

Meeting:	Audit and governance committee
Meeting date:	28 November 2016
Title of report:	Council constitution
Report by:	Solicitor to the council (monitoring officer)

Classification

Open

Key decision

This is not an executive decision.

Wards affected

Countywide

Purpose

To consider amendments to the council's constitution proposed by the governance improvement working group, and to agree recommendations to Council.

Recommendation(s)

THAT:

- (a) having regard to the detailed work undertaken by the governance improvement working group, the revised constitution at appendix 1 be recommended to full Council for adoption, with implementation with effect from annual council in May 2017 other than the following designation of posts as statutory officers:**
 - governance services manager be designated statutory scrutiny officer to be implemented with effect from 1 January 2017**
 - chief finance officer be designated section 151 officer to be implemented once recruitment to the new post is complete;**
- (b) authority be delegated to the solicitor to the council to make technical amendments (grammatical, formatting, and consistency) necessary to finalise the revised constitution at appendix 1;**
- (c) the standards working group support the monitoring officer in undertaking a review of the councillor code of conduct and the associated member codes; and**
- (d) membership of the standards working group be reviewed and agreed in light of recent changes to the committee membership.**

Alternative options

- 1 To reject the proposed amendments and retain the current constitution unamended: this is not recommended because the amendments have been proposed in order to either:
 - a) Improve clarity;
 - b) Ensure compliance with current legislative requirements; or
 - c) Improve the efficiency and effectiveness of the council's governance arrangements
- 2 To propose alternative or additional amendments; it is open to the committee to propose that consideration be given to alternative or additional amendments. However additional time may be required in order for the working group to assess the impacts of any such proposals and to consult with the wider member body as necessary.

Reasons for recommendations

- 3 The proposed amendments to the constitution reflect the principles agreed by the audit and governance committee and ensure that the council's governance will remain robust, compliant with legislative requirements, and transparent.
- 4 To ensure arrangements are in place to progress the remaining elements of the constitution review in a timely manner.
- 5 Designation of posts as statutory scrutiny officer and section 151 officer are reserved to full Council.

Key considerations

- 6 Following a meeting of group leaders in October 2014, a cross-party members' working group, reporting to the audit and governance committee was convened to initiate consideration of how governance arrangements could be improved. Membership of the group includes representatives of all political groups and of those involved in executive, overview and scrutiny and audit and governance functions plus one member not involved with those functions. The working group was tasked with ensuring that the working group effectively engages with the wider membership within their political groups.
- 7 In the run up to the elections in May 2015 the working group focused on identification of the key issues that any review of governance needed to address and the strengths, weakness, opportunities and threats were identified as outlined in the report to audit and governance committee in July 2015.
- 8 The working group developed a set of design principles for a refreshed constitution which were approved by audit and governance committee in November 2015 which sought to ensure that:
 - Members and officers perform effectively in clearly defined functions and roles
 - Member engagement and participation is maximised, including the involvement of all members in the development of key policies
 - Decision making is informed, transparent and efficient

- The council welcomes public engagement and makes accountability real

9 During the past year the working group has continued to meet regularly and, having regard to the outcome of consultation with members, has identified a number of recommended changes to the constitution. The revised constitution is attached at appendix 1 and the changes are summarised at appendix 2; all members of the council have been given access, via the council's intranet, to a version of the current constitution showing all tracked changes. Many of the changes seek to remove duplication or to clarify existing arrangements; however some are more fundamental and these are outlined below:

- a) Public participation to be strengthened through consistent application of the provision for public questions at public meetings of audit and governance committee, cabinet, employment panel, health and wellbeing board, and overview and scrutiny committees, and through the development of a public guide to participation included in part 5 of the constitution;
- b) New guide to roles of members;
- c) Overview and scrutiny committees to be restructured to provide for three committees, but with a greater degree of specialism, and the provisions for overview and scrutiny task and finish groups clarified to maximise engagement across the whole member body;
- d) Smaller committee sizes to facilitate member engagement;
- e) Call-in to apply to all executive decisions, and to be extended to all members of the council with a requirement for seven signatories and the call in period extended to four days;
- f) Formation of a single planning and regulatory committee which in plenary session will fulfil the functions of the existing planning committee and will also form the pool from which licensing sub-committee can be drawn with a member of planning and regulatory committee taking on the role of standing chairman of the licensing sub-committee;
- g) Removal of the requirement for annual reports from committees at Council given the availability online of all meeting papers and the ability to ask questions of committee chairmen;
- h) Member questions to be limited to one at any meeting given the opportunities existing for members to raise matters in other ways;
- i) Officer decisions with a financial implication of less than £50k to have no requirement to be formally documented;
- j) Removal of the petition scheme which is no longer a statutory requirement, but retention of the ability for petitions containing a certain number of signatories registered to vote in the county to be debated at full Council;
- k) Political groups to be consultees on key decisions;
- l) Delegate approval of finance and contracts procedure rules to the audit and governance committee and employee code confirmed as head of paid service function.

