

Bolsover District Council

Standards Committee on 20th February 2023

Review of the Council's Constitution

Report of the Assistant Director of Governance and Monitoring Officer

Classification	This report is public
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PURPOSE/SUMMARY OF REPORT

To consider the list of areas for review within the Council's Constitution for consideration by the Standards Committee prior to submission as part of the Annual Review of the Constitution to Council for adoption.

REPORT DETAILS

1. Background

- 1.1 The Constitution is the Council's 'rulebook'. It sets out how the Council operates and how it makes decisions. Council approved its latest version of the Constitution at the Annual Council meeting in June 2021.
- 1.2 One of the functions of the Standards Committee is to undertake an annual review of the Council's Constitution to ensure it is up to date and in line with legislation and current circumstances.

2. Details of Proposal or Information

- 2.1 The table below sets out how these areas of review will be considered over the municipal year and where the matters need to be considered by other Committees for consultation, these have been identified.

Area for Review	Lead Officer	Dates for Consideration
Minor wording changes or updating of job titles (housekeeping)	Governance Officers	Once final draft version produced
Committee Terms of Reference	Scrutiny & Elections Officer	February 2023
Scrutiny Procedure Rules	Scrutiny & Elections Officer	February 2023
Call-in Procedure	Scrutiny & Elections Officer	February 2023
Budget and Policy Framework Rules	Scrutiny & Elections Officer	February 2023

CHANGES TO ESTABLISHMENT

- 2.2 During 2022, The Chartered Institute of Public Finance and Accountancy (CIPFA) released an updated position statement on **Audit Committees: Practical Guidance for Local Authorities and Police (2022 edition)**. While the Council is compliant with the majority of the guidance there are key improvements that could be made, notably in relation to the committee structure.
- 2.3 CIPFA note that in some local authorities, the audit committee has been combined with other committees. CIPFA recommends that the audit committee should have no other functions, and explicitly no decision making role. The most common combinations have been an audit and Scrutiny committee, or audit and standards committee. CIPFA recommends these are separated. One of the core recommendations is that the Audit function should operate separately from both the Executive and Scrutiny functions.
- 2.4 In June 2021, the Centre for Governance and Scrutiny (CfGS) also produced guidance **Audit committees and scrutiny committees: working together**, which notes that:
- “Structural matters*
- *In some councils, the member audit and scrutiny functions are joined, often through an “Audit and Scrutiny Committee”. CfGS agrees with CIPFA’s recommendation that the functions of the Audit and scrutiny committees should not be combined in a single committee. Blurring the roles of these functions puts a council at significant risk of weak governance.*
 - *CIPFA and CfGS also recommend against the practice of audit committees taking on other responsibilities (for example, for the Audit committee to be termed an “Audit and Governance” committee).”*
- 2.5 Currently, delivery of the Audit governance function is incorporated in to the wider Audit & Corporate Overview Scrutiny Committee.

2.6 CIPFA recommend that not only should the function be kept separate but that the committee should also meet the following requirements:

Recommendation	Action required
<ul style="list-style-type: none"> Large committees should be avoided with a size of no more than 8 members. 	<p>That a new separate Audit committee is formed of no more than 8 members in total (inclusive of the 2 co-opted members).</p>
<ul style="list-style-type: none"> The Audit committees of local authorities should include co-opted independent members in accordance with appropriate legislation. Where there is no legislative direction to include co-opted independent members CIPFA recommends that each authority Audit committee should include at least 2 co-opted independent members to provide appropriate technical expertise 	<p>The Council currently has 1 co-opted independent member. It is recommended that the Council seek to appoint 1 additional co-optee in line with the guidance.</p>
<ul style="list-style-type: none"> CIPFA recommends that the use of substitutes is avoided. 	<p>It is recommended that the terms of reference clearly states that no members can be substituted.</p>
<ul style="list-style-type: none"> Where an authority has undergone an external inspection, peer review or other intervention, an improvement programme will be developed. It will be important for the Audit Committee to play its part in supporting the effective implementation of agreed actions. 	<p>This is not currently included within the terms of reference. It is recommended that this is added to the terms of reference for the new committee in line with CIPFA guidance.</p>
<ul style="list-style-type: none"> A suggested committee terms of reference is included within the appendices of the 2022 guidance. 	<p>It is recommended that the terms of reference for the newly formed committee is produced with regard to the suggested template by CIPFA.</p>

2.7 The size and terms of reference for each revised Committee is set out in **Appendix 1**.

2.8 It is proposed that the Audit & Corporate Overview Scrutiny Committee is disestablished and replaced by a separate Audit Committee and a Finance & Corporate Overview Scrutiny Committee.

