

AUDIT & GOVERNANCE COMMITTEE

16th November 2021

Report of the Director of Governance & Monitoring Officer

Review of the Council's Constitution

Summary

As previously reported to the Committee, a cross party working group has now been established and had its first meeting on 6th October 2021. The cross party working group has continued to meet on a weekly basis (subject to Member availability) in order to assist the Committee on the review of the Constitution. Once satisfied with the amendments to the Constitution, the Audit & Governance Committee will make a recommendation that the draft Constitution be referred to a future meeting of Full Council for approval and immediate implementation. As the Committee is aware, the amendments undertaken by Audit & Governance Committee on 11th March 2020, and subsequently approved by Full Council in October 2020, have been incorporated into this revision.

Recommendations

The Audit & Governance Committee is invited to consider its continued review of the Constitution with the support of the cross party working group. The relevant sections to be considered by the Committee are detailed within this report.

The Chair and Vice Chair of the Audit & Governance Committee have received the comments to date from the Cross Party Working Group which are now shared with the Members of the Committee and appear at Appendix One of this report

It is noted that the review of the Constitution also contributes significantly towards the progress against the Action Plan prepared in response to the Report in the Public Interest accepted by Full Council on 4th May 2021.

Reasons for the recommendations

To ensure that the Council Constitution is accurate and is fit for purpose to effectively support the service delivery and decision making responsibilities of the Council in a lawful and financially compliant manner.

The Council is required to work towards the delivery of the Action Plan in response to the Public Interest Report.

Options

The Audit & Governance Committee can choose to disregard the recommendations contained within this report, in which case the Council's existing constitution will remain in force. However should this occur, the existing constitution will need to be reviewed in any event to ensure it is a fit for purpose document.

Background

Purpose of the Constitution

Since 2000, the Council has been required to make publicly available a constitution which sets out key requirements relating to service delivery, decision-making principles and protocols, i.e. this is a document that assists the public in describing the functions of the council and how it proposes to carry out those functions. To support Council's at that time, the Secretary of State produced a modular (or template) constitution which offered a degree of consistency as to what was required to be included. However, the decision as to format of the presentation of the constitution remains at the discretion of the Council so as to ensure the document is easy to read and can be updated.

The Council operates an executive or "strong leader" model (as opposed to a committee system) as its governance framework and therefore the constitution acts to advise the reader as to the division of decision making responsibilities, i.e. which decisions are made by the Executive as opposed to those which remain the responsibility of Council.

Revisions to the Constitution previously approved by Audit & Governance Committee on 11th March 2020

The recommendations considered and approved by Audit & Governance Committee have been fully incorporated into the revised Constitution. Details of these amendments can be found in the report and

accompanying documents considered by the Committee as part of its agenda on 11th March 2020.

The revised Constitution

The Committee is invited to consider the following sections of the revised constitution:

Article 14 – Gambling, Licensing and Regulatory Committee

This Article has been updated and as the Committee is already aware, some functions have been removed from the current terms of reference and transferred to the terms of reference for the Audit & Governance Committee as these are classed as governance functions and not regulatory functions.

Article 15 – Corporate Appeals Committee

This has been updated alongside the updated provisions contained within Appendix 12 Officer Employment Procedure Rules.

Article 20 – Council’s Commitment to Corporate Parenting

Previously, the Council’s commitment to Corporate Parenting was not included in the constitution. This revised document has been considered and approved in this draft by the Corporate Parenting Board and its supporting Officers. Therefore this Article is for the Audit & Governance Committee to note.

Article 21 – Joint Committees/Arrangements

The contents of this Article are taken directly from the current constitution. No changes have been made and this Article is for the Committee to note.

Article 23 – Independent Remuneration Panel

These details are the existing terms of reference for the Panel, however this was not included within the constitution. The details of this Article are for the Committee to note.

Article 24 - Officers; Article 25 – Finance, Contracts and Legal Matters; Article 26 – Review and Revision of the Constitution; Article 27 – Suspension, Interpretation and Publication of the Constitution

These Articles are required to be included within the Council's Constitution. They remain largely unchanged from the current constitution save for the update of post titles, the commitment to regularly review the constitution on a six monthly and annual basis. These Articles are for the Committee to note.

Appendix 10 – Financial Procedure Rules and Appendix 11 - Contract Procedure Rules

The Council's Chief Finance Officer has undertaken a review of these documents. The Contract Procedure Rules have previously been approved by the Audit & Governance Committee at their meetings in February 2015, June 2016 and December 2017. Minor changes have been made to add clarity in some areas, update post titles and references to the various articles and or Appendices in the revised Constitution.

The Committee is not asked to undertake a formal review of these Appendices as part of this process as this is ordinarily a separate request made to the Committee by the Chief Finance Officer. However it is "normal" for these Rules to be incorporated into the constitution.

Appendix 13 – Ethics Statement

This is included by way of good practice following a recommendation of the Committee for Standards in Public Life. This Appendix is a new addition to the constitution and is for the Committee to note.

Appendix 19 – Protocol for use of IT and use of resources by Members

This is a new appendix to the constitution and is included by way of offering transparency and clarity to Members for their use of council provided resources. The Committees views are sought in respect of this protocol.

