



**Governance and Audit
Committee**

Tuesday, 13 April 2021

Subject: Annual Constitution Review and Monitoring Officer Report 20/21 for Recommendation to Council . Approval of amended Contract and Financial Procedure Rules.

Report by:	Director of Corporate Services and Monitoring Officer
Contact Officer:	Katie Storr Senior Democratic & Civic Officer katie.storr@west-lindsey.gov.uk
Purpose / Summary:	<p>The purpose of the report is for the Governance and Audit Committee to RECOMMEND to Council the proposed amendments to the Constitution.</p> <p>The report also includes an Annual Report from the Monitoring Officer. The report aims to provide an holistic view of all governance associated matters.</p> <p>The Governance and Audit Committee are also asked to APPROVE the amendment(s) made to the Financial and Contract Procedure Rules, which will subsequently be noted by Council as part of the Annual Review.</p>

RECOMMENDATION(S):

The Governance and Audit Committee are asked to: -

- (1) APPROVE the amendment(s) made to the Contract and Procurement Procedure Rules and Financial Procedure Rules detailed at Section 4 of this report (the full set of Procedure rules are attached at Appendix 1 and 2 for completeness).***

- (2) Agree the governance outlined in the draft report to Council (App A) , in respect of managing Commercial and Economic Growth, provides assurance that the council is taking appropriate mitigating measures against the risks identified in its commercial approach and note the updated position provided in Section 7 of the draft report to Council.**

The Governance and Audit Committee are asked to RECOMMEND to COUNCIL: -

- (3) that the outcome of the 19/20 and 20/21 annual reviews, as detailed in the report attached at Appendix A be noted;**
- (4) that the additional amendments detailed throughout Section 3 of this report, identified during the 20/21 review (and now incorporated into the draft report to Council attached at Appendix A) be adopted and implemented with immediate effect;**
- (5) the appointments of Mrs Alison Adams, Mr Peter Walton, Mr Richard Harvey and Mr Andrew Middleton (Section 9) be approved. (Section 9)**
- (6) That**
- the progress made with regards to the areas of work agreed for further development in the previous reviews (Section 5);**
 - the further planned work for 2021/22 (Section 6);**
 - the statistical data provided within the report in respect of the number, nature and outcome of Code of Conduct Complaints (Section 8); and**
 - the support offered to Parish Councils (Section 11);**
 - the use of the Council's RIPA powers during the period (section 13) be noted.**
- (7) That the interim decision making process(es) that have been in place during the COVID -19 Pandemic be acknowledged.**

IMPLICATIONS

Legal:

The Council is required by law to prepare, and keep up to date, the Constitution

Financial :

There are only very limited financial implications as a result of making amendments to the Constitution; these costs can be met from existing budgets. These relate to the resources needed to make changes to electronic records and to the limited printing costs of producing amended pages for paper copies of the Constitution.

Staffing :

The Constitution sets out the manner in which staffing matters should be dealt with. It also defines responsibilities between Officers

Equality and Diversity including Human Rights :

NB: Please explain how you have considered the policy's impact on different groups (for example: young people, elderly, ethnic minorities, LGBT community, rural residents, disabled, others).

Data Protection Implications :

Climate Related Risks and Opportunities:

Section 17 Crime and Disorder Considerations:

Health Implications:

Title and Location of any Background Papers used in the preparation of this report :

Annual Constitution Review 2018/19 and 2019/20
Effectiveness of Committees Surveys

Risk Assessment :

Failure to amend the Constitution to reflect changes could lead to a risk of legal challenge and reputational risk for the Council.

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1.1 Background

- 1.1 The Council is required by law to prepare and keep up-to-date a Constitution which explains how the Council operates, how decisions are made and the procedures which are to be followed to ensure that these are efficient, transparent and accountable to local people.
- 1.2 Article 14 of the Constitution stipulates how such a review should be conducted and Council have committed to undertake a review at least annually.
- 1.3 The Governance and Audit Committee did consider the 19/20 Annual Review (<https://democracy.west-lindsey.gov.uk/ieListDocuments.aspx?CId=155&MId=2443&Ver=4>) albeit slightly delayed, at its meeting 16 June, due to the cancellation of meetings in April 2020.
- 1.4 However with Annual Council 20/21 cancelled, the Governance and Audit Committee's full set of recommendations have to-date not received approval from Council.
- 1.5 The only elements of the 19/20 Annual Review which did receive Council consideration and which were ultimately adopted, were those which directly affected the Officer Scheme of Delegation (Officer Responsibilities). This was as a result of the pending senior management structure being completed during 20/21.
- 1.6 With the Scheme having to be fundamentally re-aligned to match the revisions to the structure and responsibilities it was considered opportune and appropriate to bring forward any elements of the review which had a direct impact on the document.
- 1.7 The report was presented to Council at its meeting in January 2021. <https://democracy.west-lindsey.gov.uk/ieListDocuments.aspx?CId=132&MId=2390&Ver=4>

2. Introduction and Summary

- 2.1 Due to the unusual circumstances we found ourselves in, the report attached at Appendix A is the report which full Council will be asked to consider for implementation on recommendation from this Committee.
- 2.2 It is amalgamation of those elements the Committee recommended during its 19/20 review, together with additional items identified during 20/21, whilst those amendments dealt with by way of report to Council as referenced at 1.7 have been removed.

