

CONSTITUTION AND ETHICS COMMITTEE: MINUTES

Date: Tuesday 20th June 2017

Time: 2.00pm – 4.10pm

Place: Kreis Viersen Room, Shire Hall, Cambridge

Present: Councillors M McGuire (Chairman), C Boden (substituting for Cllr Hickford), A Bradnam, D Connor, L Dupré, K Reynolds, J Scutt and P Topping

Apologies: Councillors R Hickford

1. ELECTION OF VICE-CHAIRMAN/WOMAN

It was resolved to elect Councillor Kevin Reynolds as Vice-Chairman for the municipal year 2017-18.

2. DECLARATIONS OF INTEREST

None

3. MINUTES – 26th JANUARY 2017

The minutes of the meeting held on 26th January 2017 were confirmed as a correct record and signed by the Chairman.

4. A CHANGE TO THE COUNCIL'S CONTRACT PROCEDURE RULES FOR WHEN THE COUNCIL RECEIVES FEWER THAN THREE BIDS BACK FROM A COMPETITIVE PROCESS

The Committee received a report setting out a proposed change to the Contract Procedure Rules, to avoid the need to ask the relevant Committee for permission to read and evaluate the responses in cases where fewer than three bidders responded to a competitive tender process and the sum involved was above the Key Decision limit. The existing exemption process operated up to that limit and was readily auditable; above the Key Decision limit, it was harder for auditors to evidence that proper approval had been given by Committee to move forward with fewer than three bids.

Members noted that the proposal was solely to authorise three identified senior officers to give this approval to read and evaluate the responses; there was no question of removing the relevant Committee's role in seeking permission to procure goods, services or works if a Key Decision was involved, or of removing the Committee's role in seeking permission to award to the preferred bidder.

In discussion, it was suggested that any decision to proceed to evaluate bids should be communicated to the Chair and Lead Members of the relevant Committee, and to all members of General Purposes Committee (as the only Committee able to call in a decision). Without an amendment to this effect, opposition members would only become aware that fewer than three bids had been received at the stage when the Committee was asked to approve the award of the contract, too late to challenge the officer decision to read and evaluate the bids.

It was proposed by Councillor Dupré and seconded by Councillor Bradnam that the proposed amendment to paragraph 4.7 of Part 1 of the Contract Procedure Rules be amended to read (additional text to present paragraph 4.7 in bold, with the proposed further addition bold and underlined):

4.7 Exemptions over the Council's Key Decision Threshold

Exemption requests cannot be sought for exemptions equal to or above the Council's Key Decision threshold, **except where the minimum number of bids cannot be obtained following a competitive process (tender/call off from a framework etc.). In that case, written approval to read and evaluate the responses must be obtained from the Chief Officer for the area conducting the procurement and the Monitoring Officer and the Chief Finance Officer. Any such decision once made shall be communicated to the chair and lead members of the relevant Committee and to all members of General Purposes Committee**

On being put to the vote, the amendment was defeated.

It was resolved by a majority

- a) to support the proposal that whenever a competitive procurement receives fewer than three bids, written approval to read and evaluate the responses is obtained from the following three senior officers without the need for the relevant Committee to grant approval:
 - 1) The Chief Officer for the area conducting the procurement
 - 2) The Monitoring Officer
 - 3) The Chief Finance Officer
- b) to recommend to Council that paragraph 4.7 of Part 1 of the Contract Procedure Rules be amended to read (additional text in bold):

4.7 Exemptions over the Council's Key Decision Threshold

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5. REVISION OF THE TERMS OF REFERENCE FOR THE AUDIT AND ACCOUNTS COMMITTEE

The Committee received a report inviting it to consider proposed revised Terms of Reference for the Audit and Accounts Committee; these had been endorsed by the Audit and Accounts Committee at its meeting on 30th May 2017. Members noted that the Committee no longer had oversight of the Assurance Framework, and the opportunity had been taken, in drafting the amended committee terms of reference, to update and refresh them, putting the Committee's responsibilities under four key headings, and incorporating further revisions as a result of the Audit and Account

Committee's discussion of the draft. Internal Audit no longer produced the Assurance Framework; its content was now reflected in the Risk Register, because of the need to have a more integrated framework for finance, performance and risk.

Members examined the revised terms of reference, checking that various aspects of the previous document had been captured in the new version. In particular, concern was expressed at the omission of the previous reference to reports on the provision of internal audit services under S.151 of the Local Government Act 1972 and the Accounts and Audit Regulations 2003 (Regulation 6); if it had previously been considered necessary to refer explicitly to the legislation, why was this no longer needed.

