

<b>Title of Report</b>	<b>REVIEW OF THE CONSTITUTION</b>	
<b>Presented by</b>	Councillor Ashman Deputy Leader	
<b>Background Papers</b>	<a href="#">Current Constitution Audit and Governance Report (25.01.23)</a>	<b>Public Report:</b> Yes
<b>Financial Implications</b>	<p>The Chief Finance Officer has reviewed the Financial Procedure Rules (FPRs) and Contract Procedure Rules (CPRs) to ensure that members and officers can make effective decisions. The proposed changes to the FPRs and CPRs are based on financial advice and best practice. Appendix C contains the Chief Finance Officer's advice in relation to CIPFA's Position Statement on improving the governance of local authority Audit Committee's.</p> <p><b>Signed off by the Section 151 Officer:</b> Yes</p>	
<b>Legal Implications</b>	<p>The Monitoring Officer has reviewed the Constitution to ensure that members and officers can make robust effective decisions. The proposed new version is based on legal advice, best practice and is in compliance with the law.</p> <p><b>Signed off by the Monitoring Officer:</b> Yes/No</p>	
<b>Staffing and Corporate Implications</b>	<p>An up-to-date and modern Constitution helps the Council to make robust and effective decisions and deliver corporate priorities. The Monitoring Officer consulted and engaged with the Chief Executive, Directors, S151 Officer, other officers, the Leader and Deputy Leader, the Constitution Cross Party Working Group and the Audit and Governance Committee in carrying out this review.</p> <p><b>Signed off by the Head of Paid Service:</b> Yes</p>	
<b>Purpose of Report</b>	To explain the outcome of the Monitoring Officer's review of the Constitution and present a proposed new version.	
<b>Recommendations</b>	<p><b>THAT COUNCIL</b></p> <ol style="list-style-type: none"> <li><b>1. CONSIDERS THE COMMENTS FROM THE AUDIT AND GOVERNANCE COMMITTEE MEETING ON 25 JANUARY 2023</b></li> <li><b>2. ADOPTS THE PROPOSED NEW CONSTITUTION AS SET OUT IN APPENDIX A WITH EFFECT FROM 9 MAY 2023</b></li> </ol>	

	<p><b>3. APPROVES THE CHANGES TO THE PROPOSED NEW CONSTITUTION AS SET OUT IN APPENDIX D IN THE EVENT THAT THE NEW STRUCTURE IS APPROVED UNDER ITEM 15 AND DELEGATES AUTHORITY TO THE MONITORING OFFICER TO MAKE THOSE CHANGES</b></p>
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**1.0 BACKGROUND**

- 1.1 The Local Government Act 2000 requires each local authority to prepare, keep up to date and publicise the document known as the Constitution.
- 1.2 The Constitution should be logical, integrated and accessible to members, officers, the public and anyone else interested in the way a local authority makes its decisions. There is also a statutory requirement on the Council’s Monitoring Officer to keep the Constitution up to date, and accordingly the update of the Constitution is an on-going process.
- 1.3 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Council to reflect best practice.

**2.0 METHOD OF REVIEW**

- 2.1 In previous years the review has involved consulting officers on areas of the Constitution that need updating/amending, updating any areas that have been raised with the Legal Team previously for clarity, reflecting any relevant changes in law and incorporating any feedback raised by members.
- 2.2 This year it was identified that a broader review of the whole Constitution may be needed. Whilst our current Constitution has worked well, it was felt that it could be made clearer and more accessible. Best practice was also identified based on the constitutions of other councils and was taken into account in the approach to remodelling ours.
- 2.3 For the 2021/22 annual review and following interest expressed by members, a cross party member working group was established to feed into the work on the Constitution review. The Constitution Member Working Group comprised of Councillors Ashman, Hay, Morris, Richichi, Saffell, Simmons and Wyatt, and met on the following dates:

10 December 2021  
31 January 2022  
4 March 2022  
27 May 2022  
22 July 2022  
10 October 2022  
8 December 2022

- 2.4 At the first meeting of the Constitution Member Working Group, members agreed that, rather than follow the usual process for reviewing the Constitution, a full review was needed. Members felt that it was an opportune time to consider the document as a whole to improve accessibility and ease of use. Members were shown some example constitutions from other district councils and chose one that they preferred for the new Constitution to be based on.

