

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE
26 NOVEMBER 2013

8 REVISIONS TO THE COUNCIL'S CONSTITUTION

A report by the Strategic Director – Transformation and Resources informed the Committee that the Council's Constitution was a 'living document' which needed to be kept under review to reflect changes in the Council and changes in the way the Council delivered services and went about its business. Regular reviews were necessary to:

- ensure the Constitution remained relevant and effective;
- identify changes required to ensure clarity and consistency; and
- provide an opportunity for the Council's constitutional arrangements to be continuously improved.

The Committee was responsible for keeping the Council's Constitutional arrangements under review. It could make minor changes to the Constitution as it considered appropriate and make recommendations on possible changes to the Council. Any changes made should be made in order to better achieve the purposes set out in Article 1 of the Council's Constitution.

The Director's report informed that the Monitoring Officer had carried out a preliminary review of the Constitution under his delegated powers and minor changes were required to address for example simple continuity issues, changes/corrections to officer titles and other names.

The report also set out proposals to amend the Council's Constitution by the Committee itself or to recommend approval to the Council to ensure that the Constitution remained effective. The Monitoring Officer's review had centred on addressing continuity, updating titles of bodies and officers, updating references to legislation, and addressing specific operational issues that had been identified. There were two Schedules appended to the report. Schedule 1 contained proposed amendments to the Constitution that were considered to be of a minor nature, and therefore approval of those changes fell within the remit/authority of the Committee. Schedule 2 contained other proposed amendments to the Constitution that it was considered should be approved by Council.

The report contained the history and background to the review work carried out, detailed issues for the Committee's consideration and set out a summary of proposed key amendments in respect of:

- The Council's Procedural Rules;
- Constituency Committees;
- The Standards and Constitutional Oversight Committee's Terms of Reference;
- Schemes of Delegation; and
- The Call-in Procedure.

The Committee noted that it was intended that a whole scale review of the Constitution would commence in early January 2014. A Members' survey would be undertaken as part of this exercise which would canvass the views of all Members on, not only the effectiveness of the current Constitutional arrangements, but also on what each Member considered could/should be improved. The outcome of this review together with recommendations/proposals on changes to the Council's Constitution would be reported back to this Committee and/or to the Cabinet for consideration.

Councillor L Fraser moved the following Motion which was seconded by Councillor C Blakeley:

'If the Committee is unable to agree any of the amendments set out in Schedules 1 and 2 to the report they be included in the consultation exercise to be undertaken with Members in early January 2014.'

Councillor R Abbey reported that it was his understanding that the Schedules contained interim measures to be taken to ensure the Council was operating properly until the whole scale review had been undertaken.

The Head of Legal and Member Services sought to clarify the position by informing that Schedule 1 contained proposed changes that the Committee had authority to change and Schedule 2 contained proposed changes that the Council had authority to change but the Committee was able to recommend to the Council that the changes be made. The changes in Schedule 1 would be permanent if the Committee agreed them and the changes in Schedule 2 required the Council's approval and could be further reviewed and changed as part of the whole scale review of the Council's Constitution.

The Committee as part of the debate discussed a number of issues and concerns with regard to the Agenda and the proposed changes to the Constitution.

Councillor C Blakeley informed that he had spoken to the Chief Executive about the report and its Schedules. The Chief Executive had been clear that if there were any contentious issues or any disagreements over what was being proposed they could be referred to the forthcoming consultation. His Political Group wanted to defer the whole report.

Councillor M McLaughlin told the Committee that there were a significant number of proposed changes to the Council's Constitution to be considered but that did not make them contentious. She also informed that she understood that all the proposed changes had been agreed the by Political Group Leaders. Therefore, she proposed that the Committee continue to make decisions on the report.

The Head of Legal and Member Services reported that he had spoken to the Chief Executive that afternoon and it was his view that if the Committee could not unanimously agree the changes then it may wish to refer them to the wider review to be undertaken in January 2014.

Councillor T Harney informed that he was unhappy because the report and Schedules were intended to assist Members to agree amendments to the Council's Constitution. He considered that the paperwork for the Standards and Constitutional Oversight Committee should be meticulous but unfortunately, this was not the case here. Councillor Harney reminded Members that in the past the Council and its Committees had often suspended Standing Orders but that it was not good practice. It was important for the Constitution to be right and adhered to. Firstly, the Committee must understand all of the issues and if some were considered urgent he wanted to know why and then a vote should be taken. He suggested that each amendment be considered in turn.

The Head of Legal and Member Services reported that it was for the Committee to decide which aspects of the report it wished to discuss, having regard to all the representations that had been made. If Members were content with some of the proposed changes they could be identified along with any it wished to discuss at a later date.

Councillor L Fraser informed that she was unhappy with the agenda and supporting papers sent to the Committee which clearly showed a printing error. She noted that whilst some of the proposed changes were 'housekeeping' e.g. updating acts etc, there were also some big important issues to be determined.

Councillor M McLaughlin proposed that the Committee agree Councillor T Harney's proposal and consider and vote on each proposed amendment.

Councillor C Blakeley raised concerns that he had asked the Democratic Services Manager yesterday for a complete copy of the Council's current Constitution with the proposed changes marked on it but his request had been refused. He told the Committee that he considered that the proposed amendments were being rushed unnecessarily.

Councillor R Abbey enquired why some Members thought the Committee could not deal with the 'housekeeping' issues now.

