

CONSTITUTION COMMITTEE

17TH OCTOBER 2012

REPORT OF THE ASSISTANT DIRECTOR OF LAW AND ADMINISTRATION

CHANGES TO THE CONSTITUTION FLOWING FROM THE RECOMMENDATIONS IN THE REPORT OF MR GRAHAM GARBUTT

1. Introduction

Members will recall from their meeting held in March of this year that following the publication of the Garbutt report, they endorsed a proposal from the Leader of the Council that the committee should 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. The council's audit committee has in the intervening period overseen the implementation of an action plan covering these and other recommendations from Mr Garbutt's report. In addition to the two mentioned above there are a further two issues which have been reviewed and which require some changes to the councils' constitution, namely, the employee Code of Conduct and the role of the Chief Financial Officer. The role of the Monitoring Officer is covered in the separate report from the Chief Executive, while the other issues are dealt with separately below, with recommendations summarised at the end of the report.

A. Officer Scheme of Delegation.

2. The specific action derived from the relevant Garbutt recommendation is –

“To undertake a review of the adequacy and compliance of the Council's Scheme of Delegation”.

2.1 Members will be aware that the Council first adopted a Constitution in 2001 following the implementation of the Local Government Act 2000. To assist with implementation central government (the Department of the Environment, Transport and the Regions) published a two volume guidance pack for local authorities entitled 'Local Government Act 2000 New Council Constitutions' which included a modular constitution to assist local authorities in introducing the new executive arrangements. Whilst this county council adopted many of the model clauses, there was no model for the Officer Scheme of Delegation.

2.2 Section 37 (1) of the Local Government Act 2000 requires local authorities operating executive arrangements or alternative arrangements to prepare and keep up to date a document known as the “Constitution”. This document must include

- such information as the Secretary of State may direct

- a copy of the local authority's standing orders
- a copy of the local authority's code of conduct for members; and
- such other information as the local authority considers appropriate

Paragraph 10.3 of the Guidance provides:

Local authorities should ensure that the constitution describes clearly and in a readily understandable form the way in which they conduct their business so that anyone who has dealings with the local authority on any matter can easily determine who is responsible for decisions in respect of those matters and so that they can easily determine how best to make representations to the relevant person. The constitution should therefore, as far as possible, be written in plain language.

- 2.3 Paragraph 10.7 of the Guidance provides that inter alia the Constitution should include information about the roles of officers of the local authority including details of delegations of functions to officers.
- 2.4 A general power of delegation to officers was originally introduced in the Local Government Act 1972; in the guidance issued by the DETR in 2000 it states 'The Secretary of State believes that the extent of delegation to officers should in general increase as result of the new arrangements' (Guidance Paragraph 4.21)
- 2.5 The format of the Scheme in the current Constitution is for the most part as it was in 2001, with amendments introduced on an ad hoc basis to take account of, for example, changes to the organisational structure of the Council.
- 2.6 In summary the current Scheme provides for delegation of functions to the Chief Executive, to the Commissioning Directors, to the Chief Fire Officer, to the Head of Trading Standards and to the Director of Law and Administration. There are also three very general delegations to Directors and Heads of Service covering day to day management of their service area in terms of contracts for the supply of goods and services; decisions under the Regulation of Investigatory Powers Act 2000 and management of staff and resources.
3. A selection of other local authority Schemes has been viewed, in order to compare with that of GCC. It would appear that they vary widely in terms of length, degree of detail and reference to specific powers. Leeds City Council for example splits the officer scheme between executive and non-executive functions. Councils operating a commissioning framework have further defined their officer scheme.

4. Adequacy of the Scheme

4.1 The purpose of the Scheme of Delegation as a whole, i.e. the Member and Officer Schemes is to allow the public to know broadly who is responsible for which decisions within the executive and how they can be contacted. (paragraph 7.9 of the Guidance)

4.2 The following extracts from the Garbutt Report are those relevant to the Scheme of Delegation;

“ 116. The scheme is set out in section 5 of the council’s constitution (see appendix 35).

Issues arising from this review include the need for greater clarity in requirements for consultation, the levels of delegation (and the accompanying schedule), clarity and consistency in processes of authorisation and recording of decisions, and for their reporting and subsequent scrutiny.

117. *Consultation: para 5.4 of the Constitution states:*

“Before exercising delegated powers the Leader of the Council, Cabinet Members and Officers must consider whether it would be advantageous and/or prudent to consult with the Leader of the Council and/or Officer, and whenever they consult with another will carefully consider any response that they receive. In any event, consultation will always be required with all persons referred to in: “Consultation under paragraph 5.4 in the table below...”.

