

DECISION-MAKER:	GOVERNANCE COMMITTEE COUNCIL
SUBJECT:	ANNUAL REVIEW OF THE CONSTITUTION
DATE OF DECISION:	22 nd APRIL 2024 (GOVERNANCE COMMITTEE) 15 th MAY 2024 (COUNCIL)
REPORT OF:	DIRECTOR OF LEGAL AND GOVERNANCE AND MONITORING OFFICER

<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
N/A

BRIEF SUMMARY	
<p>This report sets out the annual review of the Constitution. This will be considered and initially discussed by Governance Committee on 22nd April 2024. The recommendations to both the Governance Committee and Council are included below. A further, more detailed review of the Constitution and a further targeted governance review is planned as part of the Council's Transformation Programme in 2024/5 in line with best practice as recommended by the Centre for Governance and Scrutiny (CfGS). It is a function of the Monitoring Officer to ensure the Constitution is kept both under review and up to date.</p>	
<p>As ever, the Constitution is a set of documents that changes regularly and, therefore, further revisions may be proposed prior to or at Council.</p>	
RECOMMENDATIONS:	
	<u>Governance Committee</u>
(i)	To consider and recommend the changes to the Constitution to Council for adoption including the creation of a new Audit Committee with or without independent, non voting members.
	<u>Council</u>
(ii)	To agree the changes to the Constitution and associated arrangements as set out in this report;
(iii)	To authorise the Director of Legal and Governance and Monitoring Officer to finalise the arrangements and wording to any revisions approved by Council and make any further consequential or minor changes arising from the decision; and

	(iv)	Approve the City Council's Constitution, as amended, including the Officer Scheme of Delegation, for the municipal year 2024-25.
REASONS FOR REPORT RECOMMENDATIONS		
1.	It is appropriate as a core tenant of good governance for the Council to keep its Constitution under regular review and to amend it, both to reflect experience and changing circumstances.	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
2.	<p>The following options have been considered:</p> <ol style="list-style-type: none"> 1. Do nothing – the option to not update the Constitution was considered and rejected. This is not in line with recommended practice; would leave the Constitution out of date and would not reflect the way the council operates. 2. A complete review of the Constitution – this option has been rejected for this report due to the resources required, however a plan is being drawn together to complete this review in time for 2025/26 municipal year. 	
DETAIL (Including consultation carried out)		
3.	<p><u>Officer Scheme of Delegation</u></p> <p>Following two Senior Management restructures in Autumn 2023 and April 2024 the scheme has been updated to ensure current delegations are allocated to the correct new Executive Director, Director or Head of Service as appropriate. The Director of Legal and Governance and Monitoring Officer has an existing delegation to keep the Scheme (and all parts of the Constitution, Appendix 1) updated and to reallocate delegated functions in year.</p>	
4.	No new functions are proposed.	
5.	<p><u>Revisions to Governance Committee</u></p> <p>In 2022 a report from CIFPA, Appendix 3, recommended the creation of a discrete Audit Committee which may include non-voting independent members if deemed appropriate in each Council's circumstances. For Southampton these functions are currently included as part of the Governance Committee's wide terms of reference. In recent times, particularly in 2023/4 committee agendas have been lengthy, with some items deferred to the next meeting, thereby not allowing members sufficient time to consider or scrutinise some reports. A review is timely on those grounds alone.</p>	
6.	<p>Any inclusion of independent members has to add value of course and in the past under the previous law the Council had 2/3 lay members with an independent chair for a period. Finding the right, truly independent members of the public, with the right knowledge that can enhance the committee's role but without any political affiliation or agenda is a crucial criteria. In addition, there would be an extra allowance payable for each as with the Designated Independent Person (circa £700 each). In the circumstances it is not considered there would not be sufficient benefit in appointing independent members at this point in time. This can, of course, be kept under review.</p>	
7.	<p>The CIFPA report focus is on scrutiny of financial matters rather than corporate governance, however, we do have a strong scrutiny function in place already. The relationship between Governance Committee, Overview Scrutiny and Management Committee and other scrutiny committees sometimes overlap so further, practical clarity is needed as to roles and which committee has oversight of what. Governance Committee does still see regular financial reports and in particular pre-budget setting so in some regards there is some duplication. "Budget scrutiny" however, has more</p>	

