

# CONSTITUTION COMMITTEE

**MINUTES of the meeting of the Constitution Committee held on Wednesday 17th October, 2012 commencing at 9.00 am.**

## **PRESENT MEMBERSHIP:**

Cllr Ron Allen	Cllr Antonia Noble
Cllr Phil Awford	Cllr Ray Theodoulou
Cllr Mark Hawthorne	Cllr Will Windsor-Clive
Cllr Jeremy Hilton	

**Substitutes:** Cllr Ron Allen

**Apologies:** Cllr Tony Hicks, Cllr Ceri David Jones and Cllr Lesley Williams

**Officers:** Joanne Bolton, Simon Harper, Peter Jones, Christine Wray, Dilys Wynn

## **14. MINUTES**

### **RESOLVED**

THAT the minutes of the meeting held on 11 June 2012 be approved as a correct record and signed by the Chairman.

## **15. PUBLIC QUESTIONS**

No public questions were received.

## **16. MEMBERS' QUESTIONS**

No members' questions were received.

## **17. CHANGES TO THE CONSTITUTION ARISING FROM THE REPORT BY MR GRAHAM GARBUTT**

- 17.1 Christine Wray, Assistant Director of Law and Administration, presented the report which set out the proposed changes to the Constitution flowing from the recommendations in the report of Graham Garbutt.
- 17.2 Members were reminded that at the committee meeting held in March 2012, following publication of the Graham Garbutt report, they had endorsed a proposal from the Leader of the Council that the committee carry out a review of the officer

delegations set out in the Constitution and that the Chief Executive consider the role of the Monitoring Officer.

### 17.3 Officer Scheme of Delegation

- 17.3.1 The Assistant Director of Law and Administration informed the committee that the Council first adopted a constitution back in 2001 following implementation of the Local Government Act 2000. To assist with implementation, central government (the Department for Environment Transport and Regions) published guidance to assist authorities in introducing new executive arrangements, which included a modular constitution. Whilst the authority adopted many of the model clauses, there was no model for the officer scheme of delegation. The authority had been using the same scheme since 2001, with ad hoc amendments.
- 17.3.2 The committee was informed that a selection of other authorities' schemes had been viewed in order to compare them with that of Gloucestershire County Council. It appeared however that they varied widely in terms of length, degree of detail and reference to specific powers.
- 17.3.3 The committee noted that the issues arising from the Graham Garbutt report included the need for greater clarity in requirements for consultation, the levels of delegation, clarity and consistency in processes of authorisation and recording of decisions, and for their reporting and subsequent scrutiny.
- 17.3.4 The Assistant Director of Law and Administration explained that in light of the issues raised in the Graham's Garbutt's report, the proposed changes to the officer scheme of delegation meant that consultation would be mandatory where decisions had financial implications in excess of £250,000, or could be regarded as politically sensitive or contentious. In addition, that all decisions taken by officers with financial implications over £250,000 should be recorded on a pro forma and the record maintained centrally by the Democratic Services Unit.
- 17.3.5 Members were informed that the proposed changes to the officer scheme of delegation had had been piloted in four service areas (Social Care, Special Educational Needs, Property & Integrated Transport Unit). However very few decisions were made in the time period and it was possible that the volume of such decisions in general could be low.
- 17.3.6 There was concern amongst some members that the requirement to consult could be missed during times when officers made a series of individual but linked decisions, which collectively would have financial implications of over £250,000.
- 17.3.7 The Assistant Director of Law and Administration clarified that she interpreted the requirement to specifically relate to policy decisions, which would influence a number of other decisions, and have financial implications of over £250,000. Consultation would not be required on an individual decision unless the financial implications were over £250,000. She explained that it was the responsibility of the officer involved to make a judgement on whether consultation was required.

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- 17.3.8 The Chairman raised his concerns over officers making a judgement on whether decisions could be deemed to be politically sensitive. He felt difficulties would arise as the officer's judgement would be open to interpretation. In addition, questions were raised on whether officers would be in position to know, at the early decision making stage, whether the decision was likely to become politically sensitive.
- 17.3.9 One member was particularly concerned that the requirement to consult, if an officer decision could be regarded as being sensitive or contentious by members, could force officers to enter into the political arena. This would place them in a difficult position, and one they might not be comfortable with. Another member felt that the proposed requirement would help to protect the officer in undertaking their decision making. He gave the example of the decisions made around the Cotswold Water Park and suggested that if the proposed changes had been in place then, it could have enabled the officer decision to be challenged earlier on in the process.
- 17.3.10 One member, also referring to the Cotswold Water Park case, believed that lessons could be learned, and provisions should be set out in the constitution to ensure that when officers were challenged on their decisions by other officers, and concerns were raised, the officer should be obliged to inform their lead officer/cabinet member for a review their decision, and their delegated powers be suspended until a conclusion was drawn.
- 17.3.11 The Assistant Director of Law and Administration explained that whilst the scheme did require decision makers to give consideration to the need to consult, there was currently no formal provision for the decision to be escalated upwards to a Director/Cabinet Member where alternative officer advice challenged a proposed decision.
- 17.3.12 The Assistant Director of Law and Administration explained that the requirement for decision makers to give consideration to the need for consultation had been included in the constitution since its introduction. She anticipated that by making the requirement to consult mandatory, if decisions had financial implications over £250,000, or might be regarded as sensitive or contentious by members, this would send a clear prompt to officers.
- 17.3.13 In summary, the Chairman explained that he did not believe the proposed changes to the officer scheme of delegation would address the issues raised in Graham Garbutt's report. Before making a decision on whether to recommend to Council that the proposed changes to the officer scheme of delegation be made, the committee

