



Report of:	Meeting	Date
Councillor Henderson, Leader of the Council and Garry Payne, Chief Executive	Council	14 November 2019

Constitution Review

1. Purpose of report

- 1.1 To enable Wyre's Constitution to be updated following an external review by independent consultants.

2. Outcomes

- 2.1 More up to date and effective governance arrangements.

3. Recommendations

- 3.1 That the amendments to the Constitution set out as track-changes in Appendix 1 be approved and adopted with immediate effect.
- (a) Responsibilities for Council Functions (Part 3.02);
 - (b) Responsibilities for Executive Functions (Part 3.03);
 - (c) Council Procedure Rules (Part 4.01);
 - (d) Access to Information Procedure Rules (Part 4.02);
 - (e) Budget and Policy Framework Procedure Rules (Part 4.03);
 - (f) Cabinet Procedure Rules (Part 4.04);
 - (g) Overview and Scrutiny procedure Rules (Part 4.05)
- 3.2 That no change be made to the current delegation of authority to the Audit Committee to review and approve changes to the Council's Financial Regulations and Financial Procedure Rules.

- 3.3** That the comments on the effectiveness of the current Procedure Rules relating to “points of order” and “points of personal explanation” (referred to in paragraphs 5.10 and 5.11 below) be noted, but that no changes be made to those Procedure Rules at this stage.
- 3.4** That the comments of the consultants on the interpretation of the political balance rules when making appointments to committees (referred to in paragraph 5.12 and 5.13 below) be noted, but no changes be made to the Constitution relating to appointments to committees and that such appointments continue to be made by the Council on the basis of advice submitted on each occasion by the Council’s officers.
- 3.5** That the intention to submit a further report to the February Council meeting on changes which will be required to the Scheme of Delegation to Officers as a consequence of decisions to be made at this Council meeting on the appointment of Corporate Directors be noted.
- 3.6** That the intention of the Council’s officers to now also undertake a quick internal review of the Parts of the Constitution not included in the current review and to make recommendations on any further changes which may be necessary to be consistent with the decisions made at this meeting, be noted.

4. Background

- 4.1** The Local Government Act 2000 requires all local councils to have a written constitution. Most still very closely follow a national model drawn up when the 2000 Act was implemented. Reports are submitted by the Chief Executive on a regular basis to enable the Council to approve changes to the Constitution to take account of new legislation, changes to functions, structures, roles or responsibilities or procedures.
- 4.2** To ensure that the Constitution is as accurate, up to date and as easy to use as possible it was decided to commission an external review. ADSO Consultants were appointed to undertake the review, which was undertaken by John Austin and John Lynch, two former senior local government officers with extensive experience of constitutional and governance issues.

5. Key issues and proposals

General comments

- 5.1** The overall view of the external consultants is that Wyre’s current constitution is fairly clear and up to date and is better than many around the country. The specific changes they have proposed are set out as track-changes in Appendix 1, and are recommended for approval in paragraph 3.1 of this report. Many of the suggested changes in Appendix 1 are straightforward, or very minor amendments, to improve clarity and consistency. The reasons for any significant recommendations they have

made, which mostly relate to the Procedure Rules for Council meetings, are set out in the following paragraphs. The reasons for rejecting other possible changes identified by, or put to the consultants for consideration, are also referred to below.

- 5.2** The Consultants also submitted proposed changes to update the Scheme of Delegation to Officers in Part 7 of the Constitution. However, they are not included in this report because further more extensive changes will be needed to reflect changes to structures and responsibilities following the decisions to be made at this Council meeting on the appointment of Corporate Directors.
- 5.3** The Responsibilities for Executives Functions (Part 3.03), which were last adjusted following changes to Portfolio Holder titles and responsibilities reported to the Annual Council Meeting on 10 May 2018, and to which only minor changes are now recommended in Appendix 1(b), will also be looked at again when the Scheme of Delegation to Officers is reviewed.

Process for review of Financial Regulations and Contract Procedure Rules
(Article 7 in Part 2 and Responsibility of Council Functions in Part 3.02)

- 5.4** The ADSO consultants identified that the Terms of Reference of Wyre's Audit Committee (Article 7 in Part 2) include authority:

“To maintain and make changes to the Council’s Financial Regulations and Financial Procedure Rules (without reference to full Council)”

They said this was unusual and queried in their initial feedback why these changes were not approved by full Council. They said that they understand the wish for the Audit Committee to undertake the detailed review, but felt that, as both the Financial Regulations and Procedure Rules are contained within the Council's Constitution (Part 4.06), any changes to those regulations and rules should be recommended to the full Council for approval.

