

Meeting:	Executive
Meeting date:	9 th May 2024
Report of:	<p>Bryn Roberts Director of Governance & Monitoring Officer</p> <p>Debbie Mitchell Chief Finance Officer</p> <p>Dan Moynihan Deputy Monitoring Officer & Senior Lawyer</p>
Portfolio of:	<p>Cllr Katie Lomas Executive Member for Finance, Performance, Major Projects, Human Rights, Equality, and Inclusion</p>

Decision Report: Update to Joint Committee Governance Arrangements for the Yorkshire Purchasing Organisation (“YPO”)

Subject of Report

1. This report is to seek approval from Executive to sign a revised Management Agreement which sets out the governance arrangements for the YPO Joint Management Committee following a review of governance and recommendations for approval from the YPO Management Committee.

Benefits and Challenges

2. Continued participation in YPO helps CYC to combine its purchasing power with other local authorities to maximise economies of scale and ensure value for money.

Policy Basis for Decision

3. In December 2022, Full Council approved a 10-Year Plan, known as “York 2032”, and 10-Year Strategies. The Council Plan 2023-2027 was approved by Full Council in September 2023, and contributes to delivery of the 10-Year Strategies. The Council Plan has four core commitments, that define the outcomes the council will deliver over the current administrative term:
 - Affordability;
 - Environment;
 - Equalities and Human Rights; and
 - Health Inequalities.

The proposals within this report are consistent with these four key pledges as follows:

- a) **Affordability:** Through its continued participation in YPO, CYC combines its purchasing power with other local authorities to maximise economies of scale and ensure value for money.
- b) **Health Inequalities:** Overall, good local government financial governance plays a crucial role in promoting public health by ensuring that resources are allocated efficiently, these efforts contribute to creating healthier and more resilient communities.

Financial Strategy Implications

4. The recommended option has no financial implications. As one of the founder members of YPO, CYC combines its purchasing power with other local authorities to maximise economies of scale and ensure value for money. The continuation of this arrangement will support CYC in meeting the financial challenges ahead.

Recommendation and Reasons

5. **It is recommended that the Executive:**
 - a) To note, consider and accept the changes recommended by the Yorkshire Purchasing Organisation Management Committee.

- b) To delegate authority to the Director of Governance to sign an updated Management Agreement on behalf of the Council of the City of York, noting that all Member Authorities of Yorkshire Purchasing Organisation must also agree before the revisions take effect.
- c) To delegate contracting authority to the functional role of Managing Director of Yorkshire Purchasing Organisation.

6. Reasons:

- a) YPO has operated as a Joint Committee since its inception in 1974 and under the governance structure in the current Management Agreement since 2010. The governance of the arrangements needs to be updated to ensure that the governance of YPO Management Committee remains up to date and fit for purpose.

Background

- 7. YPO has operated as a Joint Committee since its inception in 1974 and under the governance structure in the current Management Agreement since 2010.
- 8. YPO operates as a Joint Committee of 13 Founder Member Local Authorities, including CYC. The same 13 Authorities are also shareholders in an associated company – YPO Procurement Holdings Ltd. - which operates a group company structure through which the local authorities can trade where necessary and appropriate to do so. The company structure is governed under a shareholder agreement and an appointed set of local authority councillor directors. The current governance proposals in this report relate only to the joint committee structure. A separate review of company governance is now taking place and if any changes are recommended within the company governance structures that will be the subject of a separate report.
- 9. The Management Agreement, and any changes to it, requires the agreement of each member authority through a formal resolution in their own council, along with a resolution to delegate contracting authority to the functional role of Managing Director of YPO.

10. The increasingly commercial nature of the daily operation of YPO and the experience of the planned acquisition of a major competitor, caused officers within YPO and the Lead Authority, Wakefield Council, to consider a review of the governance structure and operating practices of YPO to ensure that they are fit for purpose to deliver the recently approved 3-5 Year Strategy and to optimise benefits for member authorities in the future.
11. YPO members agreed at the Management Committee on 29th November 2021 to appoint a working group of Founder Member strategic officers to review current governance structures and documents and, in conjunction with officers from YPO and the Lead Authority, to submit proposed changes for consideration by members. This group met a number of times and proposed a number of changes to operating practices and to governance structures and the associated documents in which they are specified.
12. The resulting proposals were submitted to the March 2022 Management Committee for consideration and discussion prior to requesting formal approval. Members were also requested to consult within their own authorities to ensure that any final request for approval captured both the discussion in the March Management Committee and the wider views of the Founder Members. The discussion in March suggested just one minor change and no subsequent requests or suggestions were received from the Founder Members.
13. An external law firm, Addleshaw Goddard, was also commissioned by YPO to review the legal operating model. Their initial draft report was submitted to the March 2022 Management Committee. The final report was considered by the YPO Officer Working Group.
Addleshaw Goddard concluded that there is not currently a compelling case for change.