	<p>traditionally been considered through Overview Scrutiny and Management Committee in a formal way as laid down in the Constitution which does, of course, include independent members which again not all authorities have.</p>
8.	<p>In light of the above it is proposed Governance and Audit functions be split into separate committees. Many upper tier authorities already have that in place and, in the council's circumstances, a clear and transparent focus on both finance and audit by one committee, coupled with the clear CIPFA guidance would be a prudent and focussed move. Revised draft terms of reference for these two proposed committees are shown in Appendix 2.</p>
9.	<p><u>Financial Procedure Rules (FPRs)</u></p> <p>As part of the larger review of the Constitution, discussed in paragraph 2, the Financial Procedure Rules will be reviewed to ensure they are reflective of the revised Constitution and best practice. There is a financial management improvement programme in progress which includes a review of the FPRs to ensure they are effective and efficient.</p>
10.	<p><u>Contract Procedure Rules (CPRs)</u></p> <p>Changes to the Contract Procedure Rules (CPRs) are being proposed to strengthen and enhance the current provisions as well as ensuring that key policy and strategy commitments are considered as part of a procurement process where they are directly relevant to the contract.</p> <p>Section 1.5 of CPRs has been enhanced to include a number of additional areas where the rules do not apply. The changes reflect contracts that are exempt from the Public Contracts Regulation 2015 (PCR 2015), and have been incorporated into CPRs to ensure that the same considerations are being applied to contracts where the value falls within the scope of CPRs.</p> <p>The Health Care Services (Provider Selection Regime) Regulations 2023 (PSR 2023) came in to force on 1 January 2024 and internal processes have been adapted to incorporate these new regulations. These changes have been reflected in the proposed update to CPRs.</p> <p>The Medium Value Transaction Procedure is currently managed by the Procurement Team within the Supplier Management Service. It is proposed that this procedure becomes 'self-serve', with service areas taking responsibility for obtaining their quotes. This includes ensuring fair competition, being able to demonstrate best value and maintaining a robust audit trail of the process. This change will allow the Procurement Team to focus resource on supporting procurements falling within the High Value Transaction Procedure and those that are subject to the PCR 2015.</p> <p>Additional wording has been included to assist in determining the potential value of contracts, framework agreements, dynamic purchasing systems and concession contracts. This will allow officers to ensure that the full potential costs are considered and the right procurement procedure is selected.</p> <p>The update provides clarity in relation to procedural requirements such as the timescales in which contract award notices must be published, a requirement to carry</p>

	<p>out appropriate due diligence on suppliers identified following the Low and Medium Value Transaction Procedure and that emailed quotes and tenders cannot be accepted for procurements run in accordance with the PCR 2015, the PSR 2023 or the Concession Contract Regulations 2016 (CCR 2016).</p> <p>The revised CPRs also introduces the ability to consider a contract award on the basis of lowest price rather than only having the most economically advantageous tender option available. It is clarified that this should only be applied in exceptional circumstances and should not be used where social value benefits can be achieved.</p> <p>The rules in relation to contract variations and extensions have also been updated to reflect that these activities are managed now by the Contract Management Team rather than the Procurement Team, and also clarifies that the approval procedures laid down in section 25.7 apply to contracts where the variation has not been expressly provided for within the contract. In addition, the update ensures that variations made to contracts that are governed by the PCR 2015, the PSR 2023 or the CCR 2016 comply with the grounds for variation set out within the aforementioned regulations.</p> <p>The changes to CPRs now also contain an increase to the contract sealing threshold, moving from the PCR 2015 threshold for services and supplies and £200,000 for works, to £500,000 for all contracts. The threshold has not been reviewed for a number of years, is significantly lower than most of our CIPFA family of similar authorities and the change will aid operational efficiency and will free up capacity within Legal Services. The council uses standard forms of contract and there is limited, if any, risk to the proposed increase. Legal Services will still be consulted where bespoke or “non standard” forms of contract are to be used.</p>
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
11.	The revenue implications are set out in the table below Additional Special Responsibility Allowance for the Chair of the new Audit Committee of £6,950. If independent members are appointed each would receive an allowance of £719.
<u>Property/Other</u>	
12.	None.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
13.	An up-to-date Constitution is a requirement of the Local Government Act 2000.
<u>Other Legal Implications:</u>	
13.	None.
RISK MANAGEMENT IMPLICATIONS	
15.	None.
POLICY FRAMEWORK IMPLICATIONS	
16.	None.

KEY DECISION?	Yes/No
WARDS/COMMUNITIES AFFECTED:	None
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Tracked changed Constitution Parts 1 to 26 (see Members' Room document pack published online)
2.	Specific revisions to terms of reference for Audit and Governance Committees
3.	CIPFA Report; Audit Committees 2022
Documents In Members' Rooms	
1.	Tracked changed Constitutions Parts 1 to 26
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes/No
Data Protection Impact Assessment	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes/No
Other Background Documents	
Other Background documents available for inspection at:	
Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	
2.	