

Decisions of the Constitution, Ethics and Probity Committee

16 November 2015

Members Present:-

Councillor John Marshall (Chairman)
Councillor Melvin Cohen (Vice-Chairman)

Councillor Anthony Finn
Councillor Dr Devra Kay
Councillor Alison Moore

Councillor Barry Rawlings
Councillor Joan Scannell

1. MINUTES OF LAST MEETING

RESOLVED – that the minutes of the meeting held on 30 June 2015 be approved as a correct record.

2. ABSENCE OF MEMBERS (IF ANY)

None.

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS

None.

4. REPORT OF THE MONITORING OFFICER

None.

5. PUBLIC QUESTION AND COMMENTS

None.

6. MEMBERS' ITEMS

None.

7. CONSTITUTION REVIEW

The Chairman introduced the report. He advised the Committee that a supplemental report had been tabled which proposed an amendment to Full Council Procedure Rules to enable the calendar of meetings to be approved by Council before the Annual Council meeting. The Committee noted the report which was considered alongside other proposed constitution amendments.

RESOLVED – That the Committee recommend to Council that the Constitution be amended to incorporate the changes set out in this the table below and the track change versions attached at Appendix A to Appendix G.

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
A	Responsibility for Functions, Annex A	<p>Currently the terms of reference of Area Committees include 'Recommending the creation of Conservation Areas to Environment Committee'. This function was previously carried out by Area Environment Sub-Committees and the practical approach would be to clarify that Area Committees are best positioned to make these decisions at a local level.</p> <p>It is further recommended that the terms of reference of Area Committees be updated. This is a consequential change following Council's agreement in July 2015 that Public Participation and Engagement rules stipulate that petitions which receive between 25 and 2,000 signatures be reported directly to an Area Committee rather than a Residents Forum.</p>	<p>Not agreed. Add 'Recommending the creation of Conservation Areas to Full Council' to the responsibilities of the Planning Committee</p> <p>Agreed as per report, subject to the number of signatures being 1,999 and not 2,000</p>
A	Responsibility for Functions, Annex A	<p>The terms of reference of Policy and Resources Committee currently include '(11) To receive reports reviewing the progress of petitions considered at theme committees'. As petitions of between 2,000-7,000 signatures are referred to the relevant theme committee it appears more appropriate that the relevant theme committee receive any progress reports on actions requested. Should there be any reason to escalate a matter (e.g. a request for additional funding) a report would be submitted to Policy and Resources Committee as required.</p>	Agreed as per report
A	Responsibility for Functions,	The terms of reference of General Functions Committee (GFC)	Agreed as per report subject to the additional

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
	Annex A	<p>require updating to clarify that in addition to 'endorsing the calendar of meetings prior to annual council approval' GFC has responsibility for approving any mid-year adjustments to the calendar of meetings (e.g. additional meetings added/deleted) which are then noted at Council meetings. Currently GFC has recently agreed that the Head of Governance can facilitate variations in consultation with the Chairman of the General Functions Committee and Leaders of the main political groups.</p> <p>It is also recommended, on legal advice, that GFC responsibility for 'Approving premises for marriages and the formation of civil partnerships' be updated to reflect that this authority encompasses to 'Carry out functions in relation to approving premises for marriages and the formation of civil partnerships under the Marriage Act 1949, the Civil Partnership Act 2004 and the Marriages and Civil Partnerships (Approved Premises) Regulations 2005'</p>	<p>changes:</p> <p>Amend the second bullet point in the GFC's terms of reference to read: 'Making local authority nominations to School Governing Bodies'</p> <p>Delete from section b. '...except for those elements determined nationally or pensions.'</p>
A	Responsibility for Functions, Annex A	For clarity it is recommended that Planning Committee terms of reference be updated to include specific reference to its responsibility to 'Approve Article 4 Directions on HMOs for consultation'.	
B	Responsibility for Functions, Annex B	N/A	Delete from the delegated authority of the Chief Executive 'Leadership of the Strategic Commissioning Board'
B	Responsibility for Functions, Annex B	N/A	Amend the responsibilities of the Head of Governance as follows:

