

Harborough District Council

Report to Constitutional Review Committee

Meeting of 29 June 2023



Title:	Update on the review of the constitution
Status:	Public
Appendices:	A

Summary

- i. The Constitution Review Committee is responsible for overseeing the maintenance and development of the Council's Constitution.
- ii. The Council has been aware of ambiguity in the current constitution and concerns about governance arrangements for a number of years. Governance improvement within the Council and the constitution has been a priority for the Council for the last year. However, the formation of a new administration following local government elections on 4 May 2023 provides an opportunity to pause and consider the development of governance and constitution arrangements within the Council.
- iii. The Constitutional Review Committee is invited to review its current terms of reference and consider what approach to take to the continuation of the review of the Council's constitution

Recommendations

1. Consider the Terms of Reference for the Constitutional Review Committee and recommend any proposal to amend the same to Council;
2. Agree the approach to be taken to the review of the constitution;

Reasons for Recommendations

- iv. It is appropriate that, at the commencement of a new administrative term, a review of existing arrangements is undertaken by the newly constituted democratic bodies to ensure that they remain appropriate and relevant.
- v. The Constitutional Review Committee has been undertaking a review of the Constitution and the internal governance arrangements for the Council for a number of

months and it is appropriate that this is paused at this point to consider how best the process can be continued with the new administration.

1. Purpose of Report

- 1.1 To inform the Constitutional Review Committee of the terms of reference of the committee and the work undertaken to date in respect of the review of the Constitution and suggest options to move the review forward.

2. Background

- 2.1 Members have been invited to a number of inductions sessions led by senior officers of the Council during which information has been provided about the constitution and the governance arrangements for the Council. Copies of the slides for those presentations are accessible on the Members intranet, as are Teams recordings of the sessions. The Members Intranet site can be accessed via this link:
<https://harboroughcouncil.sharepoint.com/sites/HInt/SitePages/Member-Support.aspx>
- 2.2 The Constitutional Review Committee ('CRC') considered a report in relation to the corporate governance of the Council at its meeting on 25 January 2023¹. The report reflected the outcome of a review of corporate governance undertaken between July and December 2022. The review was commissioned following receipt of an internal audit report by the Audit and Standards Committee in March 2022, which identified a number of areas of governance to be strengthened within the organisation. The review concluded that there was a need to undertake fundamental and timely changes to the governance and culture of the organisation in order to addressing the issues identified in the report. Having considered the report, the Committee noted the corporate governance issues identified and resolved to:
- 2.2.1 Re-write of the constitution to remove duplication, update it and make it more accessible;
 - 2.2.2 Update the scheme of delegations to officers to match the current management structure and appropriate delegations;
 - 2.2.3 Review the current executive arrangements and make proposals as to delegations to officers and portfolio holders, and the number and frequency of meetings;
 - 2.2.4 Deliver training for officers and members on governance principles and good decision making;
 - 2.2.5 Prepare a comprehensive member induction package to ensure members are all aware of how the council runs:
- 2.3. Items 2.2.4 and 2.2.5 have now been completed. It is understood that the new administration is content to retain the current executive arrangements (albeit with a slightly increased cabinet) therefore no action is required in respect of 2.2.3 either.

- 2.4. It is also understood that there will be no alterations to the current approach to officer delegations.
- 2.5. Accordingly, at this stage, the CRC is concerned with reviewing the constitution to remove duplication, update it and make it more accessible.
- 2.6. Members may find it useful to review the last external assessment of the Council undertaken by the Local Government Association ('LGA') in 2018. The report is available on the Council's website² but the key recommendations were as follows:
 - 2.6.1. **Clarify the council's approach to commercialism and where this fits within its overall approach to finances.** *Developing a more commercial and income generating approach will not create sustainability on its own, but could be more clearly thought through and build opportunities for the future;*
 - 2.6.2. **Develop a strong team approach within the Executive.** *Use accredited tools (such as Myers-Briggs Type Indicator (MBTI), TMS personality types or Belbin team roles) to identify and understand team skills, preferences and ways of working. This could be a precursor to the executive being clearer on its vision. The LGA can support you with this. Such work could then be extended to include the Corporate Management Team (CMT), and other members in key roles, such as the Chairs and Vice-Chairs of the council, of Scrutiny and of Planning. This would help to ensure that officers and members are working well together to deliver the best for the District.*
 - 2.6.3. **Develop a partnership approach to economic growth for the district.** *The council should work with partners to explore and agree a new strategy to set out the long-term aspirations for the area;*
 - 2.6.4. **Consider the Head of Paid Service title.** *Changing the job title from Corporate Director to Joint Chief Executive could clarify and recognise the position of the role as a shared post at the very top tier of management;*
 - 2.6.5. **Streamline project and programme management systems.** *There are several major projects running at the same time, often managed by a small number of people. Streamlining processes and prioritising projects through programme management, and perhaps some rationalisation, will ensure an efficient use of resources and release some capacity;*
 - 2.6.6. **Clarify and simplify report processes.** *Reduce the levels of approval needed to get a report agreed, and have a single template with a cover sheet that can change for different audiences. Using a good proof reader who is not a senior officer will improve efficiencies. Reports presented to member committees and full council should be presented by Portfolio Holders, with officers in support for technical input if required;*
 - 2.6.7. **Improve attendance at member development sessions.** *For example, by holding sessions immediately prior to other council meetings or committees. Ensure members are regularly updated on changes to council roles, responsibilities and opportunities. This is particularly relevant to mandatory training (such as planning and licencing);*
 - 2.6.8. **Robust conversations are needed.** *Seek new methods of communicating and negotiating internally and externally. Officers need to be able to challenge and*

