

Council Report



Report of the head of legal and democratic

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To: COUNCIL

DATE: 13 December 2023 (Vale) and 14 December 2023 (South)

Review of the council's Constitution

Recommendations

That Council:

- (a) adopts the following sections of the Constitution with immediate effect:
 - (i) the revised Scrutiny Procedure Rules regarding scrutiny call-in, as set out in paragraph 9 of this report;
 - (ii) the revised Joint Audit and Governance Committee Rules regarding the terms of reference for the appointment of the independent person, as set out in paragraph 13 of this report; and
- (b) authorises the head of legal and democratic to make these changes and any further minor or consequential amendments to the Constitution.

Purpose of Report

1. This report proposes revisions to the current Constitution to ensure it is up-to-date and reflects the council's changing environment.

Strategic Objectives

2. The Constitution underpins all the council's decision-making and therefore supports all Corporate Plan objectives.

Background

3. South Oxfordshire District Council and Vale of White Horse District Council have adopted a joint Constitution. The majority of the Constitution applies equally to both

councils, with a few minor differences. Periodically the councils undertake a Constitution review in pursuance of the requirements in Section 37 of the Local Government Act 2000.

4. The Joint Constitution Review Task Group was appointed by the two Councils to conduct this review. The task group consists of six members, being three from each council and is cross-party. The task group has met regularly since August. Two co-chairs were appointed to the review group to alternate the chairing role: Councillor Sue Cooper from South Oxfordshire and Councillor Oliver Forder from the Vale. The task group is supported by the head of legal and democratic, officers from democratic services, as well as service-specific officers where appropriate.
5. Only full Council can amend the Constitution. This report is being submitted to the South and Vale Council meetings and sets out the task group's recommendations, together with an additional recommendation from the Joint Audit and Governance Committee.

Scope of this review

6. The task group is in the process of reviewing the Constitution from front to back to reflect the model Constitution adopted by most councils. The task group is aware of the size of this undertaking and has adopted a step-by-step approach. This report forms part of a series of regular reports to recommend new sections. A revised version of the Constitution is published after Council has approved changes.
7. A full schedule of the sections of the new Constitution and the progress made by the task group is shown in the contents and action tracker, attached at **Appendix A**.

Suggested changes to the Constitution

Part 4 – Scrutiny Procedure Rules

8. The task group considered the scrutiny call-in procedure, which is set out in the Scrutiny Procedure Rules. The rules do not currently require members to give reasons for a call-in request. The task group considered that scrutiny call-in of executive decisions should be seen as a positive step but to avoid unnecessary call-in, reasons should be given for any call-in request. The task group considered that scrutiny call-in should only be used in circumstances where members have evidence that the decision-maker did not follow the principles of decision-making. These principles are currently included in paragraph 18 on page 11 of the Constitution. Adding to these principles, the task group supported a further list of reasons that could be used in such circumstances. These reasons are set out in the proposed new paragraph 74 below.
9. The task group recommends to Council that the following new paragraph 74 should be added to the Scrutiny Procedure Rules (with subsequent paragraphs renumbered thereafter).

New paragraph 74:

“Call-in should only be used in circumstances where members have evidence which suggests that a decision was taken where the decision

maker did not follow the principles of decision making, set out in the Constitution, and other matters as set out below. The signatories to the call-in should explain how these principles were not followed when the decision was taken and submit their request on the form available from democratic services.

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights and equalities;
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes (link between corporate plan and implementation);
- (f) in accordance with the law and the council's agreed procedures, as set out in the Constitution;
- (g) inaccurate information of a substantial nature was given to the decision taker;
- (h) alternative options were not given sufficient consideration or were inadequately appraised; or
- (i) insufficient information was available for the person requesting the call-in to determine if the decision had been made correctly.”

10. If the Council supports this addition, members will be asked to complete the scrutiny call-in request form attached at **Appendix B** when requesting an executive decision to be called-in.