10 It is intended that, subject to the views of the audit and governance committee, the revised constitution be recommended to full Council for approval in December 2016. To provide sufficient time to enable all members and officers to be given training on the provisions of the new constitution, and for the independent remuneration panel to review the councils scheme of allowances in light of the changes and make recommendations to full Council accordingly, it is proposed that the implementation date be annual council 2017.

11 When approving the design principles the committee noted that a number of other actions would assist in meeting the principles and an update on those actions is

Further information on the subject of this report is available from
 Claire Ward, solicitor to the council on Tel (01432) 260657

provided at appendix 4 for information.

- 12 The reason for the recommendation in (b) is to enable live links, cross referencing and formatting and grammatical errors to take place once the council has approved.
- 13 Some elements of the constitution have yet to be reviewed and it is proposed these remaining elements be progressed as outlined below:
- Finance and contracts procedure rules –section 151 officer and head of law and governance to lead a review, scheduled for consideration by audit and governance committee in January 2017
 - Councillor code of conduct – monitoring officer to lead a review in consultation with the standards working group, and parish councils, for consideration by audit and governance committee on 8 May 2017 and adoption at annual council
 - Employee code of conduct – head of human resources and organisational development to lead a review, in consultation with employee representative bodies, for approval by the chief executive, following consultation with the employment panel, by May 2017
 - Member and officer relations; gifts and hospitality, and member use of resources codes – monitoring officer to lead a review in consultation with the standards working group, for consideration by audit and governance committee on 8 May 2017 and adoption at annual council
- 14 It is a Council function to designate certain posts to fulfil specific statutory functions. During the review it was proposed that the statutory scrutiny officer function should not rest with a director if officer decisions were to be subject to call in and it is therefore proposed that the governance services manager post be designated to fulfil this function. Additionally, recruitment is underway to the permanent new post of chief finance officer (replacing the previous director of resources post) and it is recommended that this post be designated as the council's section 151 officer once recruitment and selection has been completed.

Community impact

- 15 The constitution sets out how the council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The format and content of the revised constitution should help make these arrangements clearer to understand, and show how the public can effectively engage with them.

Equality duty

- 16 Legislation requires that the council must, in the exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by law;
 - 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.
- 17 The recommended changes to the constitution seek to ensure that, in its decision-making and its operations, the council fully complies with the public sector equality duty.

Financial implications

- 18 None arising from the recommendations. The council already makes provision within its existing budgets to enable publication of the constitution on its website and to ensure that members and officers have the training necessary to ensure awareness and understanding of the requirements within the constitution.

Legal implications

- 19 The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in The Local Government Act 2000 (constitutions) (England) Direction 2000 which have been complied with when preparing the amendments. A checklist has been produced to demonstrate how the draft constitution complies with these minimum requirements, and is attached at appendix 5.

Risk management

- 20 If the council's constitution is not accurate, up to date and understood then there is a risk that governance arrangements are not clear and robust leaving the council open to judicial review, contractual challenge or financial risk. The proposed amendments and adoption of the revised constitution seek to mitigate that risk. In addition the audit and governance committee will continue to maintain oversight of the constitution, once adopted, and should any further amendments be necessary will make recommendations to full Council accordingly.

Consultees

- 21 The governance improvement working group has consulted with all members by way of questionnaires, through focus sessions held with members listed below and a seminar open to all members.
- Planning and regulatory committee members
 - Overview and scrutiny committee members
 - Cabinet members
 - Audit and governance committee members

- 22 The outcome of the consultations is summarised at appendix 3

Appendices

- Appendix 1 – revised draft constitution (excluding those elements to be addressed in phase 2)
Appendix 2 – summary of amendments
Appendix 3 – summary of consultation
Appendix 4 – design principles (actions update)
Appendix 5 – The Local Government Act 2000 (Constitutions) (England) Direction 2000 checklist

Background papers

None identified