

AUDIT & GOVERNANCE COMMITTEE

2 February 2022

Report of the Director of Governance & Monitoring Officer

Review of the Council's Constitution

Summary

Following significant work undertaken by the Audit & Governance Committee, Members of the Cross Party Working Group and Senior Officers from across the Council, the review of the constitution has almost concluded.

The Audit & Governance Committee has asked for the revised draft constitution to be published earlier than the remainder of the agenda so that opportunity is provided to all for its consideration prior to the meeting on 2nd February 2022.

Recommendations

The Committee is invited to consider the revised draft constitution prior to it being referred to Full Council in March 2022, with a recommendation for its adoption and immediate implementation. In doing so the Committee should note the issues which are likely to require determination of Full Council as detailed within the 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 draft constitution has been published with some track changes which indicate the changes made in response to recent feedback from Members following December's meeting of the Audit & Governance Committee. These largely occur in Article 8 and Appendix 5 relating to the Council's overview and scrutiny function.

The views received from the Cross Party Working Group which were previously shared with the Committee have now also been incorporated.

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 has been transposed directly into the revised constitution at Appendix 14.

Appendices 17 (included with track changes) and 18 have now been reviewed and updated where necessary so that they are consistent with and 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. The Joint Standards Committee has also commissioned Hoey Ainscough Associates to review Appendix 16, the Protocol on Officer & Member relations and this along with the aforementioned supporting procedures will be considered by the Joint Standards Committee at their meeting on 24th January 2022.

Issues which require determination by Full Council

At present there are some issues which it is anticipated will require the determination of Full Council in March 2022. These are as currently believed to be the following:

	Reference in draft Constitution	Nature of dispute	Draft wording to be approved or not (disputed wording appears in bold type)
Appointment of Substitutes			
	Article 7: Decision Making Subsection 14 Para 14.1 (a)	Should substitutes be appointed from the same political group or not?	For the Planning Major Committee and Planning Minor Committee up to four named substitutes shall be allowed for each of the political Groups. For other Member bodies up to three named substitutes shall be allowed for each political Group. Substitutes shall be appointed from within the same political group. Independent Councillors may also be appointed to act as named substitutes for other Independent Councillors within this rule.
	Article 7: Decision Making Paragraph 14.1 (d)	Members of the Joint Standards Committee do not want to allow substitutes as they believe this will have a negative	There is no ability to appoint substitutes to the Joint Standards Committee or its sub-committees and panels.

		impact on the consistency of their approach to ethical governance	
Role of Executive Members on Planning Major Committee and Planning Minor Committee			
	<p>Article 13: Planning Major Committee and Planning Minor Committee</p> <p>Para 1.3</p> <p>Appendix 17: Code of Good Practice for Councillors involved in the Planning Process</p>	<p>Should Executive Members be members of the Planning Major Committee and Planning Minor Committee. If the position of Full council is “yes” the current wording remains as drafted.</p> <p>If the position of Full council is “no” the current wording will be deleted from the constitution.</p> <p><i>NOTE: if the decision is</i></p>	<p>Article 13, Para 1.3: Executive Members can sit on both of these Committees</p> <p>Appendix 17, Para 4.6:</p> <p>Executive Members may have been involved in promoting a particular development in their role as Executive Members for the Service. Whilst a Member of a Planning Committee would not be required to withdraw simply because they are</p>

		<p><i>taken to immediately remove Executive Members from the Planning Major Committee and Planning Minor committee, this will require alternative members to be appointed to the Committees.</i></p>	<p>also an Executive Member, if an Executive Member also sits on Planning Committee it may be difficult for them to demonstrate objectivity in dealing with an application relating to that development. They must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias or predetermination. Indeed, the Member may be seen as advocate on behalf of the Council for the development in question. In those cases the best course of action would be for the Executive Member to withdraw from the Planning Committee for that matter.</p>
Scrutiny Function			
	Article 8: Policy,	Should there be reference to the Vice Chair	Allocating, in consultation with the relevant Chair and Vice-Chair , urgent

	<p>Scrutiny and Overview</p> <p>Para10.2 (b)</p>		<p>issues to be considered by an appropriate committee (including ad-hoc scrutiny committee), as may be necessary</p>
	<p>Appendix 5: Scrutiny Procedure Rules</p> <p>Para 16.3</p> <p>Paragraph 18.3</p>	<p>Para 16.3: Should the anticipated time estimate which is provided as a guide only, be listed as 20 minutes or 30 minutes?</p> <p>Should there be a single vote or multiple votes where there is more than one breach alleged in respect of a call-in?</p>	<p>After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions. As a guide it is anticipated that this should not exceed 20 minutes [30 minutes] in total.</p> <p>Para 18.3:</p> <p>The vote to be taken will be by a show of hands. Where multiple breaches are alleged, a vote shall take place in respect of each potential breach.</p>

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

Report Approved **Date** 20th January 2022

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
- 16th November 2021 - Agenda, reports and supporting minutes and documents prepared for the meeting of the Audit & Governance Committee
- 1st December 2021 - Agenda, reports and supporting minutes and documents prepared for the meeting of the Audit & Governance Committee

Appendix:

- Appendix One – Draft revised Constitution for City of York Council