- 2.5 The Constitution Member Working Group also agreed the detailed methodology for the review. Once a suitable example Constitution had been identified, the Legal Team broke it down into sections and compared it against the equivalent sections in the current Constitution. The team sought to preserve the wording and layout of the example Constitution and only make changes to it to reflect how the Council works (e.g. committee titles and where decisions are made, etc.)
- 2.6 Proposed changes were presented to the Constitution Member Working Group accompanied with a separate change tracker document and any feedback from members within the group was taken into account in updating the relevant sections. The Constitution Member Working Group has been invaluable in providing member insight and constructive challenge to the review process and is thanked for its time and work on this project.

### **3.0 KEY CHANGES TO THE CONSTITUTION**

- 3.1 The substance of the Constitution has not changed significantly, as the main changes have primarily been how it looks and is presented. The new Constitution is provided at Appendix A. The reference to page numbers later in the report relates to those displayed in the top right-hand corner throughout Appendix A rather than the agenda pack numbering displayed at the bottom of the page.
- 3.2 The review table at Appendix B sets out the full extent of the changes made and how the current Constitution has been captured in the new version.
- 3.3 The area that has changed the most is the Scheme of Delegation. The intention of the changes is to provide clarity to officers on the powers which have been delegated to them not to change the balance of delegations which Council has agreed.
- 3.4 The Council's current Constitution provides both general and specific delegations to specific officers. The proposed new Scheme of Delegation delegates all powers in relation to specific services to the Head of Service and then the Head of Service delegates their powers onwards through a local scheme of delegation. The local schemes of delegation do not form part of the Constitution document itself but will be made available on the Council's website.
- 3.5 Aside from the local scheme of delegation, officers may need specific authorisations (e.g. rights of entry). These will be delegated through specific authorisation forms, similar to those used currently for all delegations.
- 3.6 Apart from any specific delegations, officers are free to take whichever actions or decisions enable them to do their job as set out in their job description without the need for any further forms. Whilst this is the position under the current Constitution, it is not as clear as it could be because of the way it is presented.
- 3.7 Since the Constitution Member Working Group saw the last version of the Constitution in December 2022, a further change has been implemented to reflect requirements from CIPFA. CIPFA reissued its "Position Statement: Audit Committees in Local Authorities and Police 2022" along with some supplementary guidance on the statement at the end of last year. The statement represents CIPFA's view on the audit committee practice and principles and it is expected that all local government bodies should make their best efforts to adopt the principles, aiming for effective audit committee arrangements.
- 3.8 The guidance from CIPFA indicates that two independent persons should be co-opted onto the Audit and Governance Committee and that members of the Committee should not overlap with those exercising Scrutiny or Cabinet functions. The new Constitution has been

amended to allow for the appointment of the independent persons and the Internal Audit Manager take a report to the Audit and Governance Committee in April 2023 to update further on the recent CIPFA guidance.

- 3.8 As part of the review of the Constitution, all cross-references and legislative references in our current Constitution were checked to make sure they remain up-to-date before repeating in the new version. An anomaly was identified in respect of the Licensing Committee as it is a legal requirement that it has no more than 15 members (as opposed to the 17 it currently has). The new Constitution has addressed this.
- 3.9 Although the draft Constitution is complete, the final version will be updated to include hyperlinks, so that it is easier to navigate to relevant sections within the document and to any other webpages or documents that sit outside of the document and are referred to within it. This work will be undertaken prior to publication.
- 3.10 As the new Constitution has changes that affect committee membership (as explained above), it is proposed that it is adopted from the new civic year, on 9 May 2023 when new councillors take their seats following the elections on 4 May 2023. This will enable the arrangements and appointments at the annual meeting to comply with the new Constitution.