However, it was acknowledged by the external lawyers that this situation should be kept under review, particularly in light of forthcoming changes under the Procurement Act 2023, which comes into force later in 2024.
14. On 22nd July 2022 Management Committee formally approved the proposals and resolved to recommend them for approval at each member authority.

15. Full detail on the changes can be found in the YPO report and minutes attached to this report as **Annex A** but in summary they are as follows:
- a) **A reduction of elected members from two per founder member to one, with substitutes permitted.** This will produce a more focused core of members with greater familiarity with the strategic challenges facing the organisation.
 - b) **A reduction in the number of Management Committee and Sub-Committee meetings from three per year to a minimum of two per year.** This will enable members to focus on the key strategic issues facing YPO and to take decisions at key points in the annual business cycle (the recommendation to specify a “minimum” number, allowing scope to call additional meetings if required for business reasons, resulted from discussion in the March Management Committee).
 - c) **The removal of the Executive Sub-Committee.** This body largely duplicates the function of the Management Committee and has no separate delegated powers for specific decisions.
 - d) **The renaming of the Audit & Scrutiny Sub-Committee to Audit & Governance.** In addition, this comes with a remit to consider all items of risk and governance on behalf of member authorities.
 - e) **A revision to the Terms of Reference of the Audit & Governance Sub-Committee.** This is to emphasise the role of this body in scrutinising risk and governance issues, holding the Executive Officers to account and reporting back to the full Management Committee.
 - f) **Revisions to the Scheme of Delegation.** This will emphasise the requirement to consider political and reputational implications for members before the powers contained are exercised, and reinforcing the role of the Executive Director, Finance in reporting directly to the S151 Officer in the Lead Authority (i.e., Wakefield Council) in the case of any suspected breach.

g) **Revisions to the Financial Procedure Rules.** To reflect the commercial nature of YPO's activities as distinct from Local Government requirements.

h) **The continuation of the role of Independent Director.** To give elected members a level of independent assurance on the operational decision-making carried out by the Executive Board and to provide commercial advice to elected members as and when required.

Items 15(a) to 15(d) above require amendments to the Management Agreement which requires approval by all 13 Founder Members, including CYC.

16. Alongside the proposed changes to the formal structure are plans to increase regular engagement with Founder Member authorities, including a Finance Directors Forum, Heads of Procurement Forum, and regular meetings with member Chief Executives.
17. YPO have asked that it should also be noted that, in addition to the formal structures described, it is important in a commercial environment to retain the ability to take rapid decisions in a controlled manner. The continued use on an ad hoc basis of consultation jointly with the Chair, Vice-Chair, Chair of Audit & Governance, Independent Director, and the Lead Authority's (i.e., Wakefield Council's) Section 151 and Monitoring Officer should remain a key element of decision-making by the YPO Executive Board.
18. YPO have stated that purpose of the proposals above is to achieve a more focussed, commercial governance structure, fit for purpose to deliver the ambitious growth plans contained in the 3-5 Year Strategy. It should be stressed that the intention is not to diminish levels of governance, oversight, or control, but, in many cases, to strengthen governance by making the control mechanisms more explicit and transparent.
19. It should be noted that since the proposed changes have been discussed with YPO Members at the Management Committee itself and with Strategic Officers, the Management Committee has been operating to the new arrangements even though this will run ahead

of each Founder Member approving an update to the Management Agreement.

Consultation Analysis

20. The proposed changes have previously taken to YPO Joint Management Committee, and a working group of Founder Member strategic officers, all of which CYC have representation on as a Founder Member of YPO.
21. CYC Legal Services have already been consulted with by the Leader and the relevant Executive Member and have reviewed the proposed changes to the governance arrangements for the YPO Joint Management Committee.

Legal Services have confirmed that they are satisfied with the proposals.

Options Analysis and Evidential Basis

22. The Executive are asked to consider the following four options:
 - a) ***Option 1 - To agree to the revised Management Agreement and give effect to the recommendations of the Joint Committee.***

This option is preferred as this is the first review since 2010, and it ensures the arrangements are fit for purpose.