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
			<p>Revise final responsibility to read: 'Returning Officer for election of statutory parent governor representatives to serve as co-opted Members on the Children, Education, Libraries & Safeguarding Committee'</p> <p>Add the following responsibility: 'Facilitating the appointment of representatives to the Local Pension Board in accordance with regulatory requirements'</p>
B	Responsibility for Functions, Annex B	<p>Council previously agreed (April 2014) to make changes to Responsibility for Functions Annex A to effect that the Performance and Contract Management Committee be authorised 'To consider reserved matters of the JVCo'. It was also agreed there should be delegated power given to the Director of Place, in consultation with the Committee Chairman for certain contractual time sensitive decisions.</p> <p>Officers have noted that the relevant officer delegation (now the Commissioning Director Growth and Development) needs to be reflected in Responsibility for Functions Annex B (Scheme of Delegated Authority to Officers).</p>	Agreed as per report
B	Responsibility for Functions, Annex B	Paragraph 1.6 lists items which can be approved by Summary DPR including 'The fixing of fees and charges to be levied by the Council'. For clarity this should specify that this relates to fees and charges which are broadly in line (or lower) than inflation, as the relevant committees have responsibility for the fixing of fees	Agreed as per report

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
		and charges above inflation.	
C	Council Procedure Rules	<p>Full Council Procedure Rules currently state, in section 1. (j) “To agree the Council Calendar of meetings including for ordinary meetings of the Council”</p> <p>Reserving approval of the calendar of meetings as a function of Annual Council means that Council do not formally approve the calendar of meetings until the beginning of the new municipal year. This can have implications for: i) Members in terms of planning holidays and other commitments; and ii) officers in terms of planning projects and other matters which will require committee decisions. Officers have consulted legislation and regulations and ascertained that there is no legal requirement for Annual Council to approve the calendar of meetings. It is therefore proposed that this becomes a function of Full Council instead in order that the calendar can be approved at any point during the year.</p>	<p>Agreed as per addendum. Delete from section 1 (Annual Meetings of the Council) the following wording: ‘To agree the Council Calendar of meetings including for ordinary meetings of the Council’ and add to Section 2 (Ordinary Meetings) Part 1 – Statutory Formalities / Announcements. Renummer all subsequent sections</p>
C	Full Council Procedure Rules	<p>Council Procedure Rules – Part 4, 14 is misleading in that it states that ‘the motion debated will be determined by Council if there is more than one submitted: subject to: the opposition motion debated will be determined by the opposition if there is more than one debated’. For consistency and fairness it should be clarified that if the opposition submits more than one motion the opposition would determine which one is debated, and if the administration submits more than one motion the administration would determine which one is debated</p>	Agreed as per report
C	Full Council	N/A	Delete section 26.2 and

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
	Procedure Rules		<p>renumber subsequent sections</p> <p>Amend section 27.1 bullet point 1 to delete 'by e-mail' and replace with 'in writing, including e-mail'</p>
D	Meetings Procedure Rules	<p>Meetings Procedure Rules, Membership and Quorum requires amendment to include the Community Leadership Committee Sub-Committee which was established in September. It is recommended the table be updated to note that the Sub-Committee has a membership of 3, 3 substitute members (1 for each member), and quorum of 2. This would be consistent with the other existing Committee with 3 members (Urgency Committee)</p>	Agreed as per report
D	Meetings Procedure Rules	<p>Meetings Procedure Rules, Members' Rights, 6. Members' Items on the Agenda states that Licensing Committee and Licensing Subcommittee are the exceptions to Members Item rule and are not allowed Members Items. However, it is noted that Licensing Committee can consider policy matters, and therefore should be allowed Members Items. It is also recommended that Urgency Committee be an exception to the Members Items rule as these meetings are convened for the particular purpose of transacting urgent business.</p>	Agreed as per report
E	Public Participation and Engagement (and Responsibility for Functions, Annex A)	<p>Public Participation and Engagement, which lists the deadlines for public questions and comments for meetings does not currently include the deadline for the public to submit issues for Residents Forum meetings (this is instead contained in Responsibility</p>	Agreed as per report

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
		for Functions, Annex A).	
E	Public Participation and Engagement	Public Participation and Engagement– the deadline for public currently questions states ‘by 10am on the second clear working day prior to the meeting’. It has been raised that this may be misleading as the deadline could be perceived as being 2 days before the meeting rather than 3 days, as is the actual deadline.	Agreed as per report
E	Public Participation and Engagement	Legal advice is that Public Participation and Engagement Rules – Speakers at Planning Committees should be adjusted to clarify that the applicant should have the right to speak irrespective of whether an application is recommended for approval or rejection by officers. Current practice (as implied by paragraph 4.8), does not allow the applicant to speak where an application has been recommended for approval. However this does not take into account that the committee could vote against a recommendation to approve, which could be challenged by an applicant who has not been provided the opportunity to speak.	Agreed as per report
E	Public Participation and Engagement	The wording in the Petitions section of Public Participation and Engagement does not clearly set out the various bodies responsible for considering petitions in accordance with thresholds, and the process for consideration of petitions. Minor amendments are recommended to this section to clarify.	Agreed as per report
F	Finance Regulations	Paragraph 4.3.9 currently states ‘Policy and Resources Committee must approve changes to fees and charges that are significantly different from inflation...’ Council subsequently agreed that this	Agreed as per report

