

CONSTITUTION AND ETHICS COMMITTEE: MINUTES

Date: Tuesday 15th September 2015

Time: 2.00pm – 3.55pm

Place: Kreis Viersen Room, Shire Hall, Cambridge

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

Apologies: Councillor D Brown and J Hipkin

75. DECLARATIONS OF INTEREST

None

76. MINUTES – 23rd JUNE 2015 AND ACTION LOG

The minutes of the meeting held on 23rd June 2015 were confirmed as a correct record and signed by the Chairwoman. The action log was noted.

77. ALLOCATION OF SEATS AND SUBSTITUTES TO POLITICAL GROUPS

The Committee received a report inviting it to consider arrangements for allocating seats and substitutes to political groups in accordance with political balance rules.

Members noted that there had been a number of occasions over the past year on which seats had had to be reallocated unexpectedly. This had given rise to the question whether there could be a standing delegation to the Monitoring Officer and Chief Executive, in consultation with Group Leaders, to make the necessary adjustments. Officers had researched this suggestion, but had established that the Local Government and Housing Act 1989 required that reviewing the allocation of seats to political groups be a decision of Council. The present practice whereby Council, on a case-by-case basis, delegated the making of minor adjustments following a foreseeable by-election could continue, but it could not be extended or changed to a standing delegation.

It was resolved unanimously to note the report.

78. CONTRACT PROCEDURE RULES

The Committee received a report inviting it to consider a variation of the Contract Procedure Rules to amend the value limit at which procurement opportunities must be published. Members noted that recent changes to the Public Contracts Regulations 2015 meant that the Council would need to amend its current Contract Procedure Rules to reflect these changes, in particular the requirement to advertise on a national portal called Contracts Finder and to publish contract award notices.

In order to support the local economy, the Council currently required that contracts above £10,000 be advertised on Source Cambridgeshire (but without requiring

publication of a contract award notice), and that at least one quotation normally be from a local provider for all requirements above £2,000. To reduce the number of limits and procedures and bring them into line with the revised regulations, it was proposed to raise the threshold at which an advert must be placed on the Tender Advertising Portal from £10,000 to £25,000, but to require that two quotations, rather than one, be from a local provider wherever possible. It was also proposed to harmonise other contract procedure rules thresholds such as exemptions from £30,000 to £25,000.

In the course of discussion, members

- expressed concern at the impact on local small and medium-sized enterprises (SMEs) of the proposal to raise the advertising threshold, even with the amended requirement to obtain two local quotations rather than one.
- asked whether there were not many contracts at £10,000 or whether there was a lack of compliance with procedures; members were advised that there was a lack of compliance and that only a low proportion of opportunities above £10,000 and below £25,000 were being advertised.
- suggested that continuing the current requirement to advertise on Source Cambridgeshire above £10,000 would not place any additional burden on staff beyond what they were already expected to do, as there would be no need for them to publish a contract award notice below £25,000; it would however help to support local small and medium-sized enterprises (SMEs).
- noted that 'local' in this context referred to the area covered by the Cambridgeshire Local Enterprise Partnership (LEP).
- urged that opportunities above £10,000 continue to be advertised on Source Cambridgeshire with the addition of advertising above £25,000 on Contracts Finder.
- noted that ways of interfacing between Source Cambridgeshire and Contracts Finder were being explored, but that any subsequent change in Contracts Finder could have an adverse effect on the link to Source Cambridgeshire.

In the light of this information, members asked whether it would be possible to advertise all opportunities from £10,000 upwards on Contracts Finder, but expressed concern that local providers might not find the Contracts Finder advert. The Committee was assured that it would be possible to advertise all opportunities on Contracts Finder, and to place a signpost to Contracts Finder on the Source Cambridgeshire website.

It was proposed by Councillor Hickford and seconded by Councillor Reeve and agreed unanimously that the Committee recommend to Full Council that:

1. Amendments be made to the Contract Procedure Rules, as set out in Appendix A in respect of exemption thresholds and as set out below for advertising thresholds in order to reflect the requirements of the Public Contracts Regulations 2015.
2. All contracts above £10,000 be advertised on the national Contracts Finder site with appropriate signposting from the local Source Cambridgeshire site and

contract award notices be published following the award of contracts above £25,000.

