

**Report to** Council  
18 March, 2014  
**Report of** Executive head of strategy, people and democracy  
**Subject** Constitution review

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**Item**

**7**

## **Purpose**

To consider proposed amendments to the council's constitution

## **Recommendation**

That council:

- (1) adopts the revised article 17 of the constitution – Audit committee (as set out in appendix A)
- (2) approves the amendment to appendix 1, council and procedure rules to widen the definition used for allowable motions to full council as follows:

“A motion must relate to a council function or, if not, it must affect the city or one of the council’s key partners”;
- (3) adopts the criteria for deciding whether a code of conduct complaint should be referred for formal investigation (as set out in appendix C).

## **Corporate and service priorities**

The report helps to meet the corporate priority Value for money services

## **Financial implications**

There are no direct financial implications of this report.

**Ward/s:** All wards

**Cabinet member:** Councillor Waters – Deputy leader and resources

## **Contact officers**

Russell O’Keefe, Executive head of strategy, people and democracy 01603 212908

Andy Emms, Democratic services manager 01603 212459

## **Background documents :**

None

# Report

## Background

1. At its meeting on 22 March 2011, the council considered changes to the council's constitution and agreed to ask the constitution working party (CWP) to conduct a fundamental review of the constitution.
2. At its meeting on 18 November 2013, CWP resolved to recommend cabinet to ask council to adopt revised terms of reference for the audit committee (Article 17 of the constitution) and changes to the council and committee procedure rules in relation to the definition of motions allowable for debate at full council (appendix 1 of the constitution).
3. At its meeting on 5 February 2014, cabinet resolved to recommend council to:
  - (a) adopt the revised article 17 of the constitution – audit committee (as set out in appendix A)
  - (b) amend appendix 1, council and procedure rules to widen the definition used for allowable motions to full council as follows:

“A motion must relate to a council function or, if not, it must affect the city or one of the council's key partners”.
4. In July 2012, the council adopted a new standards regime and framework under the Localism Act 2011. The monitoring officer has proposed the criteria to use when considering whether a complaint of an alleged breach of the members' code of conduct should be referred for formal investigation.

## Audit committee terms of reference

5. The terms of reference for the audit committee had not been reviewed since the committee was established in June 2007. Article 17 sets out the terms of reference for the committee and the procedures. The chief finance officer proposed revised terms of reference for the audit committee to complement the new financial regulations and reflect current good practice.
6. The terms of reference have been edited to reflect the functions of the audit committee. It is proposed that further detail and guidance is provided in the procedural rules for the audit committee.
7. The revised wording for article 17 is attached as appendix A. The CWP noted that the new terms of reference did not affect the powers available to the audit committee but reflected the council's new financial regulations (adopted at council on 26 November 2013) and good practice.
8. Since the CWP meeting on 18 November 2013, the Chartered Institute of Public Finance and Accountancy (CIPFA) has produced new guidance on procedural rules for audit committees which will be considered by audit committee on 11 March 2014. This does not affect the revised terms of reference in appendix A. The draft procedural rules are attached at appendix B for information.

## Motions

9. On the 9 September 2013 the constitution working party (CWP) considered proposed guidance for motions to council in line with the provisions within the constitution. Discussion at the meeting particularly focused on the current definition being used for allowable motions namely that:

*“A motion must be about matters for which the council has a responsibility or which particularly affect the city”*

This means that a motion must relate to a council function or, if not, it has to be a matter that either only relates to Norwich or the executive head of strategy, people and democracy is satisfied affects Norwich significantly more than other cities.

10. Some members of CWP expressed a concern that this definition was too restrictive. In particular there was a concern that this definition means that members are not always able to put forward motions on matters of public policy. Officers were, therefore, asked to bring a report to the next meeting of CWP with options for a different approach.

## Proposal

11. At its meeting on 18 November 2013, the CWP considered two alternative options to the council's current approach. Option 1 was to have no definition and allow motions on any subject. Option 2 was to widen the current definition to allow greater freedom for members to debate issues of public policy etc.
12. The table below sets out the two options considered by CWP and highlights some of the potential advantages and disadvantages of each approach. However, clearly this would depend on how any new approach was applied in practice.

