

CONSTITUTION AND ETHICS COMMITTEE: MINUTES

Date: Tuesday 23rd June 2015

Time: 2.00pm – 3.55pm

Place: Kreis Viersen Room, Shire Hall, Cambridge

Present: Councillors M Smith (Chairwoman), D Brown, P Bullen, R Hickford, M McGuire, L Nethsingha, P Reeve, J Scutt and A Taylor

Apologies: Councillor K Reynolds

64. ELECTION OF VICE-CHAIRMAN/WOMAN

It was resolved by a majority that Councillor McGuire be elected Vice-Chairman of the Committee for the municipal year 2015-16.

Councillors Bullen and Reeve asked that it be recorded that they had abstained because they could not choose between Councillor McGuire and Councillor Scutt, who were both credible candidates.

65. DECLARATIONS OF INTEREST

None

66. MINUTES – 28th APRIL 2015 AND ACTION LOG

The minutes of the meeting held on 28th April 2015 were confirmed as a correct record and signed by the Chairwoman.

In relation to the action log

- the Monitoring Officer undertook to seek comparator figures with previous years and from neighbouring local authorities on the number of whistleblowing reports
Action
- members asked to see the draft flowchart outlining procedures to be followed to request the inclusion of items on committee agenda, submission of motions etc
Action

67. RIGHT TO CHALLENGE PARKING POLICIES – PROPOSED ADDITIONAL PETITIONS PROCEDURE

The Committee received a report setting out new requirements under Network Management Duty Guidance to have in place a petitions procedure to enable residents to challenge on-street parking policies. Members noted that the statutory guidance suggested, but did not specify, 20 as an appropriate minimum number of signatures for such petitions, and that the draft procedure for managing petitions requesting a review of parking policies had been designed to mirror the existing petitions procedure in terms of requirements and procedure.

In the course of discussion, members

- commented that parking restrictions could be highly contentious, with consensus only achieved with great difficulty, and expressed concern that the proposed procedure could result in scarce resources being used to revisit traffic regulation orders that had only recently been granted
- queried the definition of local resident, which appeared potentially to give as much weight to commuters parking in an area as to residents of that area. Members were advised that the Government wished to ensure that all interested parties, including for example cyclists and local businesses, could seek a review
- noted that the draft procedure forbade a repeat petition on the same issues within six months, unless there had been a significant change, and suggested that if possible the procedure should also require a minimum time to have elapsed between introducing a parking restriction and allowing a petition to be brought seeking its review
- observed that petitions relating to traffic regulation orders were currently considered by officers in consultation with the Local Member, except in Cambridge City, and that the existing petitions procedure, unlike the proposed one, did not automatically commit the Council to undertake any action or review
- suggested that the matter should first have been considered by the Highways and Community Infrastructure Committee, and possibly also by the Cambridge City Joint Area Committee
- pointed out that the existing petitions procedure had no minimum number of signatures required to submit a petition; 50 was the minimum number for speaking to the petition at the relevant meeting, and a local member could speak on behalf of any number of residents
- suggested that having two types of petition, with different thresholds for speaking, could lead to difficulties when petitioners on other matters narrowly failed to meet the higher threshold; if a separate procedure was required, it should have the same threshold as the general petitions procedure
- queried the status of 'statutory guidance' – whether it was a legal requirement, or merely a suggestion – and whether a separate procedure to trigger action on parking issues was required. Members suggested that the matter be deferred in the absence of advice on the statutory requirements in relation to a petitions scheme for challenging parking policies.

It was proposed by Councillor Bullen, seconded by Councillor Hickford, and agreed unanimously that

- the report's recommendation to agree a new, separate Petitions Scheme to enable residents to challenge parking policies be rejected
- the matter be taken to the relevant Committee for consideration if it were to be established that there was a statutory requirement to have such a scheme.

68. LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015

The Committee received a report on changes to the Local Authorities (Standing Orders) (England) Regulations 2001, noting that the Regulations set out provisions the Council is required to have in its Constitution relating to disciplinary action against, or the dismissal of, the head of paid service, chief financial officer and monitoring officer. Under arrangements to date, no disciplinary action could be taken against these officers without a recommendation by a 'designated independent person'. The new arrangements instead required any recommendation for dismissal to go before a panel of at least two independent persons. The requirement remained that a decision to dismiss the head of paid service could only be taken by full Council.