3. The Monitoring Officer, in consultation with the Chairwoman of the Constitution and Ethics Committee, be authorised to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.

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

The Committee received a report inviting it to approve revisions to the Members' Code of Conduct incorporating the provisions of the Localism Act 2011 that requests for dispensations should be in writing. When the granting of dispensations had been discussed at its previous meeting, the Committee had proposed that the Code of Conduct be amended to allow for the possibility that such a request could be made and granted orally in exceptional circumstances, but it had subsequently been established that such a request had to be made and granted in writing.

Members noted the report's proposal that, while normally five days' notice would be required, in exceptional circumstances a written request for dispensation might be submitted to the Monitoring Officer up to 24 hours before the relevant meeting. The request and dispensation would still have to be in writing.

In the course of discussion, members

- expressed disquiet at the concept of an officer giving permission to an elected member to speak and suggested that such permission might come more appropriately from the Chairman/woman of Council in consultation with the Monitoring Officer. Members were advised that legislation referred only to notice being given to the Proper Officer, and did not permit the Chairman/woman to give permission to speak.
- noted that it could occasionally be appropriate for dispensation to be granted to all, or a large number of, members, for example to enable the budget to be discussed, or the recommendations of an independent remuneration panel.
- noted that a member who had been granted a dispensation had to declare the nature and existence of the dispensation at a meeting before the start of the relevant item of business.
- described as a 'catch-all' the provision whereby the Monitoring Officer could grant a dispensation when he/she 'considers that it is otherwise appropriate to grant a dispensation'; members were advised that this had been directly derived from the legislation.
- suggested that it might be appropriate for the granting of any dispensation to be reported subsequently to the Constitution and Ethics Committee.
- noted that the Monitoring Officer, speaking from memory, had received only one request for a dispensation in the past three years.

It was resolved by a majority to

1. Note that Section 33 (1) of the Localism Act 2011 required that requests for dispensations must be in writing.
2. Recommend to Full Council that:-
 - (a) 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;
 - (b) the Monitoring Officer be authorised to grant dispensations under the Members' Code of Conduct; and
 - (c) the Monitoring Officer, in consultation with the Chairwoman of the Constitution and Ethics Committee, be authorised to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.

80. DECISION REVIEW PROCEDURE RULES

The Committee received a report setting out proposed changes to the Decision Review Procedure Rules; the Committee had considered the matter at its previous meeting and asked that the report be reviewed and resubmitted to its next meeting. Members were specifically invited to consider whether they wished to provide for greater flexibility in rescinding decisions.

Discussing the report, members pointed out that the Audit and Accounts Committee was undertaking a review of the process by which the Cambridge Library Enterprise Centre (CLEC) proposals had emerged and been developed; it was likely that the report would include reference to the decision review process, and could recommend different changes to the review process from those recommended in the report presently before Committee. Some members suggested that it would be better to defer the matter until Council had received the Audit and Accounts Committee report. Other members expressed concern that the decision review arrangements in the Constitution had been shown to be unsatisfactory, and it was important to rectify this before another request for decision review arose.

It was proposed by Councillor Bullen and seconded by Councillor Scutt that the question of changes to the Decision Review Procedure Rules be deferred until after Council had considered the Audit and Accounts Committee report on CLEC. On being put to the vote, this proposal was defeated.

The Committee then considered each of the questions posed in the report recommendations in turn.

- In relation to 1(a), it did not wish to vary the list of committees subject to the decision review process.
- In relation to 1(b), some members were of the view that a committee should not be able to rescind a decision which was already subject to a review request, because this would be to override the wishes of those requesting the review; others maintained that a committee should be able to rescind its own decision, and that a decision which had been rescinded by the relevant committee should be added to the list of decisions which might not be reviewed.

