



# Council constitutions— why do they matter?

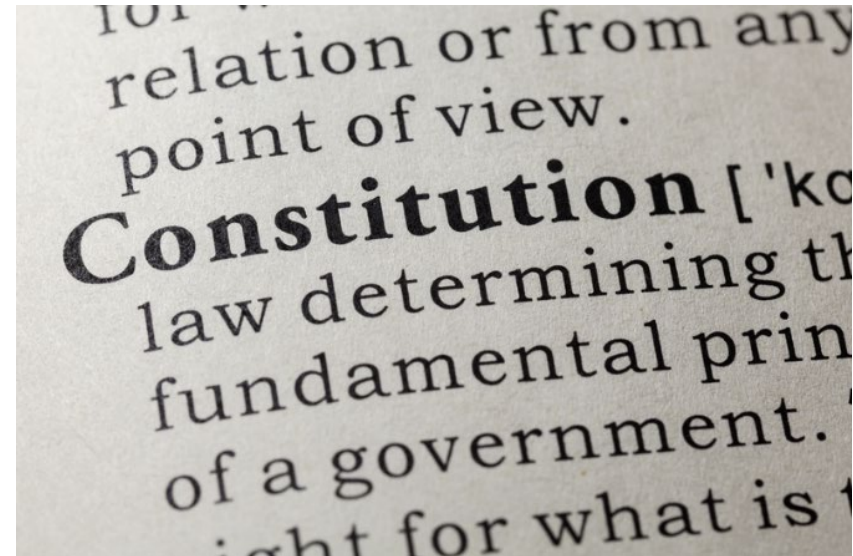
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MATT BOX

# Overview

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- Constitutions demystified
- Who makes decisions
  - Full council, committee
- Officer appointments
  - statutory appointments
  - Proper officer
  - RO and ERO
- Officer delegation



# Scenarios

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- How your council constitution impacts your role in Electoral Services
- Looking at real-life issues around:
  - losing your RO/ERO
  - last minute changes to polling stations
  - resignation of councillor
  - councillor failing to attend meetings
  - approving election fees
  - decisions on Community Governance Reviews

# Scenario 1

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Your Returning Officer, who is also the Electoral Registration Officer, wins the Euromillions and leaves the Council with immediate effect

It is early April and nominations are open

Who is the Council's RO and ERO now?  
What does the constitution say?

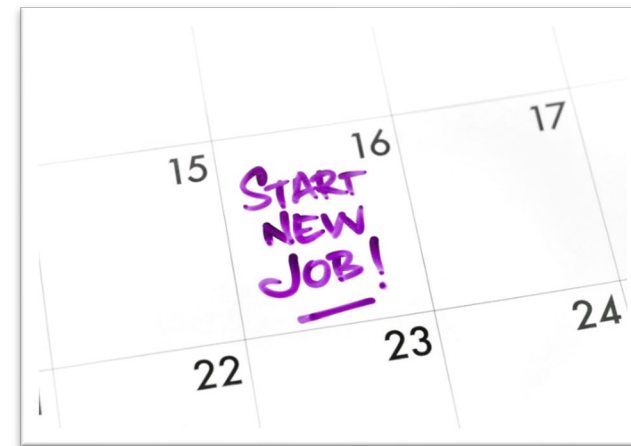
a. Constitution is irrelevant, there are deputies

b. Consult constitution to see how new RO / ERO is appointed



# Key points

- Deputies can act if RO/ERO is unable to act personally
- If RO/ERO has left completely, new or interim RO/ERO must be appointed



# Appointment of ERO / DERO

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- ERO – must be appointed - by the council (s.8 RPA 1983)
- DERO – may be appointed - by the council (s.52(2) RPA 1983)
- If ERO is incapacitated or there is a vacancy – Proper Officer carries out ERO functions (s.52(3) RPA 1983)

# Scenario 2

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Polling day for a UK Parliamentary General Election is this Thursday

You have just been informed that a community centre you use as a polling station has burnt down

How can your constitution help you identify an appropriate solution?

- a. It can't - this is an elections matter – Returning Officer can simply select another polling station
- b. It may say that an officer can change the polling place



# Key points

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- (A)RO allocates polling stations – rooms within a place
- Council designates polling places (s.18 RPA 1983)
- Delegated authority to make last minute changes ought to be in place



# Example delegation text

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(5) That the power to designate polling places in accordance with Section 18B of the Representation of the People Act 1983 be delegated to the Chief Executive, with such power to be exercised only in circumstances where a decision is required at short notice and it is not possible to await a decision of Council.

**RESOLVED** that for the elections being held on 6 May 2021, the Council delegates authority to the Returning Officer to decide on a suitable alternative venue, should any designated polling station become unavailable.

