

CONSTITUTION COMMITTEE

10th June 2013

REPORT OF THE MONITORING OFFICER

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

1. Introduction

Following the publication of the Garbutt Report in March 2012 the committee agreed to review the Scheme of Officer Delegation set out in the Constitution. This resulted in a paper being brought to the committee's meeting of 17th October 2012 that, amongst other things, proposed a series of amendments to the Scheme.

The committee considered the proposed change and expressed doubt as to whether they would address the issues raised in the Garbutt Report. Consequently, before making a decision on whether to recommend to Council that the proposed changes be made the committee requested that the Audit Committee – responsible for monitoring the implementation of the action plan addressing the report's recommendations – provide further clarification and information on several issues.

The Audit and Governance Committee (which replaces the previous Audit Committee) considered these issues at its meeting on 12th April 2013. This paper outlines the committee's response to each issue and proposes an amended version of the Scheme of Officer Delegation for the Constitution Committee to consider. Finally, it recommends that the Constitution Committee in turn recommends the changes to full Council for approval and adoption.

2. Response from the Audit and Governance Committee to requests made by the Constitution Committee

The committee considered its response to each of the points. It was explained that the recommendations had been discussed with Professor Garbutt prior to the committee meeting in line with the request from the Constitution Committee that *"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"*.

He provided the following note to summarise the main points arising from the discussions:

CWP Review: Comment from Graham Garbutt

The CWP inquiry revealed a number of failings in a broader context of an organisation under pressure with many diligent members and staff. Since that report in early 2012 the county council has made serious efforts to address the issues identified.

Delegation

The recent analysis of financial transactions seems to suggest that a threshold for consultation of around £200,000 might offer the best balance between minimising bureaucracy and ensuring transparency and accountability.

Further and more detailed analysis might suggest a need for variation to respond to different service and contractual arrangements.

Sensitivity

The requirement to consult on decisions that 'might be regarded as sensitive or contentious by members' seems wise, both in maintaining consistency and in avoiding the risk of staff being drawn into political contention. A clear requirement to record the results of consultation is plainly essential.

Escalation

Most issues will of course be resolved through normal processes of consultation, discussion and consensus. Where a course of action is proposed that conflicts with professional advice, and council or community interests may be at risk, it seems important to provide additional safeguards through escalation and arbitration. This should, I think, be part of the employer's expectation of staff, i.e. a duty rather than an option. Thus, if for example professional advice is given that a proposal is unlawful or financially imprudent, and an acceptable outcome cannot be agreed, the author of the advice should have a duty to seek resolution at a higher level and to retain documentation.

Stress Testing

Last year's review showed that the council has many complex processes, some of them unclear or contradictory. Much good work has been done to iron out the faults.

However, the existence of sound procedures does not guarantee their use, and the review pointed to significant breaches.

The main challenge now is to ensure that the council's procedural requirements are understood and implemented across the organisation. A strong emphasis on internal communications and training is now essential. There are many examples of good practice to draw on, including easy reference guides, online professional development, case studies, videos, etc. The programme will need corporate leadership and audit.

As last year's report emphasised, the concerns identified were of relatively small scale in comparison with risks in major service areas, and in a context of wider outsourcing. It is important that these risks are regularly reviewed and the associated processes refined with close involvement of relevant staff.

Governance

The council and its partners have given careful attention to future governance arrangements for CWP and significant changes have been made. Last year's review concluded that much will depend on leadership by the CWP Trust in delivering a suitably ambitious and coherent strategy for developments over the next four decades. It is too early to assess the likelihood of success. However it is important not to underestimate the scale of the challenge in integrating housing, mineral extraction, landscape design and conservation to realise the area's real potential. Individual planning decisions and accompanying development agreements must contribute towards a powerful creative vision for the area. I strongly advise that progress is subject to rigorous periodic review.

*Graham Garbutt
April 2013*

(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.

Paragraph 118 of the Garbutt Review made the following reference: *"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.”

The £250,000 threshold responds to this suggestion. The level was decided on after review of other local authorities’ limits and consideration of what would be appropriate for GCC against the background of the current financial situation. By setting the threshold for consultation and recording of decisions at a lower level than that for key decisions (currently £500,000) this introduces increased rigour and accountability to the expenditure of still significant sums of public money.

It was agreed that the committee noted the views of Professor Garbutt and reiterated its support for the £250,000 threshold for the reasons set out above.