Appendix 20 – Members Allowances and Members Allowances Scheme

These are the current arrangements considered by the Independent Remuneration Panel. These are contained within the current constitution and are for the Committee to note.

Appendix 21 – Urgent Decision Making Guidance

This was updated and approved on 23rd March 2020, at the commencement of the COVID 19 national lockdown. The Committee is asked to note its contents

The following Appendices are “new” and are not included within the current constitution, however it is good practice for these to be included so as to increase transparency.

Appendix 25 – Senior Management Structure

This is the current Chief Officer structure for City of York Council.

Appendix 26 – Information Governance Statement

This details the Council’s commitment to working with the GDPR Principles and contact details for the Data Protection Officer and the Council’s 4C’s procedures.

Appendix 27 – Protocol for Monitoring and Review of the Constitution by the Monitoring Officer

This is the outline methodology used by the Monitoring Officer to review the constitution.

Appendix 28 – Protocol on the Production and Content of Minutes of Meetings

This is the methodology outlining the production and content of Minutes of Meetings. The Committee is invited to consider this document.

Views shared by the Cross Party Working Group

As aforementioned in this report and previous reports to this Committee, the Chair and Vice Chair of the Committee sought to establish a Cross Party Working Group to seek views on the revised constitution. Appendix One of this report provides a summary of the work to date of the Cross Party Working Group for the Chair and Vice Chair of the Audit and Governance Committee to consider.

Views of the Scrutiny Chairs

The Chairs of the Council's Scrutiny Committees have been asked for their views in respect of Article 8 – Overview and Scrutiny and Appendix 5 – Scrutiny Procedure Rules. At the time of preparing this report, their feedback is awaited.

Members Code of Conduct

By way of update, Full Council met on 21st October 2021, and approved the adoption and immediate implementation of the LGA Model Code of Conduct at its meeting on 21st October 2021. As a result, the Model Code is now automatically included within the current constitution and will transpose directly into the revised constitution at Appendix 14.

Appendices 16, 17 and 18 are being reviewed so that they accurately reflect the requirements of the Model Code of Conduct.

The Joint Standards Committee has now commissioned Hoey Ainscough Associates to review the associated procedures to support implementation of the Model Code of Conduct and these will require the approval of Full Council before they can be incorporated into the constitution. The current procedures are captured within Appendix 29 of the revised constitution.

Implications

Financial

There are no financial costs associated with the Council's Constitution however it should be noted that both the Contract Procedure Rules and the Financial Procedure Rules are both key core documents incorporated into the Constitution. Both of these Rules are reviewed by the Council's s151 Officer and updates are provided to the Audit & Governance Committee.

Human Resources (HR)

There are none directly associated with this report. However the Officer Code of Conduct is a key core document of the Council's Constitution. The Member Code of Conduct and Member Allowances Scheme are also key core documents contained in the Constitution. Training will be provided to both Members and Officers in respect of the constitution.

Equalities

The Council's Constitution is a public document and steps must be taken to ensure that it is easily accessible on the Council's website. Wherever possible the revised constitution has been written in plain English to ensure that it is capable of being easily understood.

Legal

The Local Government Act 2000 requires the Council to have in place a constitution which set out key principles such as various codes of conduct, standing orders, contract standing orders and scheme of delegations. The Local Government Act 2000 (Constitutions) (England) Direction 2000 offered additional clarity as to the core requirements for the basis of a constitution and also provided a modular constitution which councils could adopt. The Council's current constitution followed the format of the modular constitution. The Council does have discretion in respect of the format of its constitution.

It is good practice to ensure that, once adopted, the constitution is reviewed by the Audit & Governance Committee on an annual basis so as to ensure that it remains fit for purpose to support effective delivery of council services and promote robust decision-making principles.

The Council's Constitution is a public document and steps must be taken to ensure is it is accessible on the Council's website.

Crime and Disorder, Information Technology and Property

There are no crime and disorder or property implications associated with this report. The Constitution will be provided to Members and Officer electronically and the will be available on the Council's website to ensure it is publicly accessible, however printed copies can be provided on request.

Author & Chief Officer Janie Berry, Director of Governance &
responsible for the report: Monitoring Officer

**Report
Approved**

Date 4th
November
2021

Specialist Implications Officer(s):

Janie Berry, Director of Governance

Debbie Mitchell, Chief Finance Officer

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report:

Janie Berry

Background Papers:

- The Council's existing Constitution (as amended by Full Council in October 2020)
- 11th March 2020 – Audit & Governance Committee – Agenda, Report and Minutes in respect of the review of the Council's Constitution
- 29th October 2020 – Full Council - Agenda, Report and Minutes approving the revisions to the Council's Constitution
- Report in the Public Interest dated 19th April 2021, received by Full Council on 4th May 2021
- Agenda, reports and supporting minutes and documents prepared for the meeting of the Audit & Governance Committee on 8th September 2021 – *NOTE: This Agenda includes the relevant links to the revised constitution*
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=437&MIId=13015&Ver=4>
- 21st October 2021 – Audit & Governance Committee – Agenda, Reports and Minutes

Appendix

- Appendix One - Summary of the Feedback received thus far by the Chair and Vice Chair of the Audit & Governance Committee from the Cross Party Working Group