Officers said that the view had been taken that it was better to have regard to readability when explaining the duties of the Committee, rather than citing legislation. The Monitoring Officer advised that there was no legal requirement to include such detail; it was more a matter of stylistic approach. Some authors of constitutional documents liked to include reference to every piece of enabling legislation, whereas his approach was not to include every legislative detail, though it could be helpful to cite legislation where there was a significant and clear statutory requirement.

The Chairman suggested that the matter be referred to the Audit and Accounts Committee for consideration, to check whether or not reference to legislation had been deliberately omitted and revisit the proposed amendment of point 4 of the current terms of reference; officers said that it would be helpful to have a view on whether legislation should be reflected throughout the document. As this was not a constitutional matter but a question of clarification, the Chairman asked that the result of the Audit and Accounts Committee's deliberations be circulated to all members of the Constitution and Ethics Committee by email.

In further discussion, attention was drawn to the removal of receipt of the relationship management report and the function of scrutinising the Council's response to issues raised (point 10 of the current terms of reference); concern was expressed at the removal of the scrutiny function. It was noted that overall the scrutiny function was still reflected in Part 2. Members were advised that this change of wording, removing scrutiny and instead referring to specific reports, was based on best practice guidance; the Committee still had a role providing scrutiny of the Council's performance, but internal audit referred to this activity as assurance rather than scrutiny. Point 10 had been broken down into proposed points 1.7 and 1.8 setting out the elements of the scrutiny of that aspect. It was the officer's understanding that a Relationship Management Report was no longer produced.

In answer to a question about the difference between overseeing (present point 17) and undertaking (proposed point 1.13) an annual review of the effectiveness of the system of Internal Audit, it was explained that the Audit and Accounts Committee was expected to play an active role in the review; that Committee was required to agree that an annual review take place and who was responsible for carrying it out.

Concern was expressed that proposed point 1.2 (To approve, but not direct, Internal Audit's annual plan of work...) suggested that the Committee could approve, but not amend, the plan of work proposed by Internal Audit; it appeared that an opportunity for members to influence the areas of activity on which the plan of work should concentrate was being lost. It was explained that Internal Audit needed to have independence to plan its work, but proposed point 1.12 (To suggest work for

Internal and External Audit) supplemented 1.2 and gave members the opportunity to suggest, but not dictate, work for Internal Audit. The Committee had a role in directing Internal Audit work, but was not responsible for directing it.

It was objected that 'suggest' and 'direct' did not have the same meaning, and there appeared to be no capacity for the Committee to require something to be done. Members asked that, if point 1.12 could not be changed, it should be numbered 1.3 and placed immediately after 1.2, so that it was clear that the Audit and Accounts Committee had an opportunity at least to suggest work for Internal and External Audit, if not to direct it. It was suggested that the new wording be accepted at present, but that there would be sufficient time for the Audit and Accounts Committee to reconsider this point, given that the Audit Plan for the following year was due to be presented to the Committee at its March meeting.

It was proposed by Councillor Boden and seconded by Councillor Connor that a second recommendation be added to that in the report:

to invite the Audit and Accounts Committee to consider the efficacy of the term 'but not direct' in point 1.2 and its relationship to 1.12, which said 'suggest', and to consider whether this wording was appropriate.

On being put to the vote, this amendment was carried unanimously.

The Monitoring Officer sought clarification of proposed point 2.1 of the terms of reference (To maintain an overview of the Council's Constitution in respect of contract procedure rules, financial regulations, codes of conduct etc.) because of its similarity to the terms of reference of the Constitution and Ethics Committee. He suggested it would be better to give responsibility to only one committee, to avoid the risk of different decisions being reached on the Code of Conduct. It was explained that maintaining an overview of the Constitution was included in the Audit and Accounts Committee terms of reference because it was the key basis on which all assurance work was built, though clarification was perhaps required that the Committee was not responsible for the Constitution; the Audit and Accounts Committee needed to assure itself that the Constitution was fit for purpose.

It was resolved unanimously:

- i) to recommend to Council that the Terms of Reference for the Audit and Accounts Committee be modified in accordance with the draft Terms of Reference set out at Annex B of the report before Committee
- ii) to invite the Audit and Accounts Committee to consider the efficacy of the term 'but not direct' in point 1.2 and its relationship to 1.12, which said 'suggest', and to consider whether this wording was appropriate.