- In relation to 1(c), there was discussion about what constituted new information, including whether for example it was information that had not been in the public domain at the time the original decision had been made, or was information that had not been known to the Committee; it was observed that a decision proving unpopular did not constitute new information.

Looking at the question of bringing the Committee Procedure Rules into line with the Council Procedure Rules on rescission of a previous decision, the Committee considered what might be a reasonable number of members required to move rescission, given that one third of the members had to sign the notice of motion to rescind a decision of Council. Some suggested that a combined threshold of new information and a specified number of members required to sign the motion would be appropriate, others urged that the Committee await the findings of the Audit and Accounts Committee report, as it could well cover the question of rescinding decisions.

It was proposed by Councillor McGuire and seconded by Councillor Bailey that the Committee defer consideration of recommendation 1(c) and request the Monitoring Officer to provide further information on what constituted new information, with examples. On being put to the vote, the motion was agreed by a majority.

Action required

It was resolved by a majority:

1. that the Committee:
 - a) did not wish to recommend revision of Article 6 and Rule 2 of the Decision Review Rules (Decisions which may be subject to review) to vary the list of committees which were currently subject to the decision review process
 - b) wished to recommend revision of Rule 3 of the Decision Review Rules (Decisions which may not be reviewed) to cover the position where a decision was rescinded prior to the consideration of a decision review request.
2. To recommend to full Council that, subject to 1 b) above:
 - a) Part 4.5 of the Constitution (Decision Review Rules) be amended as set out in Appendix A of the report before Committee
 - b) Article 6 of the Constitution (The Decision Review Process and Statutory Scrutiny Function) be amended as set out in Appendix B.
3. That the Monitoring Officer, in consultation with the Chairwoman of the Constitution and Ethics Committee, be authorised to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.

81. SCHEME OF DELEGATION TO OFFICERS

The Committee received a report informing it of the current conditions and limitations on the exercise of delegated powers by officers of the Council contained within the Scheme of Delegation and Schemes of Authorisation. Members noted that when exercising delegated powers under the existing Scheme of Delegation,

officers were required to ensure that local Members be kept informed of matters affecting their divisions. From the discussion at the Committee's previous meeting, it had however become clear that existing rules were not being complied with, which had led to the present recommendation that the Committee endorse the proposal for steps to be taken to raise officers' awareness of this requirement, and of the requirement to publish decisions taken under delegated powers.

Discussing the report, members expressed support for the recommendations, commenting that the Monitoring Officer's guidance needed to be firm. Members noted that he proposed to raise the matter with the Corporate Leadership Team, send a briefing note to officers, make use of the Chief Executive's intranet blog, and arrange for the requirements to be included in new officers' induction sessions. The Democratic Services Manager had already emailed SMT the relevant sections of the Constitution to the Strategic Management Team and asked them to disseminate the requirements to their management teams.

Members asked that the awareness-raising include asking officers to ensure that local members were informed in advance of press releases affecting their divisions.

It was resolved unanimously:

1. To note the current conditions and limitations on the exercise of delegated powers by officers of the Council within the Scheme of Delegation and Schemes of Authorisation, as outlined in paragraph 4.
2. To endorse the proposal for the Monitoring Officer to take appropriate steps to raise awareness of the requirements to:-
 - a. consult/inform Local Members on the exercise of delegated powers as provided in the Schemes of Delegation and Authorisation; and
 - b. Publish delegated decisions in accordance with the requirements of The Openness of Local Government Bodies Regulations.

82. FORWARD AGENDA PLAN

The Committee reviewed its forward agenda plan. The Chairwoman explained that the item 'Code of Conduct: declaration of membership of the Freemasons' had been moved from November to January to reduce the pressure on January's agenda, but in view of concerns expressed at the delay in dealing with a request from Council, it would be restored to the committee agenda for November.

The Committee authorised the Chairwoman and Monitoring Officer to review the agenda plan and make any further moves necessary to achieve agendas of manageable length.

83. DATE OF NEXT MEETING

It was noted that the next meeting was due to take place at 2pm on 19th November 2015.

Chairwoman