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

The committee noted Professor Garbutt’s support for the provision as currently worded. The committee agreed to respond in the following terms: *“The concepts of sensitivity and contention are inevitably subjective and will vary from case to case. It is not possible to provide a definition that covers all eventualities and advise that the current wording is left unchanged.”*

(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.

The committee agreed to respond with the following advice: *“We have reviewed the current arrangements and are satisfied that there are effective routes available for officers to express concerns and have the ability to escalate concerns until they are satisfactorily resolved. We support reiteration for officers across the council via corporate training programmes.”*

(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.

The committee suggested an amendment to the original wording, as indicated below. The committee responded to the Constitution Committee as follows: *“We have reviewed the proposed amended Scheme of Delegation and are satisfied that the proposed amendments set out below would result in a scheme that is fit for purpose. However, we advise that there is a need for improved training and guidance for*

officers and that Internal Audit would undertake a review of compliance with the revised scheme of delegation.”

3. Revised proposals re. the Officer Scheme of Delegation

Appendix A shows the proposed revised Scheme of Officer Delegation. The changes that have been included are:

Section 5.8

The introductory paragraph has been reworded so that it requires a written record of all executive decisions to be maintained. This is to ensure that this specific requirement is consistent with the Rules On Access To Information About The County Council's Formal Business in Part 4 of the Constitution which already require such records to be maintained. This is driven by the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

It is also proposed that an additional recording requirement is introduced at 5.8.4. This would require the overall record to include *“A record of any consultation with Members and/or Officers”*. This is to address one of the major problems identified in the Garbutt Report and Professor Garbutt's statement above that *“A clear requirement to record the results of consultation is plainly essential”*.

Particular Delegations to Officers

The matrix accompanying the Scheme has been amended so that all the boxes under the “Consultation under paragraph 5.4” column are completed. They now either show “N/A” where consultation is not required or give details of the members and officers to be consulted. Where appropriate the financial threshold of £250,000 (as discussed above) is included. The proposed changes are highlighted in the appendix.

4. Recommendations

It is recommended that:

- (1) The committee considers the responses received from the Audit and Governance Committee and comments as it feels appropriate.

(2) 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.

SECTION 5 - SCHEME OF DELEGATION

5.1 The Council is required to make very many executive and non-executive decisions every day. It would be quite impracticable to make all or many of these decisions through full Council, the Cabinet and other Council bodies. The full Council, Cabinet and, under the Council's new executive arrangements from June 2009, the Leader, are able to delegate powers to the Cabinet, individual Cabinet Members and to Officers. Such powers are called "delegated powers" and the distribution of responsibility amongst the Leader of the Council, Cabinet Members and Officers for making decisions under delegated powers is set out in this Scheme. Such powers must be exercised in accordance with the conditions specified in paragraphs 5.2 to 5.8 below.

This scheme does not delegate to the Leader of the Council, Cabinet Members and Officers:

5.1.1 Except under delegation CE1 any matter reserved to full Council (see Tables 1 and 2 of this Part of the Constitution);

5.1.2 Any matter that by law may not be delegated to the Leader of the Council, a Cabinet Member or Officer.

5.2 Delegated powers must be exercised in accordance with:

5.2.1 The law;

5.2.2 All of the rules, procedures, codes and protocols contained in the Council's Constitution;

5.2.3 Council policy.

5.3 Before exercising delegated powers, the Leader of the Council, Cabinet Members and Officers must satisfy themselves that the decision is:

5.3.1 Authorised by law and, if in doubt, will consult with the Head of Legal Services;

5.3.2 Within budget (allowing for such variance as may be permitted under the Council's Financial Regulations) and if in doubt will consult with the Director: Strategic Finance.

5.4 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, another Cabinet Member or any other Member 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

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always be required with all persons referred to in the column “Consultation under paragraph 5.4” in the table below headed Particular Delegations to Officers and in accordance with paragraph 5.9.

5.5 Before exercising delegated powers, Officers will consider whether the use of a power might be regarded as sensitive or contentious by Members of the Council and if it appears that this will be the case, they will:

5.5.1 In respect of any executive function, consult with the Leader of the Council or Cabinet Member with responsibility for that area;

5.5.2 In respect of any non-executive function, consult with the Chair and other political groups’ Lead Members of the committee having responsibility for that matter and any Member of the Council whose electoral division will be affected by the exercise of delegated powers.

5.6 In the absence of a Cabinet Member or if a Cabinet Member is unable to or should not exercise a delegated power, the Leader of the Council may exercise that delegated power.