No	Option	Potential advantages	Potential disadvantages
1	To have no definition and allow motions focused on any subject	<ul style="list-style-type: none"><li>• Would give members the freedom to debate any subject they wish</li><li>• Would remove the current work by democratic services and the monitoring officer in the lead up to council meetings to advise and negotiate with political groups on whether motions meet a definition</li></ul>	<ul style="list-style-type: none"><li>• Could mean that council time and resources are being used to debate issues that don't relate to the council, its functions or the city and there is likely to be no ability to influence eg policy matters in other countries etc.</li><li>• Potential reputational harm to the council due to the point above. This would be likely to increase the length of time spent at full council meetings on motions which could impact on</li></ul>

No	Option	Potential advantages	Potential disadvantages
			the time spent debating substantive agenda items unless restrictions were put on the number of motions.
2	<p>To widen the definition as follows:</p> <p><i>“A motion must relate to a council function or, if not, it must “.....particularly affect the city or one of the council’s key partners”</i></p>	<ul style="list-style-type: none"> <li>This would allow members to debate all matters of public policy that particularly affect the council, the city or one of its key partners eg health policy, education policy etc.</li> </ul> <p>Would remove some of the current work by democratic services and the monitoring officer in the lead up to council meetings to advise and negotiate with political groups on whether motions meet the definition</p>	<ul style="list-style-type: none"> <li>This could increase the length of time spent at full council meetings on motions which could impact on the time spent debating substantive agenda items unless restrictions were put on the number of motions.</li> </ul>

13. The CWP discounted option 1 as being too wide. It preferred the proposal to widen the definition used for allowable motions as set out in option 2, subject to the removal of the word “particularly”.

14. It proposed that council and committee procedure rules, appendix 1 of the constitution, relating to motions and the supporting guidance provided to members, be changed to reflect the amended definition of an allowable motions as:

“A motion must relate to a council function, or, if not, it must affect the city or one of the council’s key partners”.

15. Provision will be made in the guidance to explain that the purpose of the definition is to enable the council to debate and reach decisions on public policy affecting the council, the city or its key partners and not to discuss issues that it would have little or no ability to influence, including for example, foreign policy matters.

16. Cabinet considers an annual report which lists the council’s key partners; however, as the nature of the council’s operations changes all the time, the monitoring officer or executive head of strategy, people and democracy will determine whether a motion will affect a “key partner”.

17. The CWP also resolved to review the implementation of the changes after one year. As part of this review, it will consider whether the council and committee procedure rules should be revised to include a civic statement motion. It will also consider, at a later meeting after the implementation of a committee management system, the implications of setting up an Early Day Motion system.

18. The CWP did not support any limitation on the number of motions that can be moved at each meeting.

**Criteria for deciding whether a complaint should be referred for formal investigation**

19. Paragraph 5 of appendix 13B, of the council's constitution, Arrangements for dealing with standards allegations, states that the monitoring officer will consider a complaint against the council's adopted criteria.

20. The monitoring officer has proposed that the council adopts the criteria for deciding whether a complaint against an alleged breach of the code of conduct by a member should be referred for formal investigation, as set out in appendix C. This is based on the criteria used by Norfolk County Council and various other councils.

21. The chair and vice-chair of standards committee support this proposal.

**ARTICLE 17 – AUDIT COMMITTEE**

**Membership**

1. Membership of the audit committee shall comprise 8 members appointed by council.
2. The chair of the committee shall be elected by council and the vice-chair shall be appointed by the committee.

**Terms of reference**

3. The audit committee shall -

(a) undertake the council's financial responsibilities in the manner set out:

- (i) in the council's audit committee procedure rules as produced from time to time by the chief finance officer; and
- (ii) in the Accounts and Audit Regulations 2011;

(b) consider and approve the annual statement of accounts;

(c) ensure that the financial management of the council is adequate and effective;

(d) ensure that the council has a sound system of internal control which facilitates the effective exercise of the council's functions and which includes arrangements for the management of risk;

(e) review annually the council's system of internal control and agree an Annual Governance Statement for inclusion in the statement of accounts;

(f) ensure that the council has an adequate and effective internal audit function;

(g) have power to make recommendations to cabinet or council on any matter within its remit.

## AMENDED AUDIT COMMITTEE PROCEDURE RULES

The audit committee will carry out its terms of reference in accordance with the following:

### ***Corporate governance***

1. Review the effectiveness of internal control across the council and the adequacy of actions taken to address any weaknesses or control failures.
2. Consider the adequacy and effectiveness of the council's arrangements for the identification and management of the organisation's business risks; including the risk management policy, strategy and risk register.
3. Receive and consider regular reports on the risk environment and associated management actions.
4. Review and ensure the adequacy of the council's anti-fraud and corruption policy and strategy and the effectiveness of their application.
5. Review and ensure that adequate arrangements are established and operating to deal with situations of suspected or actual fraud and corruption.
6. Review, consider and agree the AGS including the adequacy of the corporate governance framework and improvement action plan contained within it.
7. Receive periodic updates on improvement actions taken.