2.3 Any new additions, to the report, in need of either recommendation or approval from this Committee are summarised in the following sections, including updated Financial and Contract Procedure Rules (still not received) which, this Committee are responsible for approving.

3. Additions Arising from 2020/21 Review recommended for inclusion and shown in Draft Report to Annual Council .

3.1 Due to the unusual circumstances in which the Council has been operating during 2020/ 21, this year's review has been lighter than usual. Much of the planned focus work agreed in 2019/20 has been delayed (Role of Scrutiny Committee, Parish Charter, Fourth Tier Governance Review to name a few examples) and therefore the report primarily focusses on work planned for 2021/22.

3.2 Article 14 of the Constitution sets out how the Constitution should be reviewed and Officers undertake these actions using a variety of methods including : -

- a) attending a variety of Committee Meetings in order to review proceedings;
- b) collating feedback from stakeholders and interested parties, including that received in formal complaints or alleged breaches of the Code, whether upheld or not;
- c) seeking the views of Senior Officers and Team Managers who work within the Constitution;
- d) surveying Members as to the effectiveness of the Committees to which they are appointed;
- e) collating in-year experience of when the Constitution has proved cumbersome or unclear.

3.3 Officers also meet regularly with the Chairman of Governance and Audit Committee to consider all governance matters.

3.4 Such activity this year has resulted in several, mainly minor amendments having been made throughout the document, primarily to Parts IV and V.

3.5 These are listed below, and have been included in table at 2.5. in the report to Council (Appendix A)

	Part IV (Responsibility for Functions – S151 page 36)	NEW function be added “ To make purchases in accordance and within the limits of the Council’s Commercial Investment Strategy”	This delegation was agreed back in 2016 but has not been cross referenced in the Constitution.
	Part IV (Responsibility for Functions – G and A Committee page 9)	AMEND current function (c) 4 - approving payments.... The following be ADDED “ above £2,500 “ “Compensation Payments in general are delegated to Officers”	Officers have some level of delegation regarding compensation payments as detailed in the Corporate Scheme of Delegation. This note is to clarify that it is only is a function of G and A Cttee when it relates to the LGO and that smaller payments can be made without approval as previously agreed by the Governance and Audit Committee.
	Part IV (Responsibility for Functions – Scheme of Corporate Delegation page 53)	The Note be AMENDED as follows” Compensation arising from LGO Complaints totalling less than £2,500 can be approved by the S151 Officer and must be reported to G and A for information.	Ensures the scheme of corporate delegation and the committee’s terms of reference stay in line. G and A Committee have previously agreed this threshold
	Part IV (Responsibility for Functions – Monitoring Officer page 37)	NEW FUNCTION NO.3 be added as follows “ to source appropriate Independent Resource to undertake the function of IP in accordance with the Localism Act , in consultation with the Chairman of the Governance and Audit Committee, when a vacancy arises suddenly, until such time as a formal appointment is made” Limits on delegation temporary for 9 months	Councils are recommended to have 2 IPS to undertake the functions as set in Localism Act (relating to Code of Conduct Complaints). When an IP resigns there is a period where it is difficult to function with only one IP and recruitment can take time. This delegation will allow the MO (in consultation) to seek resources from a pool or shared service arrangement in the interim period. The delegation is being suggested as temporary whist consideration is given to whether the recruitment procedure needs amending.
*	Part V (Rules of Procedure - Council Procedure Rules)	Paragraph 9.1 (c) be AMENDED as follows “a question on any matter in relation to which the Council has powers or duties, or in the case of Motions , affects the District.	Questions to Council take the form of a question followed by an answer – the effect the District’s element when applied to a question, results in almost any