6. COUNTY COUNCIL – PROPOSED CHANGES TO THE CONSTITUTION

The Committee received a report inviting it to consider proposed amendments to the Council's Constitution and, if appropriate, to recommend them to Full Council. The Committee's resolution on each proposed amendment is set out at the end of this minute.

Substitutes

The Chairman proposed an amendment to paragraph 2.2, to rectify a previous misunderstanding in the report on the number of substitute members. The Constitution currently permitted each group to nominate up to four substitute member of a committee; in the Chairman's view, it would be more appropriate for the number of substitutes for each group to equal the number of a group's members of the committee, rather than the rule suggested in 2.2 of "two-thirds, rounded up as appropriate". This would avoid the situation where, if for some reason no substantive members of a group with more than four seats on a committee were able to attend, fewer substitutes would be available than the group's number of seats. Councillor McGuire's proposal was seconded by Councillor Boden.

In discussion, members of the opposition groups pointed out that the proposed limitation on the number of substitutes would disadvantage the smaller groups, many of whose members were in full time work. If the sole permitted substitute for a group with only one seat on a committee was not able to act as substitute for the absentee member, that group would be wholly unrepresented on the committee. It was unlikely that all members of the largest group would be unable to attend at the same time, and finding two or three substitutes from a pool of four would be a lesser problem, though the largest group's wish to have an equal number of substitutes was understandable.

It was proposed by Councillor Dupré that the number of substitutes should be equal to the number of members on each committee, with the exception that there should be a minimum number of three substitutes for each political group. Members noted that this would address the concern identified in the report about the number of substitutes available for the Staffing and Appeals Committee. The Chairman accepted Councillor Dupré's proposal as a change to his suggestion that substitute numbers reflect number of substantive members on committee.

Policy and Service Committees

In discussion, it was suggested that it would be premature to recommend that the Commercial and Investment Committee and the Communities and Partnership Committee be classified as Policy and Service Committees, with the associated member allowances, until their remit became much clearer.

It was also suggested that the present arrangement whereby the Annual Meeting of Council received a short report on each Policy and Service Committee should be retained, particularly given the present reduction in the opportunities for opposition members to hold the ruling group to account. Although the report was not open to discussion at the Annual Meeting, it served as a concise, accessible summary for members, the media, and the public, and was of assistance to members when discussing and debating issues throughout the year.

Deputy Council Leader

No objections were raised to the proposal to recommend to Full Council that Article 7, paragraph 7.03 of the Council's Constitution be amended to reflect that the Vice-Chairman/woman of General Purposes Committee should be, ex-officio, Deputy Council Leader.

Lead Members

In discussion, it was pointed out that it was difficult to find members of the opposition groups who were readily available for daytime briefings; some of them were required to take unremunerated unpaid leave to attend other meetings and could not attend Lead Member briefings. It would be difficult to identify a briefing time that would be convenient to all involved; some members would need evening briefings, which would be inconvenient for officers, and for members who had evening commitments such as parish council meetings. It was suggested that opposition Lead Members be allowed to choose to be briefed together, but also that each group be allowed to make its own arrangements for briefings.

It was suggested that remuneration should not be an issue in relation to attendance at lead member briefings, because it had been accepted in drawing up the Members' Allowances Scheme that part of a Councillor's time was given free of charge as a community service. Given the reduction in staff numbers in recent years, it was better to reduce the demand on officer time by having only one lead member briefing. It was however pointed out that Chairs of Committees were remunerated for their duties, whereas there was no remuneration for the duties of Lead Members, making it more difficult for them to forego income in order to attend daytime meetings.

In answer to a member's question, it was confirmed that a Lead Member could invite another member of their group to an individual private and confidential briefing from a Director.

Council Functions

The proposed amendment to Constitution Part 3A Section 2(f) was received without comment.

Training

Members sought assurance that the proposal to remove the requirement to hold an annual training day for Chairmen/women, Vice-Chairmen/women and lead members would not downgrade the availability of training to opposition groups. It was explained that the day in August had proved inflexible and difficult to organise; each group was represented on the Member Development Panel, which decided on the provision and organisation of training.

Timing of Council Meetings

In discussion, it was suggested that the report gave no justification for the proposed change in timing of meetings of Full Council. Moving meetings to 10.30am would disadvantage members in full time employment, who would need to take a full day off work rather than half a day. This would also act as a disincentive to younger people standing for Council.

Commercial and Investment Committee Amendments to Terms of Reference

In discussion, one member urged that there be an ethical commercial framework, and that ethical commercial opportunities be maximised, and expressed concern at the implications of selling off property.

