

CONSTITUTION COMMITTEE

MINUTES of the meeting of the Constitution Committee held on Monday, 15 October 2018 at 3.00 pm.

Membership:

Cllr Mark Hawthorne MBE (Chair)	Cllr Rachel Smith
Cllr Colin Hay	Cllr Lynden Stowe
Cllr Paul Hodgkinson	Cllr Ray Theodoulou
Cllr Nigel Moor	Cllr Will Windsor-Clive

Apologies: Cllr John Payne

68. MINUTES

The minutes of the meeting held on 11 June 2018 were confirmed and signed as a correct record.

69. PUBLIC QUESTIONS

No public questions had been received.

70. MEMBERS' QUESTIONS

No questions from members had been received.

71. OPEN CONTRACTING ADVISORY GROUP

Cllr Ray Theodoulou, Chair of the Open Contracting Advisory Group, presented a report setting out the findings and recommendations of the group. He explained that a motion regarding open contracting was presented to the Council on 7 December 2016. This was referred to the Constitution Committee on 16 January 2017. The Constitution Committee agreed that an advisory group should be established after the May 2017 election to assess the implications of the Council adopting open contracting principles.

Minutes subject to their acceptance as a correct record at the next meeting

He thanked the other members of the group, Phil Awford, Iain Dobie, Rachel Smith and Lynden Stowe, for their work over the course of the review.

The group was fortunate in being able to speak to four leading figures on public sector contracting. These were:

- Andrew Bowen, Head of Transparency in Procurement at the Cabinet Office
- Gavin Hayman, Executive Director at the Open Contracting Partnership
- Al Collier, Head of Procurement at Norfolk County Council
- Liz Fitzsimons, Legal Partner at Eversheds Sutherland

Members of the advisory group had asked questions of them on a range of issues including their understanding of open contracting, how well it had been received in the private sector, balancing openness against commercial confidentiality and making decisions on redacting contracts. Officers from the Commercial, Legal and Information Management teams had supported the review by providing information on current practices at the Council.

With these factors in mind, the advisory group had made recommendations relating to:

- Compliance with the Local Government Transparency Code 2015
- Protecting public services
- Contract spend software
- Providing more opportunities for small and medium-sized enterprises to do business with the Council.
- Managing compliance costs and publishing contracts
- Raising awareness of procurement practices amongst members and officers.
- Contracts with schedules of prices

Cllr Theodoulou noted that for a number of the recommendations, the advisory group had requested that a report be made to the Audit and Governance Committee as it was responsible for ensuring that appropriate arrangements were in place.

Answering questions, Cllr Theodoulou explained that a review of the process around drafting contracts would hopefully result in the need for less redaction when requests were made to see the content of contracts. He said that what should be regarded as sensitive or confidential in a contract should be discussed with the firms tendering for the supply of a particular service. Council officers would be expected to challenge firms on any information they did not wish to be disclosed as part of the contract negotiation process.

Cllr Rachel Smith, who had been a member of the advisory group, stated that she was pleased with the content of the report but she was disappointed that it had not been possible to speak to any of the Council's suppliers. She said that the Ministry of Defence already had a process in place to ensure that commercially sensitive and confidential information included in contracts was agreed at the outset. This avoided any issues arising later on what could and could not be disclosed. She noted that there was nothing in the Constitution that prevented the Council from following open contracting principles.

Cllr Theodoulou advised that a number of Council suppliers had been approached to give evidence to the advisory group but they were reluctant to get involved. He stated that the group had spoken to four leading people on procurement and he believed that members had received the information they needed. He said that it was not appropriate to disclose the names of the firms who had been approached to give evidence.

Cllr Lynden Stowe, who had also been a member of the advisory group, said that he had enjoyed being involved in the review and he fully supported the recommendations.

RESOLVED that the Recommendations 1 to 7 in section 4 of the report be accepted.

72. FRIENDLY AMENDMENTS

Cllr Paul Hodgkinson raised an issue concerning a possible inconsistency in how 'friendly' amendments were approved at full Council meetings. In particular, he referred to how the Chairman had refused a friendly amendment that the original proposer and seconder had agreed to include as part of their motion but later in the meeting had accepted an amendment as friendly that had the support of the Council. Cllr Hodgkinson proposed that there be a change to the constitution to set out how friendly amendments should be dealt with at future Council meetings.

Cllr Mark Hawthorne, the committee chair, believed that this issue depended on how 'friendly' was defined. For example, was it that only the proposer and seconder needed agree to the amendment or did full Council need to indicate support for the amendment? He asked that Democratic Services work with the Political Research Assistants and undertake research on the practice followed by other councils.

73. REFERRALS TO SCRUTINY COMMITTEE

Cllr Colin Hay suggested that there should be a mechanism for a motion to be referred to scrutiny without the need for a debate at Council. He said that with limited time available for motions at Council meetings there were occasions when there was not enough time to consider all the motions on the agenda. He believed that with the agreement of the Chairman and political group leaders particular motions could be identified for referral to scrutiny at the Council briefing which was held the week before Council meetings. If there was sufficient time at the Council meeting there would still be an opportunity for debate but there was a fallback position that allowed motions to be referred to scrutiny without debate.

Cllr Mark Hawthorne, the committee chair, recognised the concerns raised by Cllr Hay but at the same time he was anxious that the scrutiny work programme was not dominated by items identified at full Council. Another member noted the importance of allowing each scrutiny committees to manage its own work programme.

The committee agreed that the matter should be examined in more detail through the scrutiny review being led by the Overview and Scrutiny Management Committee.

74. MONITORING OFFICER CHANGES TO THE CONSTITUTION

RESOLVED TO RECOMMEND TO THE COUNCIL that the changes to the Constitution made by the Monitoring Officer relating to the Employee Code of Conduct and changes to the Cabinet be ratified.

The meeting ended at 3.40pm

CHAIR