how you have or would like to engage and participate in those meetings and also the preferred time you would like these committee meetings to take place.

If you would like an accessible version, such as large print, or would like any further information on this issue please contact Democratic Services Team on (01429) 523013 or via email [democraticservices@hartlepool.gov.uk](mailto:democraticservices@hartlepool.gov.uk)

**1. Before you received this questionnaire, were you aware of the full range of committee meetings that took place?**

Yes	<input type="checkbox"/> 1
No	<input type="checkbox"/> 2

**2. Where you aware that the public can attend policy committee meetings and give questions at those meetings?**

Yes	<input type="checkbox"/> 1
No	<input type="checkbox"/> 2

**3. Thinking about the last twelve months have you attended a policy committee meeting?**

Yes	<input type="checkbox"/> 1
No	<input type="checkbox"/> 2

**4. What would be your preferred time of day for a policy committee meeting to be held?**

Morning	<input type="checkbox"/> 1
Afternoon	<input type="checkbox"/> 2
Evening	<input type="checkbox"/> 3
Alternate between morning, afternoon and evening	<input type="checkbox"/> 4

**5. How would you like to find out about these meetings? (Please tick all that apply)**

The council website ( <a href="http://www.hartlepool.gov.uk/democraticservices">www.hartlepool.gov.uk/democraticservices</a> )	<input type="checkbox"/> 1
A list published in Hartbeat	<input type="checkbox"/> 2
A list published in the Hartlepool Mail	<input type="checkbox"/> 3
A list of meetings displayed at the Civic Centre	<input type="checkbox"/> 4
A list of meetings displayed at the Central Library	<input type="checkbox"/> 5

Other (please specify below)
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**Thank you for taking the time to complete the survey.**

Please post completed paper surveys in the box provided or return to Democratic Services Team at the Civic Centre, Victoria Road, Hartlepool, TS24 8AY

**HARTLEPOOL BOROUGH COUNCIL**

**RE: CONSTITUTIONAL ARRANGEMENTS**

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**ADVICE**

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**SUMMARY**

1. I am asked to advise Hartlepool Borough Council (“Hartlepool”) in relation to its constitutional arrangements, particularly as they relate to the chairing of meetings and the position of Chair / Vice-Chair, Mayor, Ceremonial Mayor and their respective deputies.
2. In summary I advise that –
  - a. Under Hartlepool’s current constitutional arrangements, if the Chair is available at a Council meeting then he or she must preside over the meeting and discharge the roles listed in Article 5 of the Constitution. If he or she is not available, then the Vice Chair must preside. If neither are available, then this role is filled by a Member chosen at the meeting.
  - b. The individuals holding the offices of Chair and Vice-Chair of the council may title themselves “Mayor” and “Deputy Mayor” if they wish to hold that title. The Chair and Vice-Chair are not obliged to take up those titles if they do not wish to hold them.
  - c. Other people may be given the title of Mayor and Deputy Mayor, *as long as* the duly elected Chair and Vice-Chair are not prevented from using these titles if they wish to take them. If the duly elected Chair and Vice-Chair wish to use those titles, then no other individuals may use them.

- d. There is no impediment to having further posts of Ceremonial Mayor / Deputy or other similarly titled office holders, *provided* the Chair and Vice-Chair are not prevented from using the specific titles of “Mayor” and “Deputy Mayor”.
- e. If the posts of Ceremonial Mayor / Deputy are split from the function of presiding over council meetings, then the council will still need to retain the posts of “Chair” and “Vice-Chair” as these are statutory posts.
- f. There is no impediment to having a person styled as ‘Civic Head’ or similar, who has responsibility for civic duties, but does not preside over council meetings. That person could use the title of ‘Mayor’, but only if the duly elected Chair and Vice-Chair do not wish to use these specific titles themselves.
- g. While I initially considered that section 24A of the Local Government Act 1972 may be relevant to these issues, I now see that it does not apply, as that provision relates only to Wales.

## **ADVICE**

### **Who can chair council meetings?**

- 3. The Local Government Act 1972 (“LGA”) provides for the position of “Chairman” and stipulates that it is an elected post: see section 3. The election is by the councillors from amongst its members, determined at the first meeting of the Council: see section 4.
- 4. Section 5 of the same Act provides for the post of “Vice-Chairman”. This post is described in section 5 as “appointed” by the Council.
- 5. Apart from the above, the LGA does not impose further conditions or requirements on the determination or holding of these posts. It is for each local authority to decide how it arranges its own affairs.

6. As Hartlepool's constitutional rules currently stand, they provide for the chairing of council meetings as follows.
  - a. In the first instance the Ceremonial Mayor chairs meetings: see the Constitution, Article 5.01(iii), which provides that the role of Ceremonial Mayor to include "presid(ing) over meetings of the Council". That person must also discharge the roles listed in the other provisions in Article 5 of the Constitution,
  - b. If the Chair is unavailable, it falls to the Vice Chair to preside over meetings of the Council: see the Procedure Rules, rule 1.2(i), which provides that at its annual meeting the Council "elect(s) a person to preside at the meeting if the Chair is not present".
  - c. If Vice Chair is unavailable, a person is chosen to preside, and this is done by election at that meeting: see the Procedure Rules, rule 2.1, which provides that at an ordinary meeting, the councillors elect a person to preside if the Chair and Vice-Chair are not present.
7. Thus there is a clear system and order as to who is responsible for presiding over council meetings.
8. It would not be possible under the current constitutional arrangements for the Chair or Vice Chair to be present at the meeting, and at the same time have *another person* presiding, whatever that other person's role or title. If the Chair or Vice Chair are present at the meeting, they must preside.
9. This is not altered by rule 8 of the Council's Procedure Rules, which provides that "The person presiding at the meeting may exercise any power or duty of the Chair".
10. The Council could if it wished alter these arrangements, by amending its Procedure Rules to provide for greater flexibility in the chairing role. For example the Council's Procedure Rules could be amended to alter the order or give greater flexibility, e.g. by adding at the stages at which currently, the Chair or Vice Chair preside over the