2.9 The remaining Scrutiny Committees will remain, with a slight refresh to their terms of reference to reflect changes in service delivery and where duplication has been found. This is set out in Appendix 1. Furthermore, the 29 non-Executive seats on committees will remain allocated over the four scrutiny committees.

SCRUTINY PROCEDURE RULES

- 2.10 Following a Call-In to Scrutiny in October 2022, it has become apparent that the current procedure rules need to be made clearer in relation to where responsibility lies should a Scrutiny Committee recommend that the decision under review, is to be re-submitted to Executive for re-consideration.
- 2.11 Attached at Appendix 2 is an amended version of the Scrutiny Procedure Rules, with specific amendments as highlighted.
- 2.12 Attached at Appendix 3 is an amended version of the Call-In Procedure Rules, which rectifies the gap within the current rules.

BUDGET AND POLICY FRAMEWORK

- 2.13 In accordance with the recommended amendments in this report, attached at Appendix 4 is the revised Budget and Policy Framework, acknowledging the proposed changes to the committee structure.

3. Reasons for Recommendation

- 3.1 To ensure the Council has in place a fit for purpose Constitution which complies with the law.
- 3.2 To ensure the Council remains compliant with CIPFA best practice guidance.

4 Alternative Options and Reasons for Rejection

- 4.1 Members may consider alternative options to any proposals put forward, where legally permitted. However, as the guidance from CIPFA at a national level now specifies that the Council’s Audit Committee should be a standalone Committee, the Council risks being non-compliant with best practice if the changes to the governance structure are not made.

RECOMMENDATION(S)

- 1. That the Committee give consideration to the proposals for review and support the submission of the proposals to Council as part of the Constitution Review at a future meeting.

IMPLICATIONS:

Finance and Risk: Yes No

Details:
 Failure to ensure the Constitution meets legal requirements can leave the Council open to challenge, as does failure to comply with the provisions of the Constitution. It is therefore essential that the Constitution is regularly reviewed and given robust oversight.
 Failure to reinstate a separate Audit Committee would place the Council in a position of non-compliance with CIPFA guidance which may attract comment from the Council’s external auditor Mazars.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:
 The Council is required under the Localism Act 2011 to prepare and keep up-to-date a constitution that contains its standing orders, code of conduct, such other information that the Secretary of State may direct and such other information that the authority considers appropriate.

On behalf of the Solicitor to the Council

Environment:
 Please identify (if applicable) how this proposal/report will help the Authority meet its carbon neutral target or enhance the environment.

Details:
 None

Staffing: Yes No

Details:
 There are no human resources implications arising from the proposals within this report. Some areas for review may impact on staff. These implications will be addressed in relation to the specific areas for review.

On behalf of the Head of Paid Service

DECISION INFORMATION

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	<p>No</p>
<p>Is the decision subject to Call-In? <i>(Only Key Decisions are subject to Call-In)</i></p>	<p>N/A</p>
<p>District Wards Significantly Affected</p>	<p>None</p>
<p>Consultation: Leader / Deputy Leader <input type="checkbox"/> Executive <input type="checkbox"/> SLT <input checked="" type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input checked="" type="checkbox"/></p>	<p>Details: Relevant officers are consulted at various stages of the Constitution Review</p>

Links to Council Ambition: Customers, Economy and Environment.

DOCUMENT INFORMATION

Appendix No	Title
1	Revised Committee Terms of Ref 2023
2	PART 4.5 SCRUTINY RULES UPDATED 2023
3	PART 4.6 CALL IN PROCEDURES UPDATED 2023
4	PART 4.3 BUDGET AND POLICY FRAMEWORK UPDATED 2023

Background Papers

(These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Executive you must provide copies of the background papers).

None