

Rother District Council

Report to: Overview and Scrutiny Committee

Date: 25 April 2022

Title: Review of the Constitution, Recommendations of the Constitution Review Steering Group

Report of: Malcolm Johnston, Chief Executive

Ward(s): -

Purpose of Report: To present amendments to the Constitution for approval and adoption.

Officer

Recommendation(s): It be **RESOLVED:** That Cabinet be requested to recommend to Council that:

- 1) all proposed amendments to the Council's Constitution highlighted within Appendix 2, and contained within Appendices 2A-2K be approved and adopted;
- 2) the current governance model (executive / scrutiny split with no individual Cabinet Member decision making) be maintained;
- 3) a new stand-alone advisory Human Resources Committee comprising seven Members, to meet twice per year and assigned all functions relating to staffing matters that currently come under the remit of the Licensing and General Purposes Committee be created (the Licensing and General Purposes Committee to remain as currently constituted without HR related functions);
- 4) the Leader of the Council be requested to add Human Resources to their Cabinet Portfolio;
- 5) a review be undertaken by the incoming administration at the start of each new 4-year Council term, within its first year, to consider the decision-making structure and any proposals for change;
- 6) in each "normal" subsequent year following an election year, the Annual Council meeting to receive a report highlighting any changes that have been made to the Constitution in the preceding 12 months, under officer delegations or otherwise;
- 7) the Planning Advisory Services' latest Probity in Planning Guidance be automatically adopted and incorporated into the Constitution;
- 8) that general awareness / training on the Constitution be offered to all Councillors; and
- 9) the Centre for Governance and Scrutiny be commissioned to undertake a scrutiny improvement review during 2022/23, to be funded from the Member Training Budget, subject to the approval of the Member Development Task Group / Member Training Champion.

Introduction

1. This report proposes the draft recommendations to the Overview and Scrutiny Committee (OSC) from the Constitution Review Steering Group (CRSG). The recommendations represent the culmination of the work undertaken by the CRSG in reviewing the Council's Constitution. This work is one of the actions required to deliver the Corporate Plan aim of creating an open Council – to modernise the way the Council operates by updating the Constitution.
2. The CRSG was established in January 2021 and is made up of Councillors J. Barnes, T.J.C. Byrne, B.J. Drayson, Mrs E.M. Kirby-Green, A.S. Mier, M. Mooney, S.M. Prochak and J. Vine-Hall, was Chaired by Councillor Drayson and has met on 10 occasions to date.

Terms of Reference and Timescales

3. The scope and objectives set out in the Terms of Reference for the CRSG is to modernise the way the Council operates by undertaking a complete review of the Constitution. At its first meeting, the general mission statement for the CRSG was defined as:

“To meet the Corporate Plan objective of achieving an Open Council, a revised streamlined Constitution will be created that is clear, enables increased partnership working between officers and Councillors, is easy to read and meets the needs of the Councillors, officers and residents of Rother District Council.”

4. The original timetable was not met due to other work priorities, including the 2021 local and Police and Crime Commissioner elections held in May 2021. A new timetable was agreed by the CRSG in July 2021 and again in December 2021, which aimed to have a revised constitution in place from the start of the new civic year in May 2022. It was clear once the detailed review was underway that the original timetable was simply not achievable, given the scale of the task, the detailed way the review was being undertaken and the resources available.

Process and Scope

5. At the CRSG's first formal meeting, it was agreed that Members would look at other Council's Constitutions that they felt were clear and easy to read and understand. The CRSG identified and agreed that South Cambridgeshire (SC) District Council's Constitution provided a good example and had some synergy with how this Council operated. What became clear to Members during this exercise is that there is a lot of common ground between local authorities' constitutions as most of them were created in 2000/2001 following the Local Government Act (LGA) 2000. At that time, a model constitution was provided by the Government for local authorities to work through and amend as per local arrangements, within the framework permitted under the LGA 2000.
6. The CRSG and officers undertook a detailed review by comparing RDC's Constitution against the SC model in various parts, as well as neighbouring authorities and other good practice. Relevant key service officers and the Corporate Management Team were also consulted as and when appropriate.