**(2) That the Returning Officer/Electoral Registration Officer be given delegated authority to keep Polling Districts and Polling Places under regular review and amend any such arrangements where there is an operational need, prior to the next compulsory review of Polling Places and Polling Districts.**

# Scenario 3

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A political row erupts over an inappropriate Tweet by a Councillor

After attempting to ride out the storm for 24 hours, the Councillor wishes to resign

Who does the resignation go to?

a. the Leader of the council

c. the Proper Officer



b. the Monitoring Officer

d. the Chief Executive

# Key points

- Statutory Officers
  - Head of Paid Service
  - Monitoring Officer
  - S.151 Officer
- Proper Officers
  - Appointed to discharge a particular function (s.270 LGA 1972)



# Proper Officer – governance functions

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- Proper Officer
  - Receives letters of resignation from councillors (s.84 LGA 1972)
  - Publishes notices of vacancy (including parishes) (s.87 LGA 1972)
  - Receives requests for the filling of vacancies (including parishes) (s. 89 LGA 1972)
- Proper Officer for governance functions is often the Monitoring Officer – check your constitution

# Proper Officer – example designation

## LOCAL GOVERNMENT ACT 1972

Section 83(1) – The officer to whom a person elected to the office of councillor shall deliver a declaration of acceptance of office on a form prescribed by rules made under Section 42 of the Act	Monitoring Officer
Section 83(3)(b) – The officer before whom a declaration of acceptance of office of chair of council or deputy chair of council may be made	Chief Executive
Section 84 – The officer to whom written notice of resignation of elected office shall be delivered	Monitoring Officer
Section 86 – To declare any vacancy in any office under this section	Monitoring Officer
Section 88(2) – The officer by whom a meeting of the council for the election of the vacant office of chairperson of the council may be convened	Chief Executive
Section 89(1)(b) – The officer to whom notice in writing of a casual vacancy occurring in the office of councillor may be given by two local government electors for the Borough	Monitoring Officer
Section 96 – The officer to whom general notices and recording of disclosures of interests under Section 94 should be given	Monitoring Officer
Section 99 and Schedule 12 – To give notice and send summonses in respect of any council meeting	Chief Executive
Section 100A(6) – To give public notice of any meeting to which the public are entitled to attend, provide copies of agenda and facilities for the press	Chief Executive
Section 100B(2) – The officer to exclude from committees, sub-committees, council or cabinet meeting agendas any information to be dealt with in a meeting from which the public are likely to be excluded	Monitoring Officer
Section 100B(7)(c) – The officer to supply to any newspaper copies of documents supplied to members of committees, sub-committees, council or cabinet meetings in connection with an item for consideration	Monitoring Officer

# Scenario 4

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A councillor fails to attend any meetings for 6 months

No prior approval has been given

When can you advertise the vacancy?

a. As soon as the 6 months is up

b. Once the council declares the vacancy – check if this can be delegated



# Key points

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- A councillor ceases to be a member if they don't attend meetings for 6 months (s.85 LGA 1972)
- the council must declare the office to be vacant forthwith (s.86 LGA 1972)
- declaration made at a council meeting – unless power is delegated to proper officer
- Notice of Vacancy must be published **immediately after** the declaration

# Media and public interest – importance of smooth process

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## **Councillors sacked for attending no meetings at all say they were "thrown under a bus"**

[Lincolnshire Live, July 2021](#)

**A LONG-SERVING Norton councillor has been booted off Dudley Council for failing to attend meetings.**

[Stourbridge News, July 2020](#)

## **Bury's longest serving councillor set to avoid being thrown out for failing to attend meetings**

[Manchester Evening News, November 2022](#)



# Scenario 5

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You need to set the election fees for your all-out elections in May 2023

How will you ensure they are correctly approved?

- a. The RO agrees the fees
- b. The Election Claims Unit sets them
- c. Council approves them



# Key points

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- National elections – RO fees and maximum amount for expenses set out in SIs
- Local elections – good practice to have a scale of fees agreed by the council
- Full council / committee
- Review – to ensure appropriate payment for roles
- Consider including with Pay Policy Statement

Transparency  
is key

**A SEAL**

**OF APPROVAL**



# Scenario 6

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You have to run a  
Community  
Governance Review

What are your  
Council's decision-  
making processes and  
how can you use  
them to scope out  
your CGR timetable?