- 5.5** However, the current review carried out each year by the Audit Committee in accordance with CIPFA guidance is considered by the Head Of Finance (Section 151 Officer), the Head of Governance and the Corporate Management Team to be clear, effective, sufficiently transparent and more rigorous than would be possible for the full Council. This delegation has operated successfully for many years and although not the norm it is compliant with legislation. Therefore, notwithstanding the view of the consultants, this specific delegation of responsibility by the Council to the Audit Committee is considered to be reasonable and it is proposed that no change be made (recommendation 3.2 above).

Programme of Council Meetings (Paragraph 2 of Council Procedure Rules, in Part 4.01)

- 5.6** The consultants noted that the Constitution currently states that ordinary meetings of the Council will take place in accordance with a programme published by the Chief Executive, following consultation with the Group Leaders. They were made aware of concerns that were raised by the Leader of the Labour Group about the way in which the consultation on the 2019/20 programme of meetings was carried out. They stated that it is common practice at most councils for Party Groups/Leaders/Whips to be consulted on the dates of Council meetings. They pointed out that they are the only meetings where all councillors have the opportunity to debate issues together on a political platform. They are an important part of the Council calendar and in their view, the frequency and timing should be discussed with Group Leaders, although they acknowledged that the political reality was that if there was a disagreement, the view of the majority group is likely to prevail. In recognition of this position, and to avoid unrealistic expectations the suggestion in Appendix 1 and included in Recommendation 3.1 is that the word “consultation” be replaced with “discussion”.

Notice of Statements and Questions by members of the public to Council meetings (Paragraph 9.3 of Council Procedure Rules, in Part 4.01)

- 5.7** Currently, Section 9 of Wyre’s Council Procedure Rules allow members of the public to make a statement or ask a questions to the Leader of the Council or a member of the Cabinet at a Council meeting, provided that they give notice in writing or by email by noon on the Friday before a Council meeting. When this provision was introduced the assumption was made that this would potentially enable a member of the public to ask a question about an item on the agenda for the meeting, which will have been published on the previous Wednesday. In practice, any statements which are made usually relate to a general issue of concern, rather than a specific agenda item. The external consultants identified Wyre’s practice as being unusual in this regard and recognised the administrative difficulties it gives rise to.
- 5.8** Their suggested amendment, as set out in Appendix 1 (and included in Recommendation 3.1) is that the deadline for the receipt of questions and statements be brought forward to noon on the Monday prior to the day of agenda dispatch. They have stated that this will serve two purposes. *“Firstly, it will enable the Proper Officer to give due consideration to the content of the questions and statements and to resolve any queries. Secondly, it will improve transparency and public notice/access by enabling both to be published with the Council agenda.”*

Written Questions “On-Notice” by Councillors Council meetings
(Paragraph 12.2 of Council Procedure Rules, in Part 4.01)

- 5.9** The current deadline for any Councillor to ask a question “on-notice” to the Mayor, a Member of the cabinet or the Chairman of a Committee or Sub-Committee on *“any matter in relation to which the Council has powers or duties, or which affects the area”*, is also noon on the Friday before a Council meeting. This has the same disadvantages as the current deadline for public questions, but is even less logical, because Councillors also have an opportunity at each meeting to ask questions without notice to the Leader of the Council and Portfolio Holders on their Executive Reports and to Chairmen of Committees when they submit periodic reports. They can obviously also speak during debates on any reports for decisions. The consultants have therefore suggested that the deadline for questions “on-notice” should also be brought forward to 12 noon two calendar days prior to the day of agenda dispatch, as set in Appendix 1 and included in Recommendation 3.1.

Officers speaking at full Council Meetings (Paragraph 11.5 of Council Procedure Rules, in Part 4.01)

- 5.10** The consultants queried the provision in paragraph 11.5 (d) of the Council Procedure Rules enabling a relevant officer to *“answer a question or part of a question addressed to a Cabinet member, provided that it is non-political in nature (e.g. requiring specialist, technical or expert knowledge or the provision of professional or legal advice)”*. They stated that, in their experience, such a provision was unusual. However, following an explanation of the fairly rare circumstances in which it has been used, they understood the value of this option being available at Wyre and have not recommended any changes.

Scope of Notices of Motion at full Council meetings (Paragraph 14.3, in Part 4.01)

- 5.11** The consultants have expressed the view that Wyre’s current requirement on the “scope” of a Notice of Motion, i.e. simply that: *“it must be about matters for which the Council has a responsibility or which affect the area”*, is perfectly acceptable.