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
		<p>responsibility should be within the remit of the relevant Theme Committee/ Planning/ Licensing Committees, and reported to Policy and Resources Committee, which was subsequently incorporated into the Constitution (Responsibility for Functions, Annex A). Updates to Finance Regulations are required to reflect this change, and to clarify that ‘significantly different from inflation’ means above inflation by 2% or more.</p> <p>Further amendments are recommended to clarify that:</p> <ol style="list-style-type: none"> 1) Policy and Resources Committee approval is required for all capital additions to the capital programme. Capital additions should also be included in the quarterly budget monitoring report to Performance and Contracts Committee for noting. 2) In the area of Budget Monitoring – all forecasted overspends/additions must, following reporting to the Chief Finance Officer (section 151 officer), be submitted to the Policy and Resources Committee for approval. 	
F	Finance Regulations	<p>For clarity, it is recommended that Financial Regulations include reference to the Assurance Assistant Director and CAFT authorised powers to:</p> <ol style="list-style-type: none"> i) Act as ‘Enforcement Officers’ as defined and set out within the requirements of the Disabled Persons Parking Badges Act’ 2013. ii) Request and share information obtained under the 	Agreed as per report

App No.	Section	Changes contained in the report to Constitution, Ethics and Probity Committee	Changes recommended to Full Council
		'Prevention of Social Housing Fraud Act' 2013 for the purposes of housing fraud investigation.	

8. REVIEW OF THE COMMITTEE SYSTEM AND CONSTITUTION – SURVEY RESULTS

The Monitoring Officer presented the report.

The Committee was advised that there had been a commitment to review the Committee System 12 months post-implementation and the views of all Members and officers had been collected via a survey. It was noted that the findings didn't provide a mandate for significant change. Key findings were that:

- there were differences of opinion between Members and officers in relation to the delegation of powers;
- improvements needed to be made with Ward Member engagement;
- consideration needed to be given to the reporting of performance information and whether this should go to theme committees as well as the Performance & Contract Management Committee; and
- there was scope to revise the approach to pre-meetings and call-overs depending on the preferences of Members who sat on those committees

The Monitoring Officer emphasised that Full Council had approved print and courier savings of £50,000 and staff savings of £200,000 in the Assurance Group and to achieve these fewer meetings needed to take place. The Group Leaders undertook to provide group spokespersons to discuss possible savings options with the officer.

RESOLVED that the results from the survey be noted.

9. THE STANDARDS REGIME

The Monitoring Officer presented a report which asked the Committee to consider options for investigating and making decisions on allegations of breaches to the Members Code of Conduct.

RESOLVED that:

1. **The Monitoring Officer be requested to amend the “Protocol – Complaints against Members” as follows:**
 - i) **Revise section 7.1 include wording which enables the Monitoring Officer to determine whether to take no further action**
 - ii) **Create a new section 7.2 to state that the “...where the Monitoring Officer decides to take no further action, the Monitoring Officer will inform the person making the allegation and the Member who is the**

subject of the complaint of her decision and of the reasons for it.”

- iii) **Create a new section 12 as follows: “The Monitoring Officer will submit a report to the Standards Committee at six monthly intervals to inform the Constitution, Ethics and Probity Committee about complaints which have been received and not investigated under paragraphs 5.3 or 5.6 of this Protocol, and complaints which have been investigated but not reported to the Standards Committee under paragraph 7.1”**

2. The Committee recommend to Full Council:

- i) **The establishment a new Standards Committee comprising four members of the Council and an Independent Person (as a co-opted member of the Committee) to replace the Group Leaders Panel.**
- ii) **Not to apply the political balance requirements contained in the Local Government and Housing Act 1989 to the new Standards Committee, and that each of the two political Groups on the Council shall have two seats on the Committee (with two substitute members for each Group).**
- iii) **To appoint the Independent Person as the Chairman of the Standards Committee.**
- iv) **To approve the amended “Protocol – Complaints against Members” (as detailed in minute item 1 above) as the Council’s arrangements for the investigation of complaints that a Member has breached the Code of Conduct and for taking decisions on such complaints, as required by Section 28 of the Localism Act 2011.**
- v) **That the Monitoring Officer be authorised to implement and publish the consequential changes to the Constitution.**

(Notes: To take effect, recommendation ii) must be agreed without any member of the Council voting against (Section 17(1)(b) of the Local Government and Housing Act 1989). The independent chairman will be a non-voting member)

ANY OTHER ITEM(S) THAT THE CHAIRMAN DECIDES ARE URGENT

None.

The meeting finished at 8.00 pm