In the absence of the Leader of the Council or if the Leader of the Council is unable to or should not exercise a delegated power or other power under the Constitution, any Cabinet Member or the Cabinet may exercise those powers.

5.7 The Officers named in this scheme shall be deemed to include any other Officer of the Council that they authorise in writing to exercise delegated powers on their behalf provided:

5.7.1 An Officer named in this scheme must maintain a written record of any other Officer they have authorised to exercise delegated powers on their behalf and any limitation that they have imposed on the extent and duration or other exercise of those powers in addition to those specified in this scheme;

5.7.2 A copy of the information specified in paragraph 5.7.1 must be given to the Monitoring Officer before another Officer exercises a power on behalf of a named Officer and the Monitoring Officer shall place this information on a register that, in accordance with Section 100G of the Local Government Act 1972, will be maintained for inspection by the public.

5.8 The Leader of the Council, Cabinet Members and Officers must maintain a complete and permanent written record of all executive decisions, which must (as a minimum) include:

5.8.1 A dated record of that decision;

- 5.8.2 A record of the reasons for the decision;
- 5.8.3 Details of any alternative options considered and rejected at the time by the person when making the decision;
- 5.8.4 A record of any consultation with Members and/or Officers
- 5.8.5 A record of any conflict of interest declared by any Executive Member who is consulted in relation to the decision; and
- 5.8.6 In respect of any declared conflict of interest a note of any dispensation granted by the Audit and Governance Committee of the Council.

Note: Records of all executive decisions are required to be available for public inspection after the decision has been taken, in the same way as Cabinet papers.

- 5.9 There shall be delegated to the Leader of the Council and each Cabinet Member all executive functions, duties or powers of the Council within his or her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution. In exercising such functions, duties or powers, the Leader and Cabinet Members will consult with the Director or Head of any service area affected by their decision.
- 5.10 The functions, powers and duties identified in the table below headed “Particular Delegations to Officers” are delegated to Officers of the Council. Any Officer referred to in the “Appropriate Officer” column of the table below and to whom powers have been delegated, shall include any other person subsequently taking on that Officer’s responsibilities.
- 5.11 The Commissioning Director: Children and Families has responsibility for the statutory functions of the Director of Children's Services in accordance with Section 18 of the Children Act 2004.
- 5.12 The Officer designated as Director of Adult Social Services in accordance with Section 6(A1) of the Local Authority Social Services Act 1970 (as inserted by paragraph 2(2) of Schedule 2 to the Children Act 2004) shall be the Commissioning Director: Adults

Particular Delegations to Officers

Decision Category Number	Function, duty or power to be delegated	Appropriate Officer	Consultation under paragraph 5.4
CE1	To take any decision that could be taken by the Council, the Cabinet, any committee or any Officer (provided such action is taken in accordance with the law, Rules on Access to Information about the County Council's Business and the Cabinet Procedure Rules).	Chief Executive.	<p>Council function - Chairman and Leader of the Council.</p> <p>Cabinet function - Leader of the Council or Cabinet Member, as appropriate.</p> <p>Committee function - Chairperson and Lead Members</p>
CE2	To be the Proper Officer of the County Council, Section 270(3) of the Local Government Act 1972.	Chief Executive	<u>N/A</u>
CE3	To fill casual vacancies on committees, in accordance with Sections 15-17 of the Local Government & Housing Act 1989.	Chief Executive	Group leader of the political group entitled to appoint a Member to any committee by virtue of any vacancy that has arisen
CE4	To be the Returning Officer for County Council elections and undertake the functions of the Council in relation to elections.	Chief Executive	<u>N/A</u>

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CE5	<p>To permanently appoint, determine the terms of appointment and terminate the appointment of all staff (except those Officers within the responsibility of the Appointments Committee) under Section 112 of the Local Government Act 1972; and</p> <p>To appoint on a temporary or acting up basis for up to one year, determine the terms of appointment and terminate the appointment of those Officers within paragraph 2 of the duties of the Appointments Committee.</p> <p>To appoint on an interim basis and for a maximum period of up to six months to the positions of those officers within paragraph 2 of the duties of the Appointments Committee.</p>	Chief Executive	<p>Director of People Services</p> <p>Relevant Cabinet Member Group Leaders and relevant Scrutiny Chair.</p> <p>Relevant Cabinet Member Group Leaders and relevant Scrutiny Chair.</p>
DSF 1	To be responsible for and do anything required for the proper administration of the financial affairs of the Council.	Director: Strategic Finance	N/A
DSF 2	To make arrangements for the financing of the capital programme of the Council by borrowing, leasing or other arrangements.	Director: Strategic Finance	Leader of the Council or Cabinet Member, as appropriate.