In response to questions, members further noted that

- the independent persons who would be serving on the panel were the same independent persons appointed under the Localism Act to advise on standards issues, and were both independent persons for other councils too
- in the event of any question of dismissal of one of the three senior officers arising, the sequence would be that
 - an investigation would be conducted by the Monitoring Officer or a lawyer appointed by the Monitoring Officer (the Monitoring Officer would have no involvement in this if he/she were the subject of the investigation)
 - the matter would be taken to the Staffing and Appeals Committee for consideration
 - if the Committee were to recommend to Council that the officer be dismissed, the independent panel would then be established
 - the panel would hear the case and decide whether to endorse the recommendation to dismiss (the panel could not halt the process, only comment on the recommendation)
- because the panel could only make a recommendation, in the event of a panel of two being unable to reach a unanimous view, a split recommendation could be made to Council.

It was resolved unanimously to recommend to full Council

that Part 4.7 of the Constitution (Officer Employment Rules) be amended as set out in Appendix A to the report before Committee.

69. GRANT OF DISPENSATIONS UNDER THE MEMBERS' CODE OF CONDUCT

The Committee received a report inviting it to consider whether amendments should be made to the Members' Code of Conduct to clarify the process for the grant of dispensations in specified circumstances to allow a Member to discuss and vote on matters in which a Member had a disclosable pecuniary interest. Members noted that legal provisions enabling the granting of dispensations to members already existed in statute; the question was whether to specifically reflect this in the Council's Constitution.

In the course of discussion, members raised the question of what would happen if a matter in which a member had a disclosable pecuniary interest were to arise in the

course of a meeting. Would that member be allowed to speak without having given written notice and received written dispensation? It was pointed out that any sudden request to speak in these circumstances could put the Monitoring Officer in a difficult position, and that any such provision should be for exceptional use only, and at the Monitoring Officer's discretion. One suggestion was that the wording at 11.1 '... written notice to the Monitoring Officer (by letter or email)' might read '(by letter or email, but where circumstances require, exceptionally orally)'.

It was proposed by Councillor Hickford, seconded by Councillor McGuire, and agreed unanimously, that

the Monitoring Officer, in consultation with the Chairwoman, be authorised to amend the proposed amendment to the Code of Conduct to allow for the possibility that in exceptional circumstances, at the Monitoring Officer's discretion, a member might be permitted to speak on a matter in which he/she had a disclosable pecuniary interest without giving prior written notice

It was resolved to

- a) authorise the Monitoring Officer, in consultation with the Chairwoman, to amend the proposed amendment to the Code of Conduct to allow for the possibility that in exceptional circumstances, at the Monitoring Officer's discretion, a member might be permitted to speak on a matter in which he/she had a disclosable pecuniary interest without giving prior written notice
- b) recommend to Full Council that
 1. amendments be made to the Members' Code of Conduct to permit the grant of dispensations to Members as set out in Appendix 1 of the report before Committee as amended by the Monitoring Officer; and
 2. delegated power be granted to the Monitoring Officer to grant dispensations under the Members' Code of Conduct

70. FEEDBACK FROM COUNCILLOR REPRESENTATIVES ON OUTSIDE BODIES

The Committee received a report setting out a mechanism by which representatives on outside bodies could report back to the parent committee. Members noted that this had arisen from a specific occasion when a member had wished to raise with the Children and Young People Committee a matter that had arisen in a group on which she sat. The committee had suggested the inclusion of a standing item on each agenda, not intended for routine updates, but to give members an opportunity to raise any urgent issues arising from an outside body.

In the course of discussion, members queried the need for such an item, for various reasons including that

- members of committees were already able to request the addition of specific items to committee agendas
- the Chairman/woman of a committee had discretion to allow an item to be discussed as an urgent item of business, even if not on the published agenda
- putting an open report-back item on an agenda would not achieve the aim of fully informing the public about the topic to be discussed.