- a. You can't - the timetable is set out in the CGR legislation
- b. Factor in council meeting dates to inform the CGR timetable



# Key points

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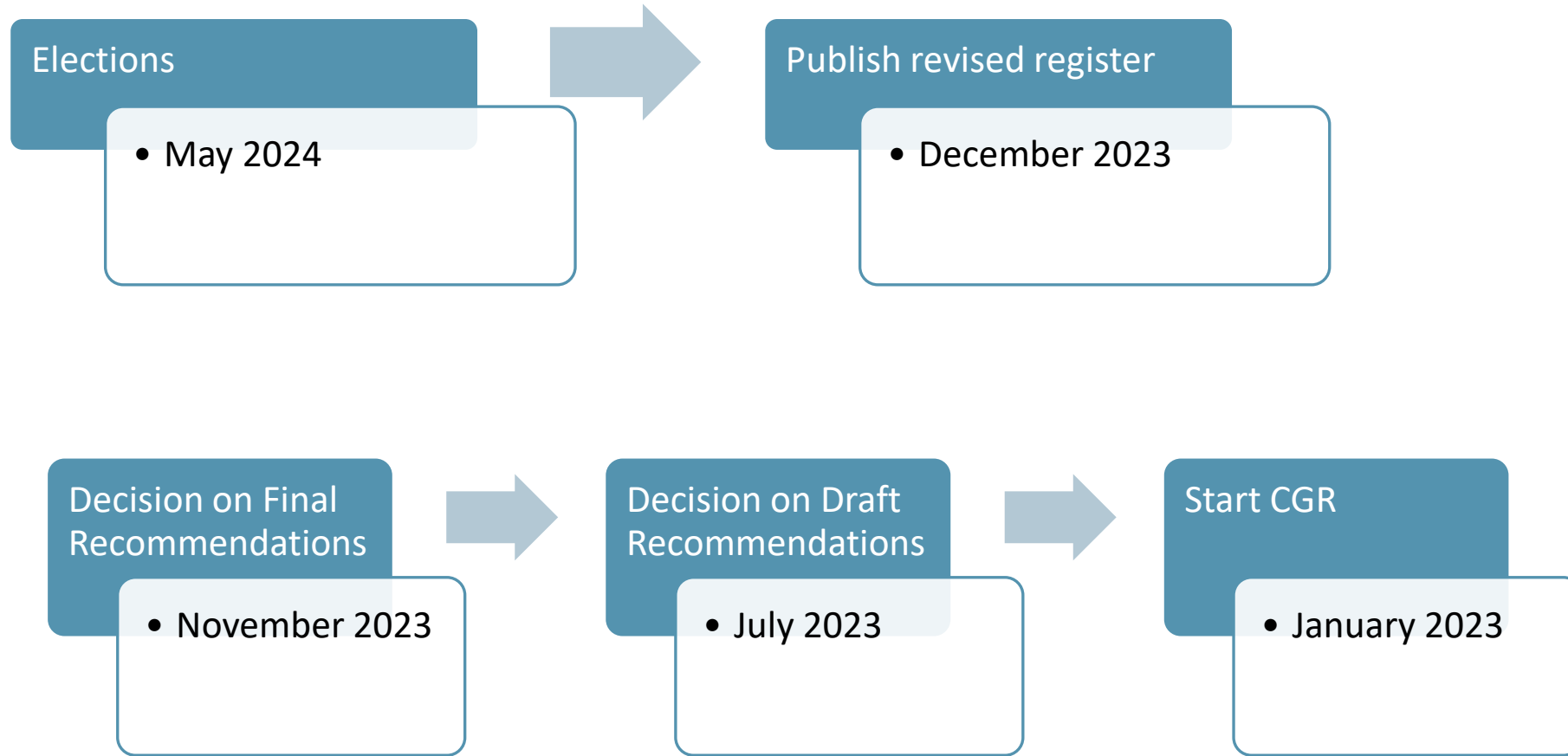
- Review process set out in legislation – s79 -102 Local Government and Public Involvement in Health Act 2007
- lots of decisions to be made
  - full council
  - committee?
  - officer with delegated authority?
- understand impact on the CGR timetable

# Decision-making process - CGRs

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- resolution to proceed with review
- adopt Terms of Reference
- working party meetings
- approval of draft recommendations
- approval of final recommendations
- consent from LGBCE if applicable
- making the CGR reorganisation order

# Example timetable - CGRs



# Scheme of officer delegation

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- Other examples of council decisions which could be delegated to an officer
  - declaring a councillor vacancy (s.86 LGA 1972)
  - polling district reviews (s.18-18E RPA 1983)
  - appointment of temporary parish councillors (s.91 LGA 1972)
  - parish name change requests (s.75 LGA 1972)
  - dissolving small parishes (s.10 LGA 1972)
  - grouping parishes, dissolving groups and separating them (s.11 LGA 1972)





# Thank you

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