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DSF 3	The functions, duties or powers of the Pensions Committee.	Director: Strategic Finance	Relevant Cabinet Member for all decisions with financial implications over £250,000
DSF 4	To formulate and issue general guidelines to Officers on financial matters including insurance and the writing-off of debts.	Director: Strategic Finance	N/A
DSF 5	To determine arrangements for treasury management in accordance with the Council's policy statement and approved treasury management practices and where relevant CIPFA's Standard of Professional Practice on Treasury Management.	Director: Strategic Finance	N/A
DSF 6	To make arrangements for the Internal Audit of the Council.	Director: Strategic Finance	N/A
DSF 7	To manage the County Fund and all subsidiary accounts and any reserve or other fund.	Director: Strategic Finance	N/A
DSF 8	To operate the Local Government Superannuation Regulations, including the exercise of discretion under those Regulations.	Director: Strategic Finance	Relevant Cabinet Member for all decisions with financial implications over £250,000
DSF 9	To implement national and local pay awards and increase payments under the Pension Increase Act.	Director: Strategic Finance	N/A

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DSF 10	To make finance leasing arrangements and authorise and make any other financial transaction including the borrowing and lending of money.	Director: Strategic Finance	Relevant Cabinet Member for all decisions with financial implications over £250,000
DSF 11	To authorise the writing-off of stock, other than through fair wear and tear.	Director: Strategic Finance	N/A
DSF 12	To effect adequate insurance cover for the Council.	Director: Strategic Finance	N/A
DSF 13	To exercise all other functions relating to the Financial Management of the Council.	Director: Strategic Finance	N/A
Dep CE 1	To acquire and dispose of any interest in land and manage the Council's estate.	Deputy Chief Executive	Director: Strategic Finance and Relevant Cabinet Member for all decisions with financial implications over £250,000
Dep CE 2	The functions of the Safety & Licensing Committee under paragraphs 2 and 3 of its terms of reference.	Deputy Chief Executive	N/A
Dep CE 3	To manage the provision of information technology services to the Council.	Deputy Chief Executive	N/A

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Dep CE 4	To exercise all other functions relating to the Support Services within Enabling & Transition save those within decision categories DSF 1 to 13. This power shall include the power to do anything necessary to secure the proper management of the Council's human resources except for functions falling within decision category CE5 but shall not include decision category HLDS 1 and 2.	Deputy Chief Executive	N/A
D:S & C 1	To publish standards for the whole Council, which will secure the efficient processing of information.	Director: Strategy and Challenge	N/A
D:S & C 2	To exercise all other functions relating to the following services: Performance & Need; Communications and Engagement; Information Management and Archives and the Executive and Cabinet Offices.	Director: Strategy and Challenge	N/A
MO1	To make payments or award other benefits under Section 92 of the Local Government Act 2000 (payments in respect of maladministration and related discretionary payments).	Monitoring Officer	Chief Executive, Chief Financial Officer and/or Director responsible for the service in respect of which a payment or other benefit is awarded.

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MO2	To amend the Constitution in any way whatsoever in order to secure compliance with the law and the convenient, efficient and effective discharge of any Council function. Such amendment to be reported to the Constitution Committee and reported to and ratified by the full Council (in respect of any non-executive function) or the Cabinet (in respect of any executive function).	Monitoring Officer	Chief Executive and any Director whose service is affected by any amendment to the Constitution.
MO 3	The functions of the Constitution Committee to advertise for, interview and appoint persons as members of an Independent Remuneration Panel.	Monitoring Officer	Lead Members of the Constitution Committee.
CFO 1	To manage the operations of the Gloucestershire Fire and Rescue Service.	Chief Fire Officer	Most relevant Cabinet Member(s) or Chief Executive for all decisions with financial implications over £250,000
CD: C & I 1	The functions of the Safety and Licensing Committee except those within paragraphs 2, 3, 4 and 7 of its terms of reference and decision categories HLDS1 and 2.	Commissioning Director: Communities & Infrastructure.	N/A