Councillor C Blakeley responded stating that clearly this Committee had an important role to play. He had been presented with the majority of the proposed Constitutional changes earlier in the evening with no time to study and understand them. He was of the view that the report and Schedules should be part of the forthcoming consultation exercise and that the findings should be presented to the Committee in due course. He considered that the Council had managed without these proposed changes since May 2013 so it should be able to manage a little longer.

Councillor T Harney considered that as the Chief Executive should be invited to attend the next meeting.

Councillor M McLaughlin proposed that Members consider the Schedules and agree the amendments/recommendations that they could. However, Councillor C Blakeley informed that in conversations with the Chief Executive and the Head of Legal and Member Services he had suggested that the contentious items be taken out but they had not agreed to it.

The Head of Legal and Member Services informed that he did not have authority to remove matters from the Committee's consideration once the Agenda had been published. The Committee had discretion to agree or recommend to Council or reject any of the proposals set out in the Schedules.

Councillor C Blakeley reminded the Committee that a Motion had already been moved and seconded and would need to be voted on. Councillor Blakeley also commented that it was not acceptable that the Strategic Director for Transformation and Resources was not in attendance at the meeting.

Councillor M McLaughlin moved the following Amendment which was seconded by Councillor R Abbey:

'That given that the proposed changes are relatively minor, the Committee will give consideration to each one and agree which ones it can agree and identify which ones it cannot agree, making progress where it can.'

This Amendment was voted on and agreed (5 for, 3 against and 1 abstention). It then became the substantive Motion and was agreed (5 for, 1 against and 1 abstention). Councillors C Blakeley and L Fraser requested that it be recorded in the Minutes that they had voted against the substantive Motion.

The Head of Legal and Member Services began to take the Committee through the detail of the proposed amendments to the Council's Constitution as detailed in the report.

Councillor C Blakeley referred to the Summary of Proposed Key Amendments set out in the report (paragraphs 2.6 – 2.14). He drew Members attention to the word 'key' informing that the proposed changes were not minor. He informed that Members of his Political Group who were Members of the Committee could not support these changes being made to the Council's Constitution.

The Head of Legal and Member Services attempted to explain the reasons why it was recommended that these key amendments should be made.

Councillor L Fraser referred to the key amendments in respect of the Council's Constituency Committees. She considered that a piecemeal approach was being taken to them. She reminded the Committee that three of the Constituency Committees had only met once and the fourth one had not yet met. Councillor Fraser's view was that these Committees should be allowed to operate for a year before discussions over what worked and what did not work were held. She also raised concerns over proposals to amend the Call-in procedure.

Councillor T Harney drew the Committee's attention to Schedule 1 – Paragraph 15 – Special Urgency. He considered that it should be rewritten in 'plain' English. He told the meeting that he was unable to understand what the provision meant. Therefore, he requested a clear explanation of this paragraph.

The Head of Legal and Member Services explained that in relation to Executive decisions the Council was obligated to give 28 working days notice of any proposed key decision or proposed decision which relied upon exempt information. However, on occasion it was not possible to give 28 working days notice and so in such circumstances it was possible to still take the decision if agreement was obtained from the Chair of the relevant Policy and Performance Committee or in his/her absence the Mayor and in his/her absence the Deputy Mayor.

Councillor P Kearney informed that he was not happy with any of the wording in Schedule 1 to the report. He referred to Paragraph 15 – Special Urgency and pointed out that it had not been punctuated.

Councillor R Abbey proposed that the Proposed Key Amendments set out in the report be referred to the Council for its decision.

Councillor L Fraser informed that she had been happy with the proposed amendment to Paragraph 15 – Special urgency on Schedule 1 until she had heard Councillor P Kearney's comments which had allowed her to see it in a different light.

The Head of Legal and Member Services reported that in respect of the Access to Information Regulations 2012, the Council was obliged to comply with the Regulations. The amendment sought to bring the Constitution in line with these Regulations and reflect the legal framework which the Council had to observe in any event.

Councillor C Blakeley referred to Schedule 1 to the report and informed that he was content with the Head of Legal and Member Services changing the names of Officers. However, responsibilities could be listed under post holders. He was aware that the Committee was not making progress and proposed that the Committee refer the report to the Standards Working Group and that it become part of its work.

Councillor M McLaughlin considered that the Committee should accept those parts of the Constitution that it could and refer what needed to be referred to the Council.

Councillor C Blakeley informed that if these matters were referred to the Council he saw no point in this Committee. He considered that the democratic services process was being undermined.

Councillor C Blakeley moved the following Motion which was seconded by Councillor L Fraser:

‘That Item No. 4 on the Committee’s agenda be withdrawn and referred to the Standards Working Group to be considered with the assistance of Officers and a report on its recommendations be provided for consideration by the Committee at its next meeting.’

Councillor M McLaughlin moved the following Amendment which was seconded by Councillor D Roberts:

'That in order to assist the smooth running of the Council, prior to the whole scale review of its Constitution

- (1) the proposed changes set out in Schedule 1 to the report be approved and the Council's Constitution be amended accordingly; and
- (2) the Council be **recommended** to approve the proposed changes to the Council's Constitution set out in Schedule 2 to the report.'

This Amendment was voted on and agreed (5 for, 4 against). It then became the substantive Motion and was agreed (5 for, 4 against). Councillors C Blakeley and L Fraser requested that it be recorded in the Minutes that they had voted against the substantive Motion.

RESOLVED: That

- (1) **the proposed changes set out in Schedule 1 to the report be approved and the Council's Constitution be amended accordingly; and**
- (2) **the Council be RECOMMENDED to approve the proposed changes to its Constitution as detailed in Schedule 2 to the report.**