- b) ***Option 2 – Not to agree to the revisions***

This option is not recommended as it fails to give effect to the views of the Committee informed by a detailed governance review.

Organisational Impact and Implications

23. ***Financial***

There are no Financial implications to this report.

24. **Human Resources (HR)**

There are no HR implications to this report.

25. **Legal**

a) Vires & Statutory Duties

YPO is a Joint Committee constituted under Sections 101 and 102 Local Government Act 1972.

The proposed changes also include reduction of elected members from two per founder member to one, with substitutes permitted. Section 15 Local Government & Housing Act 1989 sets out the duty of relevant authorities /committees who make appointments in relation to political balance.

The bodies to which Section 15 applies are defined in Schedule 1 of the 1989 Act to include ordinary and advisory committees and sub-committees, and by virtue of para 2 (h) a joint committee appointed under S102(1)(b) LGA 1972.

However, in relation to joint committees (and other bodies set out in para 2) Section 15 duty only applies where “...*at least 3 seats...fall from time to time to be filled by appointments made by the authority or the committee.*”

As each member authority will be appointing 1-seat to the Joint Committee under the proposed amendments, this duty does not apply.

b) CYC Constitution

Under the Scheme of Delegation set out in Appendix 1 of the CYC Constitution, the Leader and Executive are responsible for all of CYC’s functions (including local area functions), except those which are required by the law or CYC’s Constitution, to be the responsibility of CYC itself, or any other non-Executive part of CYC.

YPO exercises functions on behalf of its member authorities relating to procurement which are executive functions.

Changes to those arrangements are therefore the responsibility of Executive.

c) YPO Management Agreement

Clause 15(1) of the 2011 YPO Management Agreement states that any variation to said agreement, once approved by two thirds majority at the Joint Management Committee, shall be agreed in writing by all of the Founder Members who were party to the agreement, including CYC.

d) Proposed Changes

CYC Legal Services have already been consulted with the Leader and the relevant Executive Member and have reviewed the proposed changes to the governance arrangements for the YPO Joint Management Committee.

Legal Services have confirmed that they are satisfied with the proposals.

26. Procurement

There are no direct procurement implications in this report to sign a revised Management Agreement and approve the proposed changes to the governance arrangements for the YPO Joint Management Committee. However, as noted in the report, the Management Agreement must be kept under review due to Procurement Legislation changing and coming into force October 2024. Any changes, impacts or decisions surrounding Procurement must be held with the Commercial Procurement Team.

27. Health and Wellbeing

Overall, good local government financial governance plays a crucial role in promoting public health by ensuring that resources are allocated efficiently, these efforts contribute to creating healthier and more resilient communities.

28. Environment and Climate Action

There are no Environment and Climate Action implications to this report.

29. ***Affordability***

The recommendation in this report ensures that through its continued participation in YPO, CYC combines its purchasing power with other local authorities to maximise economies of scale and ensure value for money which helps reduce the impact on the council taxpayer in York.

30. ***Equalities and Human Rights***

CYC recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation, and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

At the time of writing, it is believed that there are no Equalities or Human Rights implications in respect of the matters discussed in this paper. However, an Equalities Impact Assessment (“**EIA**”) will be carried out in due course and the process of consulting on the recommendations in this report will identify any equalities implications on a case-by-case basis, and these will be addressed in future reports.

31. ***Data Protection and Privacy***

Data protection impact assessments (“**DPIAs**”) are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK data protection and privacy legislation. Failure to carry out a DPIA when required may leave CYC open to enforcement action, including monetary penalties or fines.

DPIAs helps us to assess and demonstrate how we comply with all of our data protection obligations. It does not have to eradicate all risks but should help to minimise and determine whether the level

of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve.

The DPIA screening questions were completed for this report and as there is no personal data being processed for the options set out in this decision report, there is no requirement to complete a DPIA at this point. However, this will be reviewed where required following the decisions from this report.

32. **Communications**

Any Communications Service support necessary in relation to this report is likely to be limited to reactive media management only.

33. **Economy**

There are no Economy implications to this report.

Risks and Mitigations

34. Please refer to **Background, Option Analysis Evidential Basis** and **Organisational Impact and Implications** above.

Wards Impacted

35. All Wards.

Contact details

For further information please contact the authors of this Decision Report.

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Background papers

N/A

Annexes

- Annex A – YPO Governance Review Document.