**RESOLVED that**

- (a) In respect of the proposed changes to the officer scheme of delegation that require the decision maker to consult if the decision has financial implications of over £250,000, Audit Committee be asked to provide clarification on the rationale behind the figure of £250,000.**

**(b) Audit Committee be asked to provide clarification on the definition of 'sensitive or contentious to members'.**

**(c) Audit Committee be asked to review whether it should be made mandatory that an officer decision be escalated upwards to a Director/Cabinet Member where alternative officer advice challenged a proposed decision.**

**(d) As a result of the proposed changes the Audit Committee be asked to arrange for the Officer Scheme of Delegation to be subject to a 'stress test' on potential worst case scenarios to determine whether it was fit for purpose.**

**(e) Graham Garbutt be asked to provide an opinion on whether the proposed changes to the Officer Scheme of Delegation were sufficient to address the actions outlined in his report**

#### 17.4 Employee Code of Conduct

17.4.1 The Assistant Director of Law and Administration reported that the recommendations set out in Graham Garbutt's review of the Cotswold Water Park included the need for revised codes of conduct for both members and employees.

17.4.2 Members were informed that the Standards regime for members was a statutory one and the Localism Act 2011 required wholesale changes. As a result, the Director of Law and Administration was taking the opportunity to update the Council policy in line with legislative changes and a report would be taken to the next Constitution Committee meeting on 7 November 2012.

17.4.3 A series of proposed changes to the Code of Conduct for Employees had been made by the Director of People Services, and were outlined in the report.

17.4.4 The committee noted that paragraph 82 of the constitution had been redrafted. The section on membership of societies now reflected the Members' Code of Conduct. The proposed changes meant that employees who were members of any organisation which was not open to the public, where there was a commitment of allegiance, and/or which had secrecy about rules, membership or conduct, would now need to declare their membership.

17.4.5 The Chairman stated that whilst he was not opposed to the redrafting of paragraph 82 he felt that additional legal advice should be provided on the legalities and potential risks of forcing employees to declare their membership to those types of organisations.

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17.4.6 In response to a question, the Assistant Director of Law and Administration confirmed that she personally had not looked at what other authorities were requiring their employees to declare. She explained however that this was not a new provision, and was actually less specific than the current paragraph in the constitution.

17.4.7 Members recognised that the spirit of transparency needed to be encouraged to prevent potential conflicts of interest, and that it was essential that the principles relating to declaration of interests were made clear to employees.

17.4.8 The committee agreed that the section on the membership of clubs, societies and other organisations in the Employee Code of Conduct, required further redrafting to include a paragraph outlining the purpose of recording the information, and to set out examples of potential conflicts of interests.

**RESOLVED that**

**The Director of People's Services be asked to redraft the section on the membership of clubs, societies and other organisations in the employee code of conduct to:**

- (a) include a paragraph outlining the purpose of recording the information.**
- (b) provide examples of potential conflicts of interest.**

17.5 The role of the Chief Financial Officer

17.5.1 The Assistant Director of Law and Administration drew members' attention to the proposed revised wording of Financial Regulation E, which was in accordance with the recommendations made in Graham Garbutt's report.

**RESOLVED to recommend to Council that the revised wording of Financial Regulation E be adopted.**

**18. THE ROLE OF THE MONITORING OFFICER**

18.1 Peter Jones, Deputy Chief Executive, introduced the report which set out information about the role of the monitoring officer in light of the recommendations in Graham Garbutt's report, that the council should review the role of the Monitoring Officer and Chief Legal Adviser.

18.2 He explained that the report had been considered by the Audit Committee at its meeting on 27 September 2012, and the comments made by members of the committee were included in the report.

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- 18.3 Following consideration of the report, members indicated that they were in support of a mandate for changing the current designation of the post of Director of Law and Administration as the Council's Monitoring Officer.

**RESOLVED to recommend to Council that a separate officer post for the Monitoring Officer role is so designated as soon as practicable.**

## **19. RATIFICATION OF CHANGES TO THE CONSTITUTION**

- 19.1 Christine Wray, Assistant Director of Law and Administration, presented the report which sought agreement to ratify and recommend to Council, for approval the proposed amendments to the constitution that had been made by the Monitoring Officer under delegated powers.
- 19.2 The committee was informed that the proposed changes related to the publication of the Constitution and the role of the independent persons on the Standards Committee.

**RESOLVED to recommend that**

- (a) the changes set out in Annex 1 of the report be forwarded to Council for ratification.**
- (b) the changes set out in Annex 2 of the report be forwarded to Council for ratification.**

## **20. NEXT MEETING**

- 20.1 The committee noted that the next meeting would be held on 7 November 2012 at 10am.

**CHAIRPERSON**

Meeting concluded at 10:30