7. The scope of the work undertaken by the CRSG is shown at Appendix 1 which also gives details about the Parts of the Constitution which were not part of the review for the reasons given. It can be seen that Part 3, Responsibility for Functions and Part 8, Delegations to Officers are still to be completed and these will follow in the coming months.

Considerations and Recommendations

8. Attached at Appendix 2 is a full list of all the main proposals which are either a deviation to current custom and practice and represent a change to the way the Council currently operates, or new provisions which are not within the Council's existing Constitution. Those that are considered worthy of special note have been highlighted. Where improvements have been made to clarify current custom and practice, these have not been detailed here.
9. Comparing different models identified several easy, quick improvements that could be made throughout the document ranging from layout changes, minor clarifications, gender neutral terminology, the use of Chair and Vice-Chair and improved use of plain English; a number of these amendments have been made throughout.

Recommendation 1: That all proposed amendments to the Council's Constitution highlighted within Appendix 2 and contained within Appendices 2A-2K be approved and adopted.

10. It became apparent very early on that there was not a desire to completely change the way in which the Council operated and introduce a revised governance structure, such as a return to a committee system or individual Cabinet Member decision making. Indeed, the CRSG was mindful that wholesale changes would have necessitated public consultation which would divert resources away from other priority areas and potentially jeopardise delivery of other projects within the Corporate Plan.

Recommendation 2: That the current governance model (executive / scrutiny split with no individual Cabinet Member decision making) be maintained.

11. Whilst no changes are proposed to the governance model, the CRSG has recommended that a stand-alone advisory Human Resources Committee be created. The Committee be scheduled to meet twice per year and comprise seven Members, to include the Leader of the Council with the Cabinet Portfolio for Human Resources. It is considered that a separate, dedicated Committee to focus on Human Resources related issues will ensure a build-up of expertise amongst Members and an improved Member oversight in the field of staff management.
12. Member input in the appointment and dismissal processes of senior officers (not already covered by statute in respect of statutory officers) has also now been clarified within the officer employment procedure rules at Part 4-8.

Recommendation 3: That a new stand-alone advisory Human Resources Committee comprising seven Members, to meet twice per year and assigned all functions relating to staffing matters that currently come under the remit of the Licensing and General Purposes Committee be created (the Licensing and General Purposes Committee to remain as currently constituted without

HR related functions).

Recommendation 4: That the Leader of the Council be requested to add Human Resources to their Portfolio.

13. The CRSG felt that it was important for any in-coming administration to consider the decision-making structure within its first year, to ensure that the inherited governance arrangements were those that the new administration wanted to operate in light of their own circumstances and political make-up; unless wholesale changes were proposed, this would very much be a light-touch review.

Recommendation 5: That a review be undertaken by the incoming administration at the start of each new 4-year Council term, within its first year, to consider the decision-making structure and any proposals for change.

14. In order to improve Members' knowledge and understanding of the Constitution, in each "normal" subsequent year following an election year, it is proposed that the Annual Council receives a report highlighting any changes that have been made to the Constitution in the preceding 12 months, under officer delegations or otherwise.

Recommendation 6: That in each "normal" subsequent year following the election year, the Annual Council meeting to receive a report highlighting any changes that have been made to the Constitution in the preceding 12 months, under officer delegations or otherwise.

15. To cut down on unnecessary reporting, it is recommended that the Planning Advisory Services' Probity in Planning Guidance which forms part of the Council's Constitution is automatically adopted and incorporated into the Constitution following the publication of any new edition. Members will be notified when a new version has been incorporated and what, if any, are the main changes.

Recommendation 7: That the Planning Advisory Services' latest Probity in Planning Guidance be automatically adopted and incorporated into the Constitution.