² https://www.harborough.gov.uk/downloads/file/4405/harborough_corporate_peer_challenge_report

negotiate with members, and members should be open to this challenge. Officers and members need to be able to challenge partners, and hold each other to account.

3. Details

- 3.1. Good governance within a local authority cannot be achieved by a “tick box” approach. Rather, it requires an appreciation of the purpose of the controls and a willingness to allow the controls to perform the function they are designed for within decision making processes.
- 3.2. Authorities can get into a myriad of difficulties if their corporate governance fails. Examples include Northamptonshire County Council and Liverpool City Council. Both were subject to best value inspections by a government inspector who identified the following areas of common concern:
 - 3.2.1. Lack of evidence of decisions, or updating of decisions to reflect changes in circumstance;
 - 3.2.2. Refusal to enforce terms and conditions of agreements;
 - 3.2.3. Failure to comply with contract and procurement standing orders;
 - 3.2.4. A culture of rule avoidance;
 - 3.2.5. Failure to appoint a shareholder representative and have a shareholder agreement with council companies;
 - 3.2.6. Infrequent company board meetings which do not discuss key reports which would enable the Directors to understand how the company is performing in both physical and financial terms;
 - 3.2.7. Failing to appraise the roles and skill sets required for specific companies and ensure the board and shareholders appoint the best match, even if this means the individual appointed is not a councillor.
 - 3.2.8. Ignoring legal, financial and other professional advice, particularly in setting and managing budgets and the necessary control mechanisms to ensure compliance with the law and good practice ;
 - 3.2.9. Lack of appropriate training for members;
 - 3.2.10. Lack of clarity between the roles of officers and members;
 - 3.2.11. Non-compliance with the rules relating to Key Decisions, Scrutiny, Exempt reports and probity;
 - 3.2.12. Failure to maximise the benefits of two tier areas of government (County / District or City / Combined Authority);
 - 3.2.13. Use of one off resources or a reported service overspend where planned savings have not been achieved;
 - 3.2.14. Lack of corporate leadership and accountability;
 - 3.2.15. Setting targets and goals for its Chief Executive and senior officers, and holding them to account;
 - 3.2.16. Challenge and criticism was discouraged;

- 3.2.17. Failure to minute management considerations and decisions;
 - 3.2.18. Imposing savings targets without understanding of demand, need or deliverability combined with a lack of accountability for delivery of the savings;
 - 3.2.19. Processes need to be streamlined to enable the Council to recognise what decisions it needs to take, in what order and at what time with a grip on implementation. This will require consideration of what information is required to take a decision rather than what it would be useful or nice to know but will not change the decision itself
- 3.3. Even more recently, a best value inspection report in respect of Thurrock Council found dereliction in political and managerial leadership and inadequate governance arrangements led the council to be more than £1 billion in debt, while this month Woking Borough Council has confirmed that it has £1.8bn of debt and core funding of just £16m per annum. Accordingly, it has issued notice to cease all spending other than that required to discharge its statutory duties (known as a Section 114 notice).
- 3.4. The common theme in all of the above instances is failure of good governance – failing organisations need simpler structures which allow clear accountability as well as strong personal and collective performance management, starting from Councillors and focused through the Chief Executive right down the organisation. These arrangements need to be reflected in the Constitution and support provided for members and officers as the change journey is neither quick or easy, with constant vigilance being required to remain focused on the ultimate objective – efficient, robust, proportionate and accountable governance.