This could and should have formed the correct procedure for the delegated decision on the Keynes Country Park underlease. But the column referred to in paragraph 5.4 is blank. This does not negate the requirements of the earlier part of the paragraph, but inclusion in the schedule might have been both helpful and prudent. Generally, a review of the schedule, including completion of the blanks parts, is necessary.

118. *Levels of Delegation: it follows from the above that a clear definition of thresholds for mandatory consultation would also be helpful. Volume of work may preclude consultation on smaller and less contentious matters. But it should be possible to apply reasonable definition of scale and sensitivity. In particular, where legal or financial advice challenges a proposed decision, this should be referred to a higher level in all cases, and probably to Directors or Cabinet Members.*

119. *Authorising and recording: the council has no single system for this but para.5.8 of the scheme sets out requirements for “key decisions” which are clear and do require consultation. For other decisions it does not specify a common system or format and does not require a record of any consultations undertaken nor that records should be made available for public inspection. The system for non-key decisions would benefit from closer definition.”*

4.3 It should be noted that the Scheme contained in the Constitution is for delegation to officers (generally) at the highest level. There are no thresholds for delegation. However, as Mr Garbutt recognised, paragraph 5.5 of the Constitution does require decision makers to consider the need for consultation, whilst paragraph 5.4 makes it mandatory for persons named in the right hand column to be consulted.

4.4 Having given consideration to the comments made by Mr Garbutt, some rationalisation of the Scheme is now put forward in the draft attached as Appendix A. The principles which have been adopted are that consultation should generally be upward in the hierarchy i.e. to Members or to a more senior officer, that consultation is mandatory where a decision has financial implications in excess of £250,000, that consultation is not required for day to day management; that the inclusion of a consultee in the right hand column means consultation is **mandatory**.

4.5 The amendments which are now proposed flow from the review prompted by the Garbutt report, but Members may wish to consider whether a more thorough review of the Scheme would be worthwhile including for example taking the opportunity to compare the range of approaches adopted by other councils.

5. Scheme of Authorisation

5.1 Paragraph 5.7 of the Scheme permits an officer named in the Scheme to authorise another officer to exercise delegated powers on their behalf, provided certain conditions have been met. The register of authorisations is maintained by the Monitoring Officer.

5.2 Schemes of Authorisation for different service areas are under review as the implementation of the new operating model progresses. It is recognised that any such authorisation should reflect the requirement for the same recording of decisions as the delegations contained in the Constitution itself, and that consultation should be carefully addressed.

6. Recording of Decisions

6.1 Members are referred to paragraph 5.8 of the Scheme which sets out certain minimum requirements for the recording of decisions. In respect of all

decisions taken by a Cabinet Member, and all key decisions taken by officers, a permanent record is maintained centrally by the Democratic Services Unit.

6.2 From discussions I have had with the Democratic Services Unit and liaison with directors, it seems that key decisions are only rarely taken by officers.

6.3 A key decision is defined as one which, if implemented, would be likely to:

- result in the Council incurring expenditure, or the making of a saving, which is significant having regard to the County Council's budget for the service or function to which the decision relates: or
- be significant in terms of its effects on communities living or working in an area comprising two or more county electoral divisions in the county.

6.4 The Constitution goes on to say that as a general rule, a decision will be significant in financial terms if the value of any expenditure or saving exceeds £500,000 unless the Council's Chief Financial Officer and Monitoring Officer certify that it would not be a key decision and state their reasons for this conclusion in writing.

6.5 Following the recommendation from the Garbutt report it is now proposed that all decisions taken by officers with financial implications over £250,000 should be recorded and the record maintained centrally by the DSU. A template for such decisions is attached at Appendix B.

Note that the intention is not to lower the threshold for a key decision to £250,000; that will continue to be £500,000 as now.

Since these decisions are not key decisions, they do not require publication in advance, nor do they required publication afterwards, but they will be subject to The Freedom of Information Act 2000, unless a relevant exemption applies.

7. Future Compliance

It is proposed that Internal Audit will undertake a piece of work in Quarter 4 of this financial year to check compliance with the new process. However it is a management responsibility in the first instance to ensure that the requirements of the constitution are observed. It is envisaged that Internal Audit may instigate periodic checks as part of a future governance work plan.

8. Recommendation.

That the Committee considers the proposed amendments to the Council's Scheme of Officer Delegation as set out in the draft Scheme at Appendix A and recommends the same to full Council for approval and adoption, together with the Decision record at Appendix B.