One member did suggest that there should be some mechanism by which members representing the Council on outside bodies could report back, so that the appointing

body was aware of what was happening at the outside body. However, others pointed out that there already was some reporting back of outside body business, and that some outside bodies had a cross-cutting remit which concerned the work of more than one Council committee. Those members present at the Children and Young People Committee meeting explained that they had not envisaged changing the Constitution, but had just sought a way of feeding back from an outside body.

The Committee concluded that existing procedures were sufficient, and that this was a matter for member development, to ensure that those chairing committees were aware of the powers they already had, and that members of committees knew how to get items onto agendas when necessary.

It was proposed by Councillor Nethsingha, seconded by Councillor Bullen and agreed unanimously that the item be closed and sent to the Member Development Panel for consideration.

71. AMENDMENTS TO THE COUNCIL'S CONSTITUTION

The Committee received a report setting out a number of amendments to the Council's Constitution relating to Part 3D, the Scheme of Delegation to Officers, and to Part 4.5, the Decision Review Procedure Rules.

Looking at the proposal to add two further delegations to the responsibilities of the Executive Director: Economy, Transport and Environment Services as set out in Appendix A, members

- expressed reluctance to add to delegations where there was no member involvement in their exercise, though noted that the delegations were limited to matters below £500,000, the threshold for a key decision
- commented that the delegation of 'flooding and water management' seemed very broad, and requested greater definition of what was involved, to avoid suggesting that the Council's responsibilities were greater than they in fact were
- sought further information about Travel for Cambridgeshire and the Energy Investment Unit before including them in the list of delegations
- drew attention to the importance of involving local members in delegated matters, particularly in relation to such issues as flooding and planning, where local knowledge could be of great importance
- suggested that the whole list of delegated responsibilities should be revisited with a much greater emphasis on the need for local member involvement.

In relation to proposed changes to the Decision Review Rules, members noted that this procedure had been employed for the first time only recently. Officers had as a result identified a number of issues in relation to the existing rules, particularly the question of whether it was theoretically possible to have a circular process of repeated reviewing of a decision. In the course of discussing the draft changes, members

- drew attention to a discrepancy between Rule 3.i), which exempted from review 'a decision which was made more than 3 working days ago', and Rule 4.a), which provided that a written request for review must be received 'before the

end of 3 full working days from the date on which the decision notice was published'

- commented on the lack of timescale for publication of the decision notice; members noted that Article 6 laid down that a decision should be published usually within two working days of being made, and that meeting this timescale formed a performance indicator for Democratic Services, which was usually met
- suggested that the provision 'A decision may only be subject of a request for a decision review by the General Purposes Committee once' be rearranged to move the word 'only' to the end of the sentence, for greater clarity.

It was proposed by Councillor Bullen, seconded by Councillor Scutt, and agreed unanimously that the Monitoring Officer should rewrite the report and send it out for comment before bringing it back to the next meeting of the Committee.

72. QUARTERLY REPORT ON INVESTIGATION OF COMPLAINTS

The Committee received a report setting out the number and nature of the complaints received about Members under the Code of Conduct from 3rd March 2015 to 11th June 2015.

It was resolved to note the report.

73. FORWARD AGENDA PLAN

The Committee reviewed its forward agenda plan, and suggested the addition of several further matters to the plan:

- Spokes' allowances
- the question whether the Highways and Community Infrastructure Committee should be divided into two committees, one covering highways and the other dealing with community infrastructure
- roles and powers of chairmen/women of the Policy and Service Committees, and where they should and should not be involved in matters
- the involvement of local members, for example by informing them of planning applications received, and by informing members when the Council has responded to a request for statutory representation to another body; this would be helpful to members, for example when talking to parish councils
- arrangements for the budget meeting of Full Council
- the clarification of what motions and issues could be brought to Full Council
- the clarification of the position when dealing with confidential matters; was it permissible for example to talk to other members of the same political group about a confidential matter of which a member had knowledge.

The Chairwoman undertook to look at the allocation of topics to forthcoming meetings in consultation with the Monitoring Officer.

74. DATE OF NEXT MEETING

Noted that the next meeting was due to take place at 2pm on 15th September 2015