### ***Internal and external audit***

8. Approve the internal audit charter.
9. Approve and monitor delivery of the internal audit strategy.
10. Consider, endorse and monitor delivery of the internal audit annual work programme, including any significant in-year changes to the programme or resource requirements.
11. Ensure adequate resourcing of the internal audit function, approving any significant additional consulting services requested from internal audit not already included in the internal audit annual work programme.
12. Receive and consider the annual internal audit report and opinion on behalf of the council.
13. Oversee the annual review of the effectiveness of the system of internal audit, to include the performance of the internal audit function, compliance with standards and delivery of improvement actions.
14. Contribute to the external quality assessment of internal audit that takes place every five years.
15. Commission work from internal and external audit and consider the resulting reports.
16. Comment on the scope and depth of external audit work and ensure it gives value for money.
17. Ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.
18. Seek assurance that action has been taken to implement the recommendations arising from the findings of significant audit and inspection work.

### ***Statement of accounts***

19. Discuss the annual audit plan for the audit of the financial statements with external audit.
20. Consider the external auditor's annual letter, relevant reports and the report to those charged with governance.
21. Review and approve the annual statement of accounts, including subsequent amendments on behalf of the council.

### ***Referred powers***

22. Consider and make recommendations on all matters described above.  
Recommendations relating to all paragraphs except 9 – 10 and 12 – 21 shall be made to the cabinet and chief finance officer. Recommendations relating to paragraphs 9 – 10 and 12 – 21 shall be made to the chief finance officer.

### ***Accountability arrangements***

23. Report to those charged with governance on the committee's findings, conclusions and recommendations concerning the effectiveness of their governance, risk management and internal control frameworks, financial reporting arrangements and internal and external audit functions.
24. Report to full council on the committee's performance in relation to the terms of reference and effectiveness of the committee in meeting its purpose.



### **Code of Conduct – Criteria for deciding whether a complaint should be referred for formal investigation**

1. Complaints about alleged breaches of the Code of Conduct will be received and considered by the Monitoring Officer.

2. In the event that there is a conflict of interest or other circumstances where it would not be appropriate for the Monitoring Officer to consider the complaint, for example where the Monitoring Officer has previously advised the Member who is the subject of the complaint about the matter complained of, then the Independent Person will receive and consider the complaint

3. In relation to any complaint the Monitoring Officer (or the Independent Person) should be satisfied that:-

(i) it is a complaint in relation to the conduct of one or more named members of Norfolk County Council

(ii) the relevant member was in office at the time of the alleged conduct

(iii) that, if proved, the member, acting in his or her capacity as a councillor, would have failed to/or behave consistently with one or more of the 7 principles set out in the code.

4. The Monitoring Officer (or the Independent Person) may take the following into account in deciding whether to investigate the complaint:- (see paragraph 5 below)

- is the matter serious enough to warrant the time and expense of further investigation
- does the complaint appear to be politically motivated
- does the complaint appear to be malicious or vexatious

- is it about something that happened so long ago that there would be little benefit in taking action now
- is the outcome including the availability of any likely sanction sought by the complainant one that the authority is empowered to deliver
- if proven, would a finding of breach of the code assist the authority in its duty to promote and maintain high standards of conduct
- had the member acted on the advice of an officer or the Independent Person in relation to the conduct complained of
- did the conduct arise from lack of experience or training
- had the member apologised for the conduct or was he or she willing to apologise
- is the subject matter of the complaint being dealt with through any other complaints, legal or regulatory process.

5. The Monitoring Officer may consult the Independent Person on any or all of the above and will take the view of the Independent Person into account in reaching a decision whether to investigate. If a conflict of interest arises the Monitoring Officer or the Independent Person may consult an independent third party.

6. The Monitoring Officer (or the Independent Person) may determine for any one or more of the above reasons (or in consultation with the Independent Person for another reason) that an investigation is not required. The Monitoring Officer (or the Independent Person) may instead request that some other action, such as the Member making an apology, be taken. Should the member refuse to take such action the Monitoring Officer may still proceed to an investigation if he or she, in consultation with the Independent Person, thinks it is appropriate.

## Integrated impact assessment



**NORWICH**  
City Council

The IIA should assess **the impact of the recommendation** being made by the report

Detailed guidance to help with completing the assessment can be found [here](#). Delete this row after completion

### Report author to complete

<b>Committee:</b>	Council
<b>Committee date:</b>	18 March 2014
<b>Head of service:</b>	Executive Head of Strategy, People and Democracy
<b>Report subject:</b>	Constitution review
<b>Date assessed:</b>	February 2014
<b>Description:</b>	Amendments to the Council's constitution

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed terms of reference reflect the changes made to the council's financial regulations and ensure best practice.
Other departments and services e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
ICT services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Economic development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Financial inclusion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>S17 crime and disorder act 1998</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Human Rights Act 1998	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Health and well being	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

	Impact			
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advancing equality of opportunity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Natural and built environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Waste minimisation & resource use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Pollution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Recommendations from impact assessment**

**Positive**

**Negative**

**Neutral**

**Issues**