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CD: C & I 2	To enforce the Trading Standards, Food, Animal Health and other legislation referred to in the Trading Standards Legislation Master Lists A to D held by the Head of Legal Services and issue statutory notices in relation to that legislation	Commissioning Director: Communities and Infrastructure	N/A
Head of Trading Standards	Without prejudice to the powers of the Commissioning Director: Communities & Infrastructure to sign warrants and authorise Officers to enforce the legislation referred to in the Trading Standards Legislation Master Lists A to D held by the Head of Legal Services and issue statutory notices in relation to that legislation	Head of Trading Standards	N/A
CD: C & I 3	To exercise the functions of the Commons and Rights of Way Committee as Local Highway Authority Commons and Rights of Way Committee terms of reference 3 to 19.	Commissioning Director: Communities & Infrastructure	N/A
CD: C & I 4	To be the Proper Officer in relation to functions under the Highways Act 1980.	Commissioning Director: Communities & Infrastructure	N/A

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<p>CD: C & I 5</p>	<p>To exercise the functions falling within Planning Committee terms of reference 1 to 14 and 16 to 25, except decision categories HLDS1 and 2 of this Scheme of Delegation.</p>	<p>Commissioning Director: Communities & Infrastructure. (Note: Where the Director is an Officer whose responsibilities include any aspect of the management of any land or building to which an application made by the Council relates, or is responsible for a function (other than as planning authority) materially affected by any planning matter, this power is delegated to the appropriate senior officer).</p>	<p>Head of Legal Services.</p>
<p>CD: C & I 6</p>	<p>To exercise the functions of the Traffic Regulation Committee (terms of reference 1 to 12), except those falling within decision categories HLDS1 and 2 of this Scheme of Delegation.</p>	<p>Commissioning Director: Communities & Infrastructure.</p>	<p>Head of Legal Services.</p>

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CD: C & I 7	To exercise all other functions relating to the areas of responsibility of the following services: Development, Planning, Transport & Community Infrastructure, Road Safety, Trading Standards, Civil Protection, Registration & Coroners, Libraries and Waste Management except decision categories CFO 1, HLDS1 and 2 (although, in cases when only an Officer other than the Head of Legal Services may institute proceedings, the Commissioning Director: Communities & Infrastructure may institute a prosecution once it has been authorised under HLDS2).	Commissioning Director: Communities and Infrastructure	Relevant Cabinet Member for all decisions with financial implications over £250,000
CD: A 1	The functions of the Safety and Licensing Committee under paragraph 7 of its terms of reference.	Commissioning Director: Adults.	N/A
CD: A 2	To exercise all other functions relating to the areas of responsibility of Adult Social Care except decision category HLDS1 and 2.	Commissioning Director: Adults.	Relevant Cabinet Member for all decisions with financial implications over £250,000
CD: C & F 1	The functions of the Safety and Licensing Committee under paragraph 4 of its terms of reference.	Commissioning Director: Children & Families.	N/A

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CD: C & F 2	To exercise all other functions relating to the areas of responsibility of Children's Services, Education and Learning except decision category HLDS1 and 2.		Most relevant Cabinet Member(s) for all decisions with financial implications over £250,000
HLDS1	To authorise the institution, defence withdrawal or settlement of any claims or legal proceedings, civil or criminal, the issue of cautions and to authorise the enforcement of any order made in those proceedings.	Head of Legal Services	Director of any service area affected by such a decision.
HLDS2	To authorise Officers of the County Council to prosecute or defend or appear in any legal proceedings (NB: The Head of Legal Services will <i>authorise</i> every decision to prosecute or defend such proceedings, including those which by law may only be <i>instituted</i> by another Officer).	Head of Legal Services	Director of any service area affected by such a decision.
HLDS3	To authorise the withdrawal or settlement of any dispute between the Council and any third party, including those that have been referred to any statutory or non-statutory Tribunal or arbitrator (this includes authorising ex gratia payments not otherwise delegated).	Head of Legal Services	Director of any service area affected by such a decision.

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HLDS4	To be the local referee for disputes under the Local Government Pension Scheme.	Head of Legal Services	N/A
HLDS 5	The functions of the Commons and Rights of Way Committee under paragraphs 1,2 and 19 or its terms of reference.	Head of Legal Services	Lead members
GEN1	To enter into any contract for works and the supply of goods and services.	Chief Executive and Directors or Head of Service in relation to their service areas.	Director of Strategic Procurement and relevant Cabinet Member for decisions with financial implications in excess of £250,000
GEN2	To take any decision under the Regulation of Investigatory Powers Act 2000.	Directors or Head of Service in relation to their service areas.	N/A
GEN3	To do anything that is required for the effective management of staff and other resources within each Service of the Council.	Directors or Head of Service in relation to their service areas.	N/A