16. Through the detailed work of the CRSG it is clear that there is a need for general Member awareness of what is in the Constitution and how the Council operates. This need has already been picked up by the Member Development Task Group and regular sessions on what is in the Constitution will be held in the future.

Recommendation 8: That general awareness / training on the Constitution should be offered to all Councillors.

Overview and Scrutiny Review

17. Whilst looking at the various parts of the Constitution that relate to the scrutiny function, the CRSG considered the role of scrutiny and whether it adds value to the work of the Council, is as effective as it could be and clearly understood by Members.

18. As a result of the discussions contact has been made with the Centre for Governance and Scrutiny (CfGS) which promotes better governance and scrutiny, both in policy and in practice. They are a charitable organisation and support local government, the public, corporate and voluntary sectors in ensuring transparency, accountability and greater involvement in their governance processes.
19. Following an initial meeting with the Democratic Services Manager, the CfGS have submitted a proposal to undertake a scrutiny improvement review at the Council, with full details attached at Appendix 3. The cost of the review would be £4,850+VAT which can be funded from the 2022/23 Member Training Budget.
20. The CRSG has therefore recommended that this review be commissioned to take place in early 2022/23 subject to the approval of the Member Development Task Group / Member Training Champion.

Recommendation 9: That the CfGS be commissioned to undertake a scrutiny improvement review during 2022/23, to be funded from the Member Training Budget, subject to the approval of the Member Development Task Group / Member Training Champion.

Environmental Implications

21. Rother District Council's Environment Strategy sets out the Council's vision for reducing our impact on the environment and our commitment to make Rother District carbon neutral by 2030.
22. The way the Council operates continues to change and adapt to help reduce its carbon footprint and the Constitution will continue to evolve to meet the challenge. Specifically, the Constitution now includes the introduction of hybrid meetings cutting down on unnecessary travel to and from the Town Hall for Members, officers and members of the public, removing the requirement to provide a hard copy of the Constitution to all Members and the acceptance of email correspondence for any procedural matter.

Risk Management

23. The Council is required to have an up-to-date Constitution available at all times. The risk of having a Constitution that is difficult to understand may lead to Members and officers not acting in accordance with the Constitution which could result in potential challenge, maladministration and reputational damage.

Conclusions

24. Whilst this review has taken longer than originally anticipated, most Members serving on the CRSG have been engaged in the process and have benefitted from the in-depth review and analysis of the Constitution.
25. It is considered that whilst there are no major proposals for change there is a desire to make the Constitution easier to understand, to be more inclusive and transparent. The OSC is asked to consider the proposals and recommend

these to full Council via Cabinet. The intention is to agree the amendments at the Annual Council meeting for implementation from the new civic year.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	Yes	Access to Information	No
Risk Management	Yes	Exempt from publication	No

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Appendices:	<ul style="list-style-type: none"> Appendix 1 – Scope of work Appendix 2 – List of Main Proposals Appendix 2A – Glossary of Terms Appendix 2B – Part 1 – Summary and Explanation Appendix 2C – Part 2 – Articles 1-16 Appendix 2D – Part 4.1 – Council Procedure Rules Appendix 2E – Part 4.2 – Access to Information Rules Appendix 2F – Part 4.3 – Budget and Policy Procedure Rules Appendix 2G – Part 4.4 – Executive Procedure Rules Appendix 2H – Part 4.5 – Overview and Scrutiny Procedure Rules Appendix 2I – Part 4.8 – Officer Employment Procedure Rules Appendix 2J – Part 5.4 – Member – Officer Protocol Appendix 2K – Part 5.6 – Hybrid Meeting Protocol Appendix 3 – CfGS Review
Relevant previous Minutes:	None.