#### **4.0 CONSULTATION**

- 4.1 As some sections of the consultation affect employees, the Head of Human Resources and Organisational Development consulted with CLT on the Officers' Code of Conduct and Employment Procedure Rules at its meeting on 26 October 2022.
- 4.2 In addition, consultation was carried out on the Officers' Code of Conduct with team managers and the trade unions.
- 4.3 UNISON confirmed that they had no comments to make and no responses were received from the other trade unions. Responses received from team managers were considered and taken account of when finalising the Officers' Code of Conduct.

#### **5.0 COMMENTS FROM AUDIT AND GOVERNANCE COMMITTEE**

- 5.1 There were some questions asked and clarifications sought when the Constitution Report item went to the Audit and Governance Committee on 25 January 2023. Officers considered those and provided the following responses after the meeting:
- A question was raised about the number of years the Leader was to be appointed for, as there was inconsistency between page 7 (of the draft new Constitution) that it indicated that the Leader was elected for a four-year term and other references that were to a one-year term. This has been reviewed and it has been confirmed that the reference to a four-year term on page 7 was included in error and it has now been amended to one year to be consistent with the remainder of the Constitution.
  - A question was raised about paragraph 2.10 on page 39 (of the draft new Constitution) in relation to functions reserved to Planning Committee. It was queried whether the District Council has functions in relation to footpaths and therefore whether such references to footpaths should be included. The relevant legislation has been reviewed and discussions have taken place with the Head of Planning, which have confirmed that the District Council does in fact have functions in relation to footpaths under the Town and County Planning Act 1990 and the Highways Act 1980 as referred to in paragraph 2.10. It is, therefore, recommended that reference to these functions remain. It was, however, noted that there was an error in

paragraph 2.10(a), as it stated “the Town and Planning Act 1990” when this should in fact read the “Town and Country Planning Act 1990” and this has now been corrected.

- Clarification was sought on the basis of a change in the Constitution relating to membership not overlapping between Audit and Governance and Scrutiny Committees, as a result of CIPFA guidance. A briefing note in relation to this issue has been prepared and is attached at Appendix C.

5.2 In addition to the above, a comment was raised during the meeting regarding Cabinet Support Members and whether this should be included as it was believed that the Council did not have any. It was confirmed that the reference to Cabinet support members in the draft new Constitution has been carried forward from the current Constitution. Any appointments of Cabinet Support Members are made by the Leader.

## 6.0 CHANGES REQUIRED IN RELATION TO THE PROPOSED RESTRUCTURE

6.1 The proposed new Constitution has been prepared based on the current senior management structure, however, there is a prior item on this agenda that seeks to change that structure, particularly in relation to the S151 Officer post.

6.2 In the event that this new structure is approved, there will be some minor changes required to the proposed new Constitution to give effect to that new structure. The nature of those changes is set out at Appendix D and Council is being asked to approve those changes in the event that it approves the new structure. The Constitution will then be updated with those changes prior to it being adopted.

<b>Policies and other considerations, as appropriate</b>	
Council Priorities:	An up to date and modern Constitution helps the Council to make robust and effective decisions and deliver corporate priorities
Policy Considerations:	N/A
Safeguarding:	N/A
Equalities/Diversity:	N/A
Customer Impact:	The Constitution is made available to customers on the Council’s website and the intention of replacing it is to make it more accessible and easier to understand.
Economic and Social Impact:	N/A
Environment and Climate Change:	N/A
Consultation/Community Engagement:	The Monitoring Officer consulted and engaged with the Chief Executive, Directors, S151 Officer, other officers, the Leader and Deputy Leader and the Constitution Member Working Group. The Head of Human Resources and Organisational Development consulted with Corporate Leadership Team, team managers and trade unions on the aspects that affect employees (as detailed in section 4 of the report).

Risks:	An up to date Constitution which is reviewed regularly ensures that robust effective decisions can be made by members and officers
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