B. The Employee Code of Conduct.

9. The recommendations set out in Mr Garbutt's Review of the Cotswold Water Park included the need for revised Codes of Conduct for both members and employees.

9.1 The standards regime for members is a statutory one and the Localism Act 2011 requires wholesale changes. As a result, the Director of Law and Administration is taking the opportunity to update the council policy in line with the legislative changes and a report will be taken to the next Constitution Committee meeting in early November.

9.2 The Council's Employee Code of Conduct has been fully reviewed, updated and incorporates the recommendations from the Cotswold Water Park review. A draft of the revised code is attached at Appendix C for consideration.

9.3 For ease of reference the changes are:

- a new paragraph setting out clearly to whom the Code applies.(para 1)
- emphasis on council values of honesty and integrity (para 9)
- new clarity on rules around receiving gifts (paras 34 to 39)
- incorporates obligations under the Bribery Act 2010 (paras 49, 50)
- a better reflection of Freedom of Information obligations.(paras 52 to 59)
- political neutrality is explicit but reflects the arrangements for political assistants. (paras 60 to 63)
- the procedure for an employee to follow if arrested is now explicit.(para 81)
- redrafted paragraph 82. Whole section on membership of societies now reflects the Members Code of Conduct.
- Incorporates Health and Safety (para 85)

9.4 It is important that the updated Code, once adopted, is promoted to ensure that employees have appropriate guidance on how the county council and the public expects them to behave. This both protects the council and employees from circumstances where employee conduct could create an impression of conflict of interest or corruption.

9.5 Recommendation

That the Committee considers the draft of the revised Employee code of conduct attached at Appendix C and recommends the same to full Council for approval and adoption.

C. The Role of the Chief Financial Officer.

10.1 The recommendations made in Mr Garbutt's report about the Chief Financial Officer specifically related to Financial Regulation E – External Arrangements. The relevant extract from the report is as follows:

The Role of Chief Finance Officer as per the Council's constitution, in Financial Regulation E (ref E1), requires that:

“The Chief Financial Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. He or she must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. He or she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.”

10.2 Mr Garbutt's response to the above was: This is very broadly drawn and goes well beyond financial matters into “corporate governance and legal matters”. There is a real risk of failure unless this is reassessed and defined more clearly, including specific departmental and delegated roles. Moreover, these expectations need to recognise the likely substantial increase in the volume of work involved in “partnerships and joint ventures” and “contracts with external bodies”.

The resulting implications could be substantial, including numbers, flexibility and skills in the staffing structure.

10.3 Review

A review of the latest guidance from CIPFA on the Role of the CFO and a number of other LAs has been undertaken. In terms of CIPFA guidance although there are some specific references to Partnerships, the constant theme throughout seems to emphasise establishing appropriate governance frameworks, effective risk management, internal control and informed decision making.

10.4 Recommendation

In conclusion it is proposed that the revised wording of Financial Regulation E is as outlined below; the Constitution Committee is asked to consider the wording and recommend the same to full Council for approval and adoption.

E1 “The Chief Financial Officer must ensure that accounting arrangements adopted relating to partnerships and joint ventures are satisfactory and that the overall corporate governance arrangements are satisfactory when contracts are arranged with external bodies. The Chief Financial Officer must ensure that the risks have been fully appraised before agreements are entered into with external bodies.”

The review also concluded that the role of the Monitoring Officer in this area should then include

E2 *“The Monitoring Officer must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies”.*

Finally as a result of the review it is recommended that the accountabilities of Directors are made clearer in relation to joint arrangements and partnerships.

E3 *“Directors are responsible for ensuring that appropriate risk assessments are undertaken and approvals are obtained before any negotiations are concluded in relation to work with external bodies and that all agreements and arrangements are properly documented, including details of the County Council’s financial and physical commitment to the arrangements which are to be in accordance with the Council’s procedures.”*

The wording of Regulation E4(formerly E3) is unchanged

External Funding

E4 *“The Chief Financial Officer is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Authority’s accounts.”*

Summary of Recommendations

- A. That the Committee considers the proposed amendments to the Council’s Scheme of Officer Delegation as set out in the draft Scheme at Appendix A and recommends the same to full Council for approval and adoption, together with the Decision record at Appendix B.
- B. That the Committee considers the draft of the revised Employee code of conduct attached at Appendix C and recommends the same to full Council for approval and adoption.
- C. That the Committee consider the revised wording of Financial Regulation E and recommends the same to full Council for approval and adoption.

Christine Wray

Assistant Director of Law and Administration

Tel: 01452 426911

email: christine.wray@gloucestershire.gov.uk