SCOPE OF WORK REVIEWED AND COMPLETED BY THE STEERING GROUP

SECTION OF CONSTITUTION	APPROACH
PART 1 – SUMMARY AND EXPLANATION	Reviewed by Group
PART 2 – ARTICLES OF THE CONSTITUTION	Reviewed by Group
PART 3 – RESPONSIBILITY FOR FUNCTIONS	Officers to work on draft and bring for approval in 2022
PART 4 – RULES OF PROCEDURE Council Procedure Rules Access to Information Procedure Rules Budget and Policy Framework Procedure Rules Executive Procedure Rules Overview and Scrutiny Procedure Rules Financial Procedure Rules Procurement Procedure Rules Officer Employment Procedure Rules	Reviewed by Group Reviewed by Group Reviewed by Group Reviewed by Group Reviewed by Group Approved by Council on 7 March For CFO / Procurement Hub Reviewed by Group
PART 5 – CODES AND PROTOCOLS Member's Code of Conduct Probity in Planning Anti-Fraud and Corruption Framework Protocol on Member / Employee Relations Member Job Profiles	For Audit & Standards Committee Planning Advisory Service document For Audit & Standards Committee Reviewed by Group For Member Development Task Group
PART 6 – MEMBERS' ALLOWANCE SCHEME	For Independent Remuneration Panel
PART 7 – MANAGEMENT STRUCTURE	Factual – to be completed by officers
PART 8 – DELEGATIONS TO OFFICERS	Officers to work on and bring for approval in 2022

GLOSSARY OF TERMS – NEW! (Appendix 2A)

This is a new section at the start of the document which provides a useful glossary of terminology used within the Constitution.

PART 1 – SUMMARY AND EXPLANATION (Appendix 2B)

No substantial change.

PART 2 – ARTICLES (Appendix 2C)

Article 2 – Members of the Council

- 2.2 Election and Terms of Councillors – **NEW!** – provides information on election and when a councillor ceases to be a councillor.
- 2.4 Conduct – includes requirement for Members of the Planning and Licensing and General Purposes Committee to have regard to current procedural guidance also.
- 2.6 Recognition of political groups – **NEW!** – provides clarity on the process of forming political groups.
- 2.7 Definitions of controlling and opposition groups – **NEW!** – provides clarity on which Members form the controlling group (currently alliance) and the Major (currently Conservatives) and Minor Opposition Groups (currently none), if any.
- 2.8 Leader of the Major Opposition Group's report to Council – **NEW!** – provides the opportunity for the Leader of the Major Opposition Group to make a written report to the Annual Council Meeting (Currently Councillor Maynard).

Article 3 – Citizens and the Council

- 3.2 Citizens' Conduct – expanded slightly.

Article 4 – The Full Council

No substantial change.

Article 5 – Chairing the Full Council

- 5.1 Election of the Chair and Vice-Chair – **NEW!** - Chair and Vice-Chair to serve a maximum of two consecutive terms.
- 5.2 Role and Function of Chair of Rother District Council – **NEW!** – h) Chair of Council to have no rights to move, second or vote as an ex-officio Member on all Committees.
- 5.3 Role of Vice-Chair – **NEW!** – provides clarity on role.

Article 6 – Overview and Scrutiny Committees

No substantial change.

Article 7 – The Cabinet

- 7.2 The Leader and Deputy Leader – **NEW!** – Deputy Leader must be appointed from membership of Cabinet.

Article 8 – Regulatory & other Committees

- 8.2 Mandatory requirement to undertake appropriate training – **NEW!** – inclusion here of already mandatory requirement for regulatory committee Members to receive initial and annual training to remain eligible to serve on committees.

Article 9 – Ethical Standards function of the Audit and Standards Committee

9.2 Sub-Committee of the Audit and Standards Committee (Hearing Panel) – **NEW!** – provides clarity on process should an investigation into a complaint result in a Hearing.

9.3 Role and Function – **NEW!** – to include responsibility for advising on adoption, revision and monitoring the operation of the Member / Officer Protocol and the Officer Code of Conduct.

Article 10 - Area Committees and Forums

No change.

Article 11 - Joint Arrangements

No substantial change – amended to streamline content in Constitution.

Article 12 – Officers

No substantial changes – updated to reflect new structure.