Local Transport Plan

In relation to the Local Transport Plan, members asked how the Council would feed its views in to the Combined Authority. The Chairman advised that this was a matter for the Board to decide. The Board was made up of the Leaders of the participating councils, and was due to receive a report on the Local Transport Plan at its June meeting. This could provide an opportunity to raise the question of how the councils contributed to the development of the Local Transport Plan; the County Council might consider doing so through the Highways and Community Infrastructure Committee.

Resolutions

Substitutes

It was resolved, one member abstaining:

to recommend to Full Council that instead of allocating up to four members of each political group as substitute members, the number of substitutes should reflect the proportionality of the committee, with a minimum of three substitutes for each political group.

Policy and Service Committees

It was resolved by a majority:

to recommend to Full Council that that the Commercial and Investment Committee and the Communities and Partnership Committee be classified as Policy and Service Committees

It was proposed by Councillor McGuire, seconded by Councillor Boden, and resolved by a majority, Councillors Bradnam, Dupré and Scutt voting against:

to recommend to Full Council that the Council Procedure Rules be amended to remove the requirement that the Annual Meeting receive a report on each Policy and Service Committee.

Deputy Council Leader

It was resolved unanimously:

to recommend to Full Council that Article 7, paragraph 7.03 of the Council's Constitution be amended to reflect that the Vice-Chairman/woman of General Purposes Committee shall be, ex officio, Deputy Council Leader

Lead Members

It was resolved by a majority:

to recommend to Full Council that Article 7, paragraph 7.05 of the Council's Constitution be amended to reflect that one briefing meeting shall be held for all opposition lead members to brief them on the agenda for future service

committee meetings and consider any other issues the officer may think appropriate.

Council Functions

It was resolved unanimously:

to recommend to Full Council that Part 3A – Responsibility for Functions, Section 2(f) of the Council's Constitution be amended to reflect the fact that Council also appoints the Chairman/woman and Vice-Chairman/woman of Commercial and Investment Committee and Communities and Partnership Committee, and the Chairman/woman of the Health and Wellbeing Board.

Training

It was proposed by Councillor McGuire and seconded by Councillor Boden and resolved unanimously:

to recommend to Full Council that Article 7, paragraph 7.06 of the Council's Constitution be deleted, removing the requirement to hold an annual training day for Chairmen/women, Vice-Chairmen/women and lead members.

Timing of Council Meetings

It was resolved by a majority, one member abstaining:

to recommend to Full Council that Council revert to the original start time of 10.30am for all full Council meetings.

Commercial and Investment Committee Amendments to Terms of Reference

It was resolved by a majority, two members abstaining:

to recommend to Full Council that the re-drafted terms of reference for the Commercial and Investment Committee be adopted, as set out in Appendix A of the report before Committee

Corporate Asset Management Plan and the Strategy Asset Development Strategy

It was resolved unanimously:

to recommend to Full Council that in relation to the Corporate Asset Management Plan and the Strategy Asset Development Strategy, Full Council should take into account the recommendation of the Commercial and Investment Committee rather than of General Purposes Committee

Local Transport Plan

It was resolved unanimously:

to recommend to Full Council that reference to approving the Local Transport Plan be removed from the Constitution.

7. ANNUAL REPORT ON WHISTLEBLOWING INCIDENTS

The Committee received a report summarising whistleblowing incidents for the period 2016/17.

Discussing the report, some members expressed concern that the Whistleblowing Policy seemed to have more to say about the Council's response to unfounded allegations than about the action to be taken should an allegation turn out to be legitimate. Others pointed out that there were positive actions indicated, and it could be assumed that any offence identified would be referred to the relevant authority. It was not possible to be prescriptive about the result of an investigation because the action taken would be depend on the circumstances of the case.

The Chairman asked members to advise the Monitoring Officer if they wished to have the Whistleblowing Policy as a matter for consideration at a future meeting of the Committee.

It was resolved to note the report.

8. A REVIEW OF THE COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT TO 12 JUNE 2017

The Committee received a report setting out the number and nature of the complaints received about Members under the Code of Conduct from 18 January 2017 to 12 June 2017.

It was resolved to note the contents of the report.

9. FORWARD AGENDA PLAN

The Committee considered its forward agenda plan, adding the responses from the Audit and Accounts Committee to the agenda for its next meeting.

It was resolved to note the agenda plan.

10. DATE OF NEXT MEETING

The Committee noted that its next meeting was scheduled to take place at 2pm on Tuesday 26th September 2017.

Chairman