

Decisions of the Constitution, Ethics and Probity Committee

17 March 2016

Members Present:-

Councillor John Marshall (Chairman)

Councillor Richard Cornelius	Councillor Alison Moore
Councillor Dr Devra Kay	Councillor Barry Rawlings
Councillor Sachin Rajput (substituting for Councillor Joan Scannell)	Councillor Anthony Finn (substituting for Councillor Melvin Cohen)

Apologies for Absence

Councillor Melvin Cohen

Councillor Joan Scannell

1. MINUTES OF LAST MEETING

RESOLVED that the minutes of the meeting held on 16 November 2015 be approved as a correct record.

2. ABSENCE OF MEMBERS (IF ANY)

Apologies for absence had been received from:

- Councillor Melvin Cohen (who was substituted for by Councillor Anthony Finn); and
- Councillor Joan Scannell who was substituted for by Councillor Sachin Rajput).

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

There were none.

4. REPORT OF THE MONITORING OFFICER (IF ANY)

There was none.

5. PUBLIC QUESTION AND COMMENTS (IF ANY)

There were none.

6. MEMBERS ITEM IN THE NAME OF COUNCILLOR RICHARD CORNELIUS

Councillor Richard Cornelius introduced the Member's item in his name which requested the committee to consider the matter set out in paragraph 1.1 of the report. He advised the committee that he wished to amend his original recommendation as follows:

“No vacant posts at Assistant Director level or above shall be advertised or recruited to without prior Committee approval and all new posts at Assistant Director level or above shall be created by committee decision and not by delegated powers.”

The Committee discussed the proposal set out in the report. Councillor Cornelius advised the committee that the intention was that when senior posts became vacant or new posts were proposed these could be considered by General Functions Committee, Policy and Resources Committee or Urgency Committee.

RESOLVED that officers be instructed to draft proposed changes to the Constitution for Council consideration on 4 April 2016 to give effect that “No vacant posts at Assistant Director level or above shall be advertised or recruited to without prior Committee approval and all new posts at Assistant Director level or above shall be created by committee decision and not by delegated powers.”

7. RECRUITMENT OF INDEPENDENT PERSONS TO CHAIR THE STANDARDS COMMITTEE

The Monitoring Officer presented a report which asked the Committee to take the next steps in implementing the decision of Full Council on 8 December 2015 in relation to the appointment of a panel of Independent Persons.

The Monitoring Officer clarified that the proposals are for the recruitment of a pool, not a panel, of up to four independent persons, and confirmed that the first recommendation would be amended to reflect this. The Committee were advised that independent persons would sit as a non-voting chairman of the Standards Committee or sit on a disciplinary panel in the event of the proposed dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer.

The Committee noted that legislation enabled the council to extend the appointment of the existing Independent Members who had supported the former Group Leaders Panel.

In reviewing the Recruitment Pack attached at Appendix 1, the Committee agreed the following changes:

In the section titled ‘The role as an Independent Person requires someone who...’ amend:

- Bullet point 5 to read “is able to make reasoned judgments based on evidence or information presented and explain reasons for their judgment”
- Bullet point 6 to read “possesses good questioning skills”
- Bullet point 7 “demonstrates assertiveness”

In the section titled ‘You cannot be an Independent Person if you are...’ amend: Bullet point 2 to add at the end of the sentence “...or held these positions within the last five years”.

RESOLVED that:

- 1. A pool of up to four potential Independent Persons should be selected for recommendation to Council.**
- 2. The recruitment pack for advertisement, as set out in Appendix 1 of the report and as amended above, be approved.**
- 3. Advertising be approved as per Option 2, as set out in paragraph 1.5 of the report.**
- 4. The composition of the Interview Panel is comprised of the Monitoring Officer and one member from each party to be drawn from the membership of the Constitution Ethics and Probity Committee.**
- 5. The level of remuneration to recommend to Council to pay the Independent Person be approved as per Option 3 in paragraph 1.8 and the Members Scheme of Allowances be amended.**
- 6. The period of appointment for the Independent Person be as per Option 2 in paragraph 9.**
- 7. The Monitoring Officer be given delegated authority to finalise the recruitment pack and make the necessary arrangements to advertise the positions and schedule the interviews for the Independent Persons, in consultation with the Chairman of Constitution, Ethics and Probity Committee.**

8. CONSTITUTION REVIEW

The Monitoring Officer introduced the report.

Councillor Barry Rawlings MOVED an amendment to make a change to Public Participation and Engagement, Rule 3.2 as follows: delete "...10am on the second clear working day prior to the meeting" and replace with "...10am on the third working day prior to the meeting". The reason for the amendment being to make the wording consistent with that used in the public questions deadline to avoid causing confusion to the public.

Upon being put to the VOTE the amendment was declared carried.

Councillor Barry Rawlings MOVED as follows:

"Main Committees and Member Working Groups established by Committees:

1. That CEP agrees to formalise member working groups established by Committees in the constitution so access to information rules apply to them.
2. That the number of main committees are reduced, to help free up resources for this, from 8 to 4 as follows:
 - Merge Assets Regeneration and Growth, Housing & Environment Committees

- Merge Adults & Safeguarding and Children Education Libraries and Safeguarding Committees
- Merge Community Leadership & Policy and Resources Committees

3. That officers bring back proposals to enact this within the Constitution.”

Upon being put to the VOTE the motion was declared LOST. Votes were recorded as follows:

In Favour	3
Against	4
Abstentions	0

Councillor Richard Cornelius MOVED an amendment to Article 9 (Chief Officers), section 9.01 (c) (Statutory Officers). It was proposed that the words “(works with Members and the Strategic Commissioning Board to deliver the council’s themes)” be deleted after the wording “Head of Paid Service” in the ‘Statutory Designation’ column of the table.