Current Structure of the constitution

3.5. The Council's current governance and constitution arrangements were assessed in the [Annual Review of the Constitution report](#)³ which was considered by Annual Council on 15 May 2023⁴. That report outlined the statutory requirements for local authority constitutions or 'Standing Orders' and summarised the steps taken to date. The Council's constitution contains seven parts:

- Part 1:** a summary and explanation of how the Council operates, including an outline of the rights of those who live and work in the district to engage with and participate in the Council's democratic processes
- Part 2:** the basic rules governing the Council are in Articles here. The Articles provide details of the decision making structures, roles and responsibilities within the Council
- Part 3:** sets out who is responsible for making what decisions, including the remit of each part of the decision-making structure, whether councillor or employee focused.

- Part 4:** provides the administrative framework of the Council contained in various rules of procedure.
- Part 5:** the codes and protocols binding councillors and employees of the Council, including guidance on the Council's practices and the law.
- Part 6:** the current Members Allowances Scheme.
- Part 7:** the Council's management structure.

- 3.6. The current administration have reservations about the previous approach to reviewing the constitution. Accordingly, work on the review of the constitution is currently paused pending the CRC determining how it wishes to proceed with the review. It is however accepted, as already resolved by the CRC, that the constitution needs to be updated and that this will involve some difficult decisions.
- 3.7. To enable as many members as possible to engage in the review of the constitution and ensure an appropriate pace of review is maintained, the Council will need to encourage all members to participate in the review. This may mean that the CRC needs to meet more frequently and in smaller sub-groups to ensure progress is maintained. It is a matter for CRC to determine how best to administer the work it needs to complete. However, it is recommended that the review is approached by breaking the constitution down into more manageable chunks, then pulling all changes together as a whole to be recommended to Council.

Delegation to the Monitoring Officer to make minor changes to the constitution

- 3.8. The MO has already been granted the ability to make minor changes needed in the current constitution in accordance with the delegated authority provided to her. Unfortunately however, this practice appears, historically to have added to the lack of cohesion in the document. Accordingly, it is proposed that a standard template and process be adopted to communicate the changes made by the monitoring officer to members. This will be the subject of a further report to the CRC in due course.
- 3.9. It is also proposed that there should be a formal annual review of the constitution report presented to annual council to maintain the constitution appropriately.

Future consideration of governance arrangements

- 3.10. Once the initial review of the constitution has been concluded the CRC will then consider if any of the governance elements within it need to be reviewed, such as the number of committees and their Terms of Reference or delegations to committees, cabinet, portfolio holders and officers.
- 3.11. Given the volume of work to be done on the constitution, it is proposed that the next meeting of CRC receive a proposed work plan for the constitution review, which includes required resources and likely timescales for the work to be completed.

4. Implications

Corporate Priorities

- 4.1. As set out in the above report, the Council must practice and seen to deliver transparent and robust governance. Doing so will support the delivery of the council's corporate priorities of:

- 4.1.1. Community leadership to create a sense of pride in our place;
- 4.1.2. Promoting health and wellbeing and encouraging healthy life choices;
- 4.1.3. Creating a sustainable environment to protect future generations;
- 4.1.4. Supporting businesses and residents to deliver a prosperous local economy

Consultation

- 4.2. In preparing this report, no statutory consultation has been required. Given the age of the administration, this report has been prepared by officers to assist Members to start to identifying priorities for outstanding work.

Financial

- 4.3. There are no direct financial implications as a consequence of this report. However, it is imperative that progress continues to be made with the constitution review in advance of the permanent monitoring officer requirement to prevent duplication and wasted costs.

Legal

- 4.4. The requirement to establish and maintain a constitution is contained within section 20 of the Local Government and Housing Act 1989 and supplemented by the Local Authorities (Standing Orders)(England) Regulations 2001 as amended. The proposals put forward in this report help ensure the Council is moving towards a user friendly and compliant document, which is also future proofed as far as possible.

Environmental Implications

- 4.5. The Council has declared a climate emergency. This report does not specifically address climate issues.

Risk Management

- 4.6. The main risks in relation to this matter are failing to ensure that the Council has, and maintains, a fit for purposed constitution.

Equalities Impact

- 4.7. Given the committee is not being asked to make any formal decision or recommendation, at this point, undertaking an equality impact assessment at this stage is considered premature.

Data Protection

- 4.8. As this report contains no personal information, the principles set out in the Data Protection Act 2018 are not engaged.

5. Recommendations

- 5.1 For the reasons set out within this report, it is recommended that the Constitutional Review Committee:
 - 5.1.1. Consider the Terms of Reference for the Constitutional Review Committee and any revisions required;
 - 5.1.2. Create task and finish groups to look at distinct parts of the constitution and report back to the council.

5.1.3. Receive a fully costed work plan for the review of the constitution.

6. Background Papers

6.1 The Constitution of Harborough District Council.

6.2 Previous reports to Council bodies in respect of governance generally.