			question being accepted, however answering them without proposing action can be difficult. Matters which affect the District should be dealt with by Motions.
*	Part V (Rules of Procedure - Council Procedure Rules)	Paragraph 9.4 (a) be AMENDED to include the words or ” in the case of a motion affects the District”	This amendment brings in line the paragraph to reflect the change above.
*	Part V (Rules of Procedure - Council Procedure Rules)	Paragraph 9.4 – Rejection of Questions – new grounds be added as follows: - “(h) the question names an individual member or Group” and (i) the use of Council resources for such a matter is questionable”	Both of these requirements already stand, however they not all included in one consolidated place – this amendment brings clarity
*	Part V (Rules of Procedure - Council Procedure Rules)	Paragraph 9.1 (c) has a link to the Public Question Time at Council Meeting. This leaflet to be updated to include the same criteria applied to Councillors at 9.4	Through operation of the scheme this year it has become apparent that the requirements for Members of council and the public are slightly out of kilter, for example members of the public could currently ask questions about individual Members. This amendment brings clarity and ensures the two schemes are on a par.
	Part IV Responsibility for Functions – Scheme of Corporate Delegation page 48)	The Assistant Director Column be ticked for function 1.5 – “carry out consultation with the workforce trade union for changes in work practices etc	This function will be undertaken by Ads who have full responsibility for staff within their service.
	Part IV Responsibility for Functions – Scheme of Corporate Delegation page 52)	The sub note in 7.4 be amended to read this delegation only applies when directors of Ads are carrying out the role of “ Strategic and Tactical Commanders ” as opposed to Strategic Commander as currently stated.	Better reflects the role being undertaken by Ads
	Part IV Responsibility for Functions – AD for Commercial and Operational Services page 40)	NEW function 8 be added – “to alter the approved fees and charges at the Crem for a limited period of time taking into account circumstances at any given time (following consultation with the Chief Finance Officer)	The AD has similar delegation for both markets and the TAC allows some flexibility to deal with changing circumstances more rapidly – no new fees can be approved through this delegation.

Part IV Responsibility for Functions –All Management Team General Delegations - page 28)	The following legislation be added to list displayed at 17: - <ul style="list-style-type: none"> Localism Act 2011 The Assets of Community Value (England) Regulations 2012 	These two bits of legislation cover various statutory functions and decision making we have to undertake for community rights and neighbourhood planning – and should be included for completeness.
Part IV – Responsibility for Functions – Director of Corporate Services – page 38	Functions 7 and 8 – relating to ERO and RO be moved to the Chief Executive	Agreed by Council in March due to current post holder leaving.
Part IV Responsibility for Functions – Scheme of Corporate Delegation page 55)	The CFO be ticked for function 10.3 – “allowing exemptions to Contract Procedure Rules “	Should be a function of the Chief Finance Officer as well as C Exec
Part IV Responsibility for Functions – Scheme of Corporate Delegation page 59)	Function 16.4 – determining and responding to request under GDPR and DPA – All Officer columns need to be ticked and the note needs to read following advice from the DPO	Historic Drafting error
Part IV Responsibility for Functions – Planning Committee Delegation page 12)	REMOVE bullet “conservation area consents”	“Conservation Area Consents” no longer exist, so can be deleted – only <i>planning permission</i> is now required to demolish a building in a conservation area.
Part IV Responsibility for Functions- AD Planning and Regeneration (page 42	REMOVE “conservation area consents” from delegation 1 and REPLACE with “demolition in conservation areas”	As above

Note : Those elements of table 2.5 which have previously been seen by the Committee, and stand recommended, are shown in “greyed out text” in the report to Council, together with the supporting information (Sections 2.6, 2.7, 2.9) . Any previous sections which have been updated to now cover the two year period are shown in red text

3.6 Additional text has been added to section 2.7 - **Amendments to Scheme of Delegation to Support Parishes** , this now includes data from the current civic year 20/21 and details information of the training planned to further assist parishes in their role within the planning process.

3.7 A New Section 2.8 has been added and is set out below:

2.8.1 Through the course of the 20/21 Year whilst dealing with both Questions / Motions from Councillors and the Public it has become apparent that the criteria for acceptance at times can be cumbersome. Furthermore, there are exemptions applied to Councillors, which are not repeated in the Public Scheme. A number of suggestions have been made in the Table at 2.5 to rectify this situation.

2.8.2 The suggested amendments, it is hoped, also support differentiating between questions and motions. A question should be put and answered and should not lead to direct separate actions. Motions on the other hand should seek the Council to take some sort action.

3.7.1 This provides context for the suggested amendments to the Council Procedure Rules and Revision to Public Question Time Scheme detailed in the table above marked *.

3.8 **Amendments required as a result of changes to the Management Structure**

3.8.1 As stated at the outset of this report the only elements of the 19/20 Review which did receive Council consideration and which were ultimately adopted, were those which directly affected the Officer Scheme of Delegation, which was up-to-date and current as at January 2021.

3.8.2 Members will be aware that since that time the former Director of Corporate Services has left the organisation and a New Assistant Director for People and Democratic Services has been appointed.