12.1 Management Structure (e) – **NEW!** – includes definition of Corporate Management Team.

12.3 Functions of the Monitoring Officer (i) – **NEW!** – to confirm provision of a Deputy Monitoring Officer.

12.4 Functions of the Chief Finance Officer (Section 151 Officer) (g) **NEW!** – to confirm provision of a Deputy Chief Finance Officer, if appropriate.

Article 13 – Decision Making

13.9 Appeals – **NEW!** – to clarify custom and practice that where an appeal arises from a relevant decision, no one involved in the decision giving rise to the appeal will be involved in the appeal (where a right exists).

Article 14 - Finance, Contracts and Legal Matters

No substantial changes – updated to reflect new structure.

Article 15 – Review and Revision of the Constitution

15.1 Duty to Monitor and Review the Constitution – **NEW!** - proposed that this function is reassigned to the Audit and Standards Committee, and not the Overview and Scrutiny Committee as now.

15.3 Changes to the Constitution (c) – **NEW!** – Chief Executive in consultation with Chair and Leader of Council to amend Constitution in light of factual legislative changes.

Article 16 - Suspension, Interpretation and Publication of the Constitution

16.3 Publication – **NEW!** – (a) to be made available on line and not in paper format to Members.

PART 4 – RULES OF PROCEDURE

Part 4-1 – Council Procedure Rules (Appendix 2D)

5. Appointment of Substitute Members on Committees – **NEW!** – current scheme has been incorporated into the Council Procedure Rules.
13. Notice of Motions – **NEW!** – only one Motion on notice per Member with a maximum of five at any meeting.
- 13.5 Scope – **NEW!** – for clarity.
- 13.6 Time limit – **NEW!** – 30 minutes maximum for each Motion on notice then proceed to put to the vote.
- 15.5 When a Member may speak again – **NEW!** – provision for Leader, Cabinet Member or Committee Chair to respond to a factual question directly addressed to them, at the Chair of Council's discretion.
- 15.6 Amendments to Motions (b) – **NEW!** – provision for a proposed amendment to be agreed by the original mover to be incorporated as part of original motion.
- 15.13 Point of Information – **NEW!** – allowing Members to raise a point of information in relation to incorrect information – must be able to evidence their point and only allowed at Chair's discretion.

Part 4-2 – Access to Information Rules (Appendix 2E)

- 21.4 Access to information generally and privileged legal advice – **NEW!** – provides clarity on access.

Part 4-3 – Budget and Policy Procedure Rules (Appendix 2F)

No substantial changes.

Part 4-4 – Executive Procedure Rules (Appendix 2G)

- 7.1 Who Presides? – **NEW!** – Deputy Leader to preside in Leader's absence and have the second or casting vote, if required.
13. Steering Groups – **NEW!** – clarity on steering groups' role and composition.

Part 4-5 – Overview and Scrutiny Procedure Rules (Appendix 2H)

- 6.5 Chair – **NEW!** – requirement for the Chair of any Overview and Scrutiny Committee will be an opposition Member.
19. Crime and Disorder Matters – **NEW!** – clarify the Committee's role when it sits as the Council's Crime and Disorder Committee.
20. Party-Whip – **NEW!** – rule to specifically forbid the use of a party whip at an Overview and Scrutiny Committee meeting.
21. Task and Finish Group operating guidelines – **NEW!** – for clarity.

Part 4-8 – Officer Employment Procedure Rules (Appendix 2I)

3. (a) Senior Officer Appointments Panel – **NEW!** - to be convened for the appointment of Chief Officers only (CE, DCE and Director of Place and Climate Change).
5. Other Appointments – **NEW!** - Member input for other senior key officer roles the discretion of the CE.
7. Dismissals – **NEW!** - legal process to dismiss a statutory officer now detailed.
- 7.2 Posts reporting directly to the CE – **NEW!** - appeals against dismissal to Senior Officer Appointments Panel.