However, they have advised that some authorities spell out in more detail the criteria on which motions can be ruled out. They have suggested, in order to provide greater clarity for Members when submitting a Notice of Motion and the Chief Executive when deciding whether such a motion is valid, that the following wording be added to Paragraph 14.3 of the Council Procedure Rules.

The Proper Officer may reject a motion if it:

(i) is not about a matter for which the Borough Council has a responsibility or is not about a matter of regional or national policy which affects the Borough disproportionately;

(ii) is defamatory, frivolous or offensive and in the case of the latter, which names, or clearly identifies a member of staff or other individual;

(iii) is substantially the same as a motion which has been put at a meeting of the Council in the past six months;

(iv) requires the disclosure of confidential or exempt information;

or

(v) is either unlawful or incapable of having practical effect

Such Motions submitted will be dealt with by the Proper Officer and the proposer of the Motion will be given advice accordingly in line with these criteria.

These additional words are included in Appendix 1 and are therefore recommended for approval in Recommendation 3.1 above

To provide time for such considerations and discussions to take place, the consultants have also recommended that the deadline for submission be brought forward to 12 noon on the Monday prior to the day of agenda publication (in line with the revised deadlines recommended for written questions). This proposal is also included in Appendix 1 and in recommendation 3.1 of this report.

Points of Order at full Council meetings (paragraph 16.12 of Council Procedure Rules in Part 4.01)

5.12 The Council's officers discussed with the consultants the effectiveness of the current provisions in Procedure Rule 16.12 enabling any councillor to raise a "*point of order*", noting that the requirement to specify which Procedure Rule or law has been broken is rarely followed. The consultants confirmed that the current wording in Paragraph 16.12 of Wyre's Procedure Rules is fairly standard. They also stated that, in their experience, handling points of order was difficult at many councils across the country with a balance having to be struck between giving individual members the opportunity to make legitimate challenges, but avoiding frequent interruptions to the flow of debates. The conclusion reached was that no changes would be recommended to Procedure Rule 16.12 in this report, but that the Mayor would be encouraged to make sure that members gave proper reasons when making a point of order.

Points of Personal Explanation at full Council meetings (paragraph 16.13 of Council Procedure Rules in Part 4.01)

- 5.13** Similar discussions took place about the effectiveness of the current provisions for “*Points of Personal Explanation*” in Paragraph 16.13 of the Council Procedure Rules although they are not frequently used at Wyre. The Consultants said that, if it was felt necessary to reduce the potential for interruptions to debates, wording could be added to specify that a councillor may only raise a point of personal explanation at the end of the speech to which it relates, rather than before or during the speech. However, it was again concluded that no changes would be recommended to Paragraph 16.13 as part of this review.

The interpretation of political balance rules and appointments to Committees

- 5.14** The consultants were made aware of the suggestion made by the Leader of the Labour Group that a section should be added to the Council’s Constitution setting out principles on how the political balance rules are interpreted when appointments are made to committees. He has proposed, in particular, that the allocation of seats on committees should be calculated on the basis of fractions rather than percentages.

- 5.15** The response from the consultants was as follows.

- *“The rules for the allocation of seats are set out in Sections 15 and 16 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups Regulations) 1990.*
- *The regulations do not prescribe the method by which the allocation must take place. The duty on Councils is to reflect the overall Council membership in the allocation to its committees. Our experience is that most Councils do it on a percentage basis (as in your own report to Annual Council in May) and we struggle to see what difference it would make by applying fractions. At the end of the day, Councils will inevitably end up with odd numbers which have to be rounded up or down to fill the allocations to each committee and a certain amount of bartering may take place between the respective whips. Part of that process can involve the majority party deciding on the extra places. Their majority status gives them that right.*
- *In our experience, Councils do not generally spell out the detailed process in their Constitutions, just the requirements of the Act and regulations. You have set this out in detail however in your report to Council. Whether you include this in your Constitution is really a matter for local choice.”*

On the basis of this opinion, no additional provisions to the Constitution are being recommended.

Financial and legal implications	
Finance	ADSO Consultants fees for carrying out the review are £3,950 plus VAT and expenses and these will be reflected in the Revised Estimates. There will be no additional costs arising from the implementation of the recommendations in this report.
Legal	Approval of the changes recommended in this report will ensure that the Council's Constitution is up to date, is in line with best practice and complies with the Local Government Act 2000 and subsequent Regulations.

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
ICT	x
data protection	x

Processing Personal Data

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

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List of background papers:		
name of document	date	where available for inspection
None	-	-

List of appendices

Appendix 1: Amendments to Parts the Constitution, recommended by ADSO
Consultants, shown as track changes

dem/cou/cr/19/1411 Item 12