Part 4 – Joint Audit and Governance Committee Procedure Rules

11. This matter has not been considered by the task group directly but has been considered by the Joint Audit and Governance Committee.
12. The Council previously approved the appointment of an independent person to be a co-opted member of the Joint Audit and Governance Committee. At its meeting on 3 October 2023 the committee reviewed its terms of reference for the appointment of the independent member. The committee considered that a mechanism should be provided to remove the independent person if they did not perform to the expected standard; the report provided some suggested wording.
13. Overall, the committee was satisfied with the suggested wording but also concluded that the independent person should have appropriate time to respond before being removed. The committee has therefore recommended to Council to adopt the revised terms of reference for the appointment of an independent person on the Joint Audit and Governance Committee (as part of the committee's procedure rules), as set out at below, with immediate effect. It will be included in Part 4 of the new Constitution.

“The committee may consider the removal of the independent person from the committee if it is agreed that they are not making a meaningful contribution to the work of the committee. Any request for their removal must be made to the co-chairs of the committee who will consult with the monitoring officer and section 151 officer. The committee will make a final decision on the matter. The independent person will have the

opportunity to respond to the proposal at the committee if there is cause to consider such a proposal.”

Financial Implications

14. There are minimal financial implications for amendments to the Constitution as no paper copies are printed. The Constitution is published to the council’s website and the public, councillors and officers are encouraged to refer to this online version.
15. The review of the Constitution is aimed at making the council’s procedures more efficient and therefore there may be some financial gains as a result of the proposed changes.

Legal Implications

16. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review. The Monitoring Officer is responsible for ensuring that the council operates within the law and that the Constitution is fit for purpose.

Climate and ecological impact implications

17. There are no climate implications from these recommendations.

Equalities implications

18. There are no equalities implications from these recommendations.

Conclusion

19. This report sets out proposals to further amend the Constitution on recommendations from the Joint Constitution Review Task Group and the Joint Audit and Governance Committee, and invites Council to authorise the head of legal and democratic to make these changes and any further minor or consequential amendments.
20. The Constitution review is a continual process. Any changes adopted by Council can be subject to further review or adjustment. The task group will continue with the review and will make further recommendations to Council in due course.

Appendices

- A – the Constitution Contents and Action Tracker
- B – the Scrutiny Call-In Request Form

Background Papers

None

APPENDIX A

Constitution Contents and Action Tracker South Oxfordshire and Vale of White Horse District Councils

Section	Description	Review status	Date approved by Task Group	Date adopted by Council
Contents Page				
Part 1	Summary and Explanation	Complete	29 April 2022	12/13 October 2022
Part 2				
Articles of the Constitution				
	1 – The Council Constitution	Complete	20 June 2022	12/13 October 2022
	2 – Members of the Council			
	3 – Residents and the Council			
	4 – The Full Council			
	5 – Chair of Council			
	6 – Scrutiny Committees			
	7 – The Cabinet			
	8 – Regulatory and Other Committees		16 August 2022	
	9 – Ethical Standards Complaints Panel			
	10 - Joint Arrangements			
	11 - Officers			
	12 - Decision Making			
	13 - Finance, Contracts and Legal Matters			
	14 - Review and Revision of the Constitution			
	15 - Suspension, Interpretation and Publication of the Constitution			
Part 3				
Responsibility for Functions				
	3 (A) Introduction, Key Decisions, Forward Plan	Under review		

Section	Description	Review status	Date approved by Task Group	Date adopted by Council
	3 (B) Council Functions			
	3 (C) Committee Functions	Under review		Part adopted by Council in October 2022
	3 (C) (a) Working Groups and Advisory Bodies			
	3 (D) Non-Executive Delegations			
	3 (E) Executive Functions and Cabinet Member Responsibilities			
	3 (E) (a) Table of Executive Functions			
	3 (F) Statutory and Proper Officer List			
Part 4 Rules of Procedure				
	4 (1) Council Procedure Rules			
	4 (2) Cabinet Procedure Rules			
	4 (3) Access to Information Procedure Rules			
	4 (4) Budget and Policy Framework			
	4 (5) Overview and Scrutiny Procedure Rules			
	4 (6) Audit Procedure Rules			
	4 (7) Financial Rules			
	4 (8) Procurement Procedure Rules	Complete	8 November 2022	7/8 December 2022
	4 (9) Officer Employment Procedure Rules	Complete	29 September 2022	12/13 October 2022
Part 5 - Codes and Protocols				
	5 (1) Members' Code of Conduct	New Oxfordshire code of conduct adopted by both	Not required	18/19 May 2022