PART 5 – CODES AND PROTOCOLS

Part 5-4 - Member / Officer Protocol (Appendix 2J)

This is a completely **NEW** protocol.

Part 5-6 – Hybrid Meeting Protocol – Formal Meetings (Appendix 2K)

This protocol was originally approved by Cabinet in December 2021; a number of subsequent amendments are highlighted for consideration and for completeness, it is recommended that this Protocol now be incorporated into the Constitution under Part 5, Codes and Protocols.



Rother

District Council



Centre for Governance and Scrutiny

CFGS
Centre for Governance and Scrutiny
Scrutiny
Improvement
Review

Proposal
January
2022
Supporting scrutiny

Improving scrutiny through a collaborative review process

Rother District Council has established a steering group to undertake a review of the Council's constitution and is looking for expert external advice to support the Council in a review of its scrutiny function to ensure it is effective in providing a quality contribution in accountability, policy and decision making, delivery of council plans and overall improvement.

Rother District Council wants to check and test that scrutiny arrangements and effectiveness meet the council's high expectations of democratic accountability and that decision-making and overview and scrutiny is transparent, effective and impactful. It is determined to make its ongoing approach to scrutiny fresh, innovative, and bold.

It wants its overview and scrutiny structure to create the right framework to maximise its impact within its governance arrangements. The Centre for Governance & Scrutiny, as the leading national governance and scrutiny organisation, has been asked to support a member review panel to help develop its plans for the development of scrutiny. This proposal suggests the scope and approach to that support.

The council has not undertaken a comprehensive review of its scrutiny arrangements for some time and considers that this would now be valuable exercise – both in order to assure its existing practice, and to challenge it to undertake further improvements.

No council can profess excellence in scrutiny across the board – there are always areas of weakness which, left untended, can develop into flaws in scrutiny which can have a more significant impact on effectiveness overall. The CfGS review is designed to be challenging, but essentially also to be constructive in suggesting ways to drive forward improvement.

Outline

This will be a short, simple 'step-back' review. It is not an inspection or audit of scrutiny. It will seek to help improvement through an evidence-based assessment which will involve exploring the following

- **Culture.** The relationships, communication and behaviours underpinning the operation of the overview and scrutiny process. This will also involve the Council's corporate approach, organisational commitment, and status of scrutiny.
- **Member engagement.** Are members motivated and engaged. How do they participate, take responsibility, and self-manage their role?
- **Member skills and application.** Are skills up-to-date and can Members participate fully or are there development gaps?
- **Information.** How information is prepared, shared, accessed and used in the service of the scrutiny function.
- **Impact.** Ways to ensure that scrutiny is effective, that it makes a tangible and positive difference to the effectiveness of the council, and to local people.
- **Focus.** How prioritisation, timeliness and relevance of the work programme and agendas lead to value-adding and productivity.
- **Structure.** Formats used by scrutiny to carry out its works and their effectiveness.

This review build its understanding through conversations with Members and Officers, observation of meetings (recordings or live online), a review of key documents; agendas, work programmes etc and a short member survey.

A feedback letter will summarise findings and propose areas to improve.

A Member development workshop will facilitate Members, to explore the findings and suggested improvements. Members will be expected to work on and deliver aspects of improvement.

Objectives

This methodology aligns with both latest statutory guidance and best practice experience accumulated by CfGS over many years. This review will therefore evaluate the council's approach to scrutiny in the light of the guidance and best-practice.

It will help to explore with Members ways to improve scrutiny

Any Member development needs can be addressed following the review.

Timescale

The anticipated timescale is 2-3 days evidence gathering, observation and assessment. 1-day feedback letter and workshop preparation. 0.5 days Members feedback and action- planning workshop.

Costings

£4850+vat

About CfGS and delivery

CfGS is the leading national body promoting and supporting excellence in governance and scrutiny. As a charity, our work has a strong track record of influencing policy and practice nationally and locally. CfGS provides training, consultancy and conferences. We are respected and trusted to provide independent and impartial advice.

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