meeting, that meeting may be presided over by another person for reasons wider than the Chair / Vice-Chair being not “available”.

11. However there are limits to what can be changed. The role of “Chair” is a statutory one, and an important one. By section 3(4) of the LGA “The chairman of a district council shall have precedence in the district, but not so as prejudicially to affect Her Majesty's royal prerogative”. Thus the chair, and only the Chair, has this statutory status of first citizen of the district. Another person, such as ceremonial or civic head, can never have that status of first citizen, as statute is clear that only the Chair has that status.
12. Similarly, section 24(1)(b) of the Representation of the People Act 1983<sup>1</sup> provides that “the returning officer for a parliamentary election is ... in the case of a borough constituency in England which is coterminous with or wholly contained in a district, the chairman of the district council”. Again, chair, and only the Chair, has this statutory status of returning officer for a parliamentary election and another person, such as ceremonial or civic head, can never have that status.

### **Equality Act 2010**

13. The Equality Act 2010 may be relevant in the sense that the council should ensure that its own Rules do not indirectly discriminate against people holding a protected characteristic, for example if a person wishing to stand for, or a person already elected to, the role of “Chair” has difficulty with presiding over meetings due to a disability.
14. In such a circumstance it may be considered to be a reasonable adjustment within sections 20 and 21 of the 2010 Act to make provision within the Council’s Procedure Rules for alternative people to preside over meetings, if this would assist a disabled person in not being unlawfully discriminated against by being required to not take up a post due to the difficulties which his or her disabilities gave rise to in chairing meetings.

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<sup>1</sup> The former provision for returning officers in section 40 of the LGA is now repealed.

15. The issue raised here is not one as to the content of LGA itself, but rather an issue of ensuring that the Council's Procedure Rules are sufficiently flexible so that they do not prevent the Council from meeting its legal obligations to make reasonable adjustments where necessary to prevent a disabled person from suffering unlawfully in his or her access to roles within the Council.
16. The reasonable adjustments duty does not enable the Council to do something contrary to statute, such as having a person preside over council meetings notwithstanding the presence of the duly elected Chair.

**Who can use the title of "Mayor"?**

17. Section 245 of the LGA provides that "the chairman and vice-chairman of the council shall respectively be entitled to the style of mayor and deputy mayor of the borough".
18. This is unless the "council are operating executive arrangements which involve a mayor and cabinet executive". I understand that, while the Council did operate executive arrangements from 2002 to 2013, it does not do so currently. If that is not the case, please do let me know.
19. Assuming the Council is not currently operating executive arrangements, then section 245 "*entitles*" the chair and vice-chair to the style of mayor and deputy mayor. However neither section 245, nor anything else in the LGA, *requires* that the chair and vice-chair take this title.
20. Therefore, under the LGA, others may be given the title of mayor and deputy mayor, provided that chair and vice-chair are not *prevented* from using these titles if they wish to take them.
21. On the Council's Rules as they are currently drafted, the positions of Ceremonial Mayor and Deputy Ceremonial Mayor are formal offices which a person can only hold by election: see the Council's Procedure Rules, rule 1.2(iii), (iv).



22. So on the current Rules, it is only the people elected to that post who can use the titles of Ceremonial Mayor and Deputy Ceremonial Mayor.

23. This could be relatively easily changed, by amendment of the Council's Procedure Rules. There could be some other mechanism, as well as or in addition to election of these posts. For example, there could be a system of ad hoc appointment by the Council from time to time, or appointment by the Leader or other appropriate office-holder.

**Separating the functions of Ceremonial Mayor and person presiding over meetings**

24. There is nothing in the LGA which would prevent the separation of the above roles. This could be done by amendment of Hartlepool's constitutional documents.

25. For example, the opening words of Article 5 could be amended to delete the second sentence, and Article 5.01(iii), which provides for the Ceremonial Mayor and Deputy to preside over meetings, could be deleted or amended to give greater flexibility.

26. If the posts of Ceremonial Mayor / Deputy are split from the function of presiding over council meetings, then the Council will still need to retain the formal posts of "Chair" and "Vice-Chair" as these are statutory posts which the Council must have filled.

27. The Council may if it wishes have a person styled as 'Civic Head' or similar, who has responsibility for civic duties, but does not preside over council meetings. This is not unusual across local government in England.

28. The person occupying such a post could use the title of 'Mayor', but only if the persons duly elected as Chair and Vice-Chair do not wish to use these specific titles themselves. If the duly elected Chair and Vice-Chair do wish to use these titles, then they must be permitted to do so.

**JONATHAN AUBURN**  
**11 KBW**  
**24.5.17**