

AUDIT & GOVERNANCE COMMITTEE

8 September 2021

Report of the Director of Governance & Monitoring Officer

Review of the Council's Constitution

Summary

This report sets out the proposed revisions to the Council's Constitution for consideration by the members of the Audit & Governance Committee and makes a recommendation that draft Constitution be referred to a future meeting of Full council for approval and immediate implementation. 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 the following recommendations:

1. That the proposed revised Constitution as set out in the annex to this report be approved and referred to a future meeting of Full Council for approval and immediate implementation;
2. That the proposed amendments to the terms of reference for the Audit & Governance Committee as detailed at Appendix 9 of the revised Constitution be approved;
3. That the Director of Governance & Monitoring Officer liaise with the Council's Corporate Management Team to ensure that each service area has in place a scheme of delegation to deliver the consistent compliance with the requirements of the revised Constitution that relate to delegated decisions taken and recorded by Officers;
4. That the Director of Governance & Monitoring Officer in consultation with the Group Leaders and the Corporate Management Team provide training to Members and Officers to

improve the understanding across the Council of the purpose and requirements of the Constitution;

5. That the Audit & Governance Committee will commit to undertake an annual review of the Council's Constitution to ensure it remains fit for purpose.

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.

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 produces 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 and 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

Format

The revised constitution is broken down into two separate sections:

1. Articles:

Each Article describes a particular function or role and responsibility. The Articles are grouped by theme, for example a regulatory theme, a governance theme etc. In a transparent manner, these detail the decision making framework for the Council i.e. the various committees, the varied roles and responsibilities of Members and key Officers and the commitments the Council makes to ensure it maintains a robust oversight of its governance framework. Where possible, each committee has its own Article, for example, Article 9 relates solely to the role and responsibility of the Audit & Governance Committee.

2. Appendices:

These are detailed and set out how the Council proposes to deliver the functions as described in the Articles. This section of the revised constitution also includes the numerous protocols referenced to the Committee as part of the review undertaken in early March 2020. The appendices section also includes more recently developed protocols such as those required during the Coronavirus Pandemic and the Internal Travel protocol developed by the Joint Standards Committee.

Approach taken to review the constitution

The aim of the review has been to increase awareness and understanding and ultimately the transparency of the constitution. Officers from Legal Services and Democratic Services have consulted with Members and members of the Corporate management Team and

reviewed the operation of the constitution both prior to and during the national lockdown. The observations detailed in the Public Interest Report received by Council on 4th May 2021, have also been fully taken into account.

Comparison with the Existing Constitution

The existing constitution is written following the modular constitution and as advised in March 2020, it has not been reviewed and or updated for a significant period of time.

Due to the change in format, a cross referencing document has been provided at Appendix 1 which serves to demonstrate how, where possible, the existing content has been transposed into the revised version.

Wherever possible, the aim has been to retain as much of the existing text/language as possible so as to maintain consistency of understanding. However there are some areas which have not been reviewed as part of this process as they will be included as part of a future review, these include:

1. Members Code of Conduct - this Appendix and others which reference the Members Code of Conduct will be reviewed if Full Council approves the adoption of the Model Code of Conduct at its meeting in October 2021;
2. Terms of reference for the Health and Wellbeing Board – this will be reviewed as part of the development of the health alliance project;
3. Officer Code of Conduct – this has not been reviewed and is subject to a future review with the Trade Unions;

The terms of reference for the Overview and Scrutiny Committees (as detailed in Article 8) have not been reviewed however the delivery of the Council's scrutiny function as developed during the national lockdown has been included and is detailed within Appendix 5.

What is “new” to the revised Constitution?

Articles

Many of the Articles detail information which was already contained within the existing constitution however they may, the face of it appear to

be “new” additions as the various functions have now been broken down to separate areas. However:

1. Article 15B provides for the creation of an Investigating and Disciplinary Committee and an Appeals Committee for statutory chief officers;
2. Article 19 details the revised proposed constitution for York SACRE (Standing Advisory Council for Religious Education). This document cannot be approved by Council until such time as it is formally approved by SACRE;
3. Article 20 – York’s Commitment to Corporate Parenting publicises City of York Council’s commitment to its children and young people.

Appendices

Many of the appendices are “new” additions as these now include reference to the various protocols which did exist as part of the Council’s governance framework but had not been formally adopted into the constitution.

Some Appendices have also been re-written including Appendix 1 to provide for a much more detailed approach to the scheme of delegation compared to the existing high level approach. Others have also been included by way of good practice, for example the inclusion of an Ethics Statement at Appendix 13, Appendix 18 - Guidance to Councillors and Officers Appointed to Outside Bodies and Appendix 28 – Protocol on the production and content of Minutes of Meetings.

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 **Date** 31st August
Approved 2021

Specialist Implications Officer(s):

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

Appendices

- Appendix 1 – Cross reference document between the existing constitution and the revised constitution;
- Appendix 2 – Articles of the revised constitution
- Appendix 3 – Appendices of the revised constitution