3.8.3 A Revised Section 4 has been added to the draft report to Council to deal with this and is set out below for ease of reference:

4.1 The Chief Executive in consultation with the Chairman of the Governance and Audit Committee was granted delegated Authority to confirm the final version of the scheme of delegation in June 2020, prior to it being presented to Council for Approval.

4.2 This work was completed in December 2020 and reported to Council in January 2021. Since then, Council will be aware that the former Director of Corporate Services has left the

organisation and a New Assistant Director for People and Democratic Services has been appointed.

4.3 As a result, delegations previously assigned to the former Director will need to be re-aligned; some to the new Director others to existing Officers. One section of the Constitution which is fundamentally changed as a result of this change in management structure is the scheme of Officer Delegation. (Contained within Section 4 – Responsibility for Functions).

4.4 Due to these changes not being “transformational” in nature, rather a re-alignment of duties they have not been listed within this report, but will be applied in the next published version of the Constitution. The Monitoring Officer does have delegated authority to make housekeeping amendments of this nature.

3.9 **Section 5 - Progress made with regards to those areas of work agreed for further development in the previous reviews** – This section remains fundamentally the same, as the good work achieved in 19/20 was never reported to Council, in the absence of the annual meeting. (Text shown greyed out in the draft report to Council).

3.10 Any areas which it had been intended would stay on the Governance and Audit Committee’s radar in 2021 but where progress was limited either due to previous recommendations not being implemented or due to the Pandemic, have been updated to reflect progress in made in 2020/21 also (shown in red text in the draft report to Council) namely : -

- Overview and Scrutiny Function
- Member Development

3.11 **Section 6 – Focus for Next Year** – A new section has been written but many of the issues remain the same, O and S, Member Development, Parish Charter, New Code of Conduct. However the text alongside each has been updated to reflect work planned for 2021/22.

3.12 New areas included are: - a review of working Groups, the intention to hold a workshop style event to review standing orders, an intention to look at the role of the newly established Member Forum and its impact on decision making, and continued use of remote working where appropriate.

3.13 **Sections 7 – 12 make up the Monitoring Officer’s Annual Report** these sections aim to provide an holistic overview of all governance associated matters. These sections have been updated to provide Council with a two year position statement, including updated statistical information relating to code of conduct complaints and virtual meetings

3.14 **Section 13** – this is a new section and relates to the Council’s **Regulation of Investigatory Powers (RIPA)** . This information has been included following a recent review of arrangements, with one of the

inspector's recommendations being that Members should receive at least annually the number of times the Council has used it powers.

4 In Year Changes to Contract and Procurement Procedure Rules and Financial Procedure Rules – for Approval by Governance and Audit Committee

4.1 The Governance and Audit Committee are delegated to make any changes to the Contract and Procurement Procedure (CPR) Rules and the Financial Procedure Rules (FPR) between Annual Councils. These must then be reported up to Full Council, for noting, as Part of the Annual Review.

4.2 An Audit of the Council's Procurement Procedures was undertaken in April 2018 which resulted in considerable amendments being made to the CPRs and FPRs in the 2018 Constitution Review. A number of significant amendments were also made that year to reflect the Council's commercial agenda.

4.3 Relatively few, mostly minor amendments are being proposed as a result of this review and these primarily relate to: -

- amendments required to "job titles / structure levels" to reflect the impact of the of the recent re-structure*
- A revised introduction and scope in light of Brexit .
- New Section 8.3 relating to reserved Contracts.
- Clarity around the different processes for procuring interim staff as opposed to Agency Staff

4.4 The Full set of amended Contract and Procurement Procedure Rules are attached at Appendix 1 along with brief rationale for each amendment being proposed.

4.5 Amendments have also been made to the FPRs to ensure these two important procedural documents work in harmony.

4.6 The main amendments are as follows: -

- Amendments for clarity, or new titles ie Finance Business Partner from Accountant and Entrepreneurial Board to Portfolio Board – housekeeping in nature.
- The maximum loan amount to our subsidiaries has been updated to £50k from £25k as this has been approved by CP&R previously therefore housekeeping in nature.
- A new write of limit has been introduced for Budget Managers where an asset is deemed to be irrecoverable . The limit is set at £250.
- All Procurement limits have been amended to ensure they are in line with the Contract procedure rules

4.7 For completeness, the Full set of amended Financial Procedure Rules are attached at Appendix 2 with the amendment(s) highlighted for ease.

- 4.8 These documents sit within Part V of the Constitution – Rules of Procedure.
- 4.9 Members of the **Governance and Audit Committee** are asked to **approve** the amendments, set out within each document.
- 4.10 Council will be asked to note them as part of the annual review; a section to this effect has been included in the draft report to Annual Council ((section 3) Appendix A).