

**Report of the Monitoring Officer**

**Overview of the Constitution**

**Summary**

1. This report responds to Members' request for a report providing an overview of the Constitution.

**Background**

2. The Local Government Act 2000 introduced for the first time a requirement for upper tier Councils to adopt a Constitution. Before then it was normal for Councils to produce a single document setting out their scheme of delegations, financial regulations and standing orders but there was no requirement to do so. The Council's Constitution is a public document and is available here: <http://democracy.york.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12830&path=0&wb48617274=06D9ACDB>.
3. The contents of the Constitution are in part defined by law. It must contain:
  - (a) a copy of the authority's standing orders for the time being,
  - (b) a copy of the Members' code of conduct,
  - (c) such information as the Secretary of State may direct

In 2000 the Secretary of State issued a direction (under an earlier version of the current legislative provision) which required around 80 matters to be included within constitutions. That covered such things as a summary of the purpose of the constitution, the members' allowances scheme and access to information provisions, amongst other things. This has resulted in local authority constitutions being weighty documents.

4. Most local authority constitutions follows a similar style. This is because they are largely based on a model constitution issued by the predecessor department to the Department for Communities and Local Government in 2000. They also have to reflect the law which underpins local authority decisions making. As with York's constitution though they have all been changed over the years to reflect changes in the law and local requirements.
5. So long as Councils meet the legal requirements they are free to adopt the constitution they wish. Constitutions are though are an important legal and governance document. Whether a Council has complied with its own constitution can and does become an issue in legal proceedings. The resulting need for accuracy and clarity does not always go hand in hand with making constitution documents which the general public will find easy to read. Nevertheless in recent years work has been undertaken to make the constitution easier to follow both by simpler drafting and by reducing some of the need to have an understanding of where it is necessary to cross reference various parts of the constitution. In addition, in 2014 this Committee supported the introduction of a new summary and explanation section to the constitution. This is intended to give an overview of how the Council operates for any interested reader. For ease that section has been included as an annex to this report.
6. While it does have to follow the law the importance of the Constitution is at least as much in what it says about how the Council wishes to operate. So, for example, York's Constitution:
  - Allows opposition group leaders to participate at meetings of the Executive which is not a legal requirement
  - Obliges Executive Members to make their decisions in public and only after giving at least 28 days notice. These requirements are unusual in local government.
  - Makes arrangements for public participation at all meetings. Again there is no requirement for this.
  - Requires all Executive and Executive Member decisions to normally be included on the Forward Plan for at least 28 days before the decision is made. This exceeds the legal requirements which only apply to key decisions.
  - Includes provision for pre decision call in rather than simply post decision as the law provides for.

## Changing the Constitution

7. The Audit and Governance Committee has a responsibility under the Constitution:

“To keep under review the Council’s contract procedure rules, financial regulations, working protocols and codes of conduct and behaviour (not otherwise reserved to the Joint Standards Committee)”

Changes recommended by the Committee are reported to Council for approval.

8. Other Committees may make recommendations to Council in relation to their own terms of reference and procedures.
9. The Executive may make changes which result in amendments being required to the Constitution. For example, the Leader is personally responsible for the allocation of responsibilities and delegated powers in respect of executive functions. As the Constitution should reflect Members’ wishes as to how the Council operates it is normal for relatively significant changes in the Constitution to follow changes in the Council’s leadership and to be initiated by the leadership.
10. The Monitoring Officer has the power:

“to make such amendments to the Constitution and related documents as may be necessary. Such changes should not include any changes of substance but be restricted to changes which the Monitoring Officer considers are required to reflect and take account of changes in legislation, guidance, Council policy and decisions of the Council and the Executive or are drafting changes and/or improvements”

These changes are reported to Council.

11. The Constitution is the subject of regular and going review. With the exception of two sections the entire Constitution has been the subject of review since 2014 with some sections having been reviewed on more than one occasion during that period. The sections which have not been recently reviewed are Section 4E which repeats legislative provisions in connection with approving

the budget and policy framework and section 5B – the Officer Code of Conduct. Currently reviews are planned of the sections containing the financial regulations, the contract procedure rules and the scrutiny procedure rules. The first two will result in reports to this Committee and the third will be reported through and involve discussions with Corporate and Scrutiny Management Committee.

### **Council Plan**

12. The Constitution supports good governance and the delivery of the council's priorities.

### **Implications**

13. **Legal** – Section 9P of the Local Government Act 2000 requires the Council to have a Constitution.

### **Risk Management**

14. There are no particular risks associated with this report.

### **Recommendations**

15. Members are asked to note the report.

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**Report  
Approved**

**Date**

29 August  
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**Specialist Implications Officers**

Not applicable

**Wards Affected:** Not applicable

**All**

**For further information please contact the author of the report**

**Background Papers**

None

**Annex A**

Summary and Explanation of the Constitution