Section	Description	Review status	Date approved by Task Group	Date adopted by Council
		Councils in May 2022		
	5 (2) Officers' Code of Conduct	Complete	29 September 2022	12/13 October 2022
	5 (3) Whistleblowing Policy	Complete	8 November 2022	7/8 December 2022
	5 (4) Protocol on Member and Officer Relations	Complete	29 September 2022	12/13 October 2022
	5 (5) Planning Protocol	Being reviewed by officers		
	5 (6) Licensing Protocol			
	5 (7) Protocol for the Attendance of Officers and Members at Meetings			
	5 (8) Anti-Fraud, Corruption and Bribery Policy	Complete	8 November 2022	7/8 December 2022
	5 (9) Arrangements for assessing allegations of a breach of the Member Code of Conduct	Revised arrangements adopted by both Councils	Not required	8/9 December 2021
	5 (10) Role Profiles for Councillors			
	5 (11) Local Petitions Scheme			
	5 (12) Code of Governance	Under review by Task Group		
	Optional			
	Social Media Protocol for Members			
	Press and Media Protocol	Complete	16 August 2022	12/13 October 2022
	Councillor Call for Action			
	Members' Parental Leave Policy	Complete	Not required	8/9 December 2021

Section	Description	Review status	Date approved by Task Group	Date adopted by Council
Part 6 – Members Allowances Scheme				
	South and Vale Councillors’ allowances schemes	Updated 1 April 2022 to reflect new allowances approved by the Council	Not required	6/7 October 2021
Part 7 - Management Structure				
	Management structure May 2023	Approved by Chief Executive under delegated powers	Not required	Not required

KEY

YELLOW HIGHLIGHTING	UNDER REVIEW BY TASK GROUP OR BEING RECOMMENDED TO COUNCIL
GREEN HIGHLIGHTING	ADOPTED BY COUNCIL

APPENDIX B

Scrutiny Call-In request form



Listening Learning Leading

Please return to democratic.services@southandvale.gov.uk at the latest, 5pm on the fifth working day after the publication of the decision (this is the end of the call-in period)



Date form completed:.....

1) Council in which the decision relates to (delete as appropriate: South/Vale/both)

2) Your name:

3) Decision to be called in:

Date of decision:

Decision maker:

4) Which of the principles of decision making do you think have not been applied? (required)

See the summary and explanation section (para 17 and 18) of the constitution and paragraph 74 of the Scrutiny Procedure Rules.

Tick all that apply:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);	
(b) due consultation and the taking of professional advice from officers;	
(c) respect for human rights and equalities;	
(d) a presumption in favour of openness;	

(e) clarity of aims and desired outcomes; (link between corporate plan and implementation);	
(f) in accordance with the law and the council's agreed procedures, as set out in the constitution.	
(g) inaccurate information of a substantial nature was given to the decision taker;	
(h) alternative options were not given sufficient consideration or were inadequately appraised; or	
(i) insufficient information was available for the person requesting the call-in to determine if the decision had been made correctly.	

5) Evidence which demonstrates the alleged breach(es) indicated

6) Documents or additional information requested (note that the ICMD/cabinet report and minutes related to the decision will be included in the call-in meeting agenda)

7) Witnesses requested

8) Signed (not required if sent by council email):

9) Notes

Call-in requests need to be supported by either the chair of the Scrutiny Committee, or any three members of the council (one of whom must be a member of the Scrutiny Committee).

This call-in form and supporting requests must be received by 5pm on the fifth working day after the decision was published on our website(s).

The form and/or supporting requests must be sent by email from a member's email account (no signature required) to democratic.services@southandvale.gov.uk

Although we would accept a paper copy of this form, there is a deadline for call-in requests to be received. Therefore, you should notify democratic services if you are sending a paper copy, so that they may know to expect it. The call-in request is only valid when physically received by democratic services (in paper copy or by email). As a result, it would be more practical to email your request where possible to ensure it is received in time.