Upon being put to the VOTE the amendment was declared carried.

Following consideration of the report the Chairman moved to the vote on the remaining recommendations.

Councillor Barry Rawlings MOVED that proposal no. 2 from the Constitution Review report (relating to the referral of Area Committee Budget applications) be deleted. Upon being put to the VOTE the motion was declared LOST. Votes were recorded as follows:

In Favour	3
Against	4
Abstentions	0

RESOLVED –

- 1. That the Committee recommend to Council a change to Public Participation and Engagement, Rule 3.2: Public Comments to delete “10am on the second clear working day prior to the meeting” and replace with “10am on the third working day prior to the meeting”.**
- 2. That the Committee recommend to Council a change to Article 9 (Chief Officers), section 9.01 (c) (Statutory Officers) after ‘Head of Paid Service’ to delete the words “...(works with Members and the Strategic Commissioning Board to deliver the council’s themes)”**
- 3. That the Committee recommend to Council that the Constitution be amended to incorporate the changes set out in the table below and the track change versions attached at Appendix A to Appendix E.**

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
1	Responsibility for Functions	Page 55-60	<p>The current wording of paragraph 6.2 of Responsibility for Functions states that the Chairman of an Area Committee and/or Area Planning Committee "...may refer any item that it considers with a recommendation to the relevant committee within whose Terms of Reference it falls, by indicating immediately after the decision is taken that they require the decision to be referred up." As currently drafted it is not clear that a Chairman of an Area and/or Area Planning Committee is required to give reasons when using his / her authority to refer a matter to another committee and this is contrary to Article 10.2 which states that: All decisions of the Council will be made in accordance with the following principles...(g) the giving of reasons for the decision and the proper recording of those reasons." It is recommended paragraph 6.2 be amended to specify that a reason should be given, consistent with the requirement for Committees to give reasons when referring a matter up.</p>	Agreed as per report
2	Responsibility for Functions	Page 55-60	<p>Members have proposed that an amendment be made to Section 6 of Responsibility for Functions (Members Rights to Refer Matters to Parent Body) to enable Area Committee Chairmen to have the ability to refer applications to the Area Committee Budget to relevant Theme Committee (Environment Committee for environment related schemes or Community</p>	Agreed as per report

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
			Leadership Committee for community related projects). The proposed amendment would provide Chairmen with the flexibility and discretion to ensure that Area Committees achieve an appropriate balance between environment and community based projects when allocating funds via the Area Committee Budget. It is recommended consequential changes be made to the relevant Committee terms of reference.	
3	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	Audit Committee terms of reference does not contain anything about ability to 'refer' or 'recommend' matters of concern to bring them to the attention of the relevant Committee for attention (frequently recently this has concerned contract compliance or performance issues by CSG or Re, but should equally encompass the ability to raise concerns regarding internal delivery units). It is recommended an amendment be made to Annex A Responsibility for Functions to add this.	Agreed as per report
4	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	It is recommended that performance and contract monitoring information be reported to Theme Committees in addition to Performance and Contract Management Committee to close a gap. It is suggested this be added to the terms of reference of each of the Theme Committees, and clarification provided from officers as to how this will work in practice.	Agreed as per report
5	Responsibility for Functions, Annex A	Page 61-99	The terms of reference of the Performance and Contract Management Committee note	Agreed as per report, subject to the

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
	(Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)		that the committee has a responsibility regarding Monitoring of Performance 'against targets'. It has been noted that the committee monitors against KPIs and should be able to raise any matter regarding performance.	amendment of the terms of reference as follows: “(2) Monitoring of Performance including, but not limited to, targets of Delivery Units and Support Groups...”
6	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	General Functions Committee terms of reference still includes that GFC recommends calendar of meeting dates to Annual Council. This changed in October 2015 and it is now Council and not Annual Council which has the authority to approve	Agreed as per report
7	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards) And Meeting Procedure Rules	Page 61-99 Page 125-136	The rules regarding the process for changing committee meeting dates require clarification. Currently the process involves: 1. Consult with Chairman of the General Functions Committee and Group Leaders (as per decision of Council on 26 January 2016); and 2. Consult with relevant Committee Chairman. Date to be amended subject to a majority of committee members being in agreement (in accordance with Meeting Procedure Rules 4.2)	Agreed as per report

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
			<p>It is also noted that General Functions Committee has within its terms of reference 'Agreeing mid-year adjustments to the approved Calendar of Meetings'. It is noted that in practice the involvement of GFC Committee in agreeing changes to individual meeting dates is does not occur, as there has been earlier involvement of the Chairman of GFC, the Group Leaders and the Chairman and committee members, who will have agreed a change.</p> <p>It is recommended that to avoid confusion this provision be deleted from GFC Committee terms of reference and that instead Meeting Procedure Rules are amended to clarify the process agreed by Council on 26 January of ensuring that the Chairman of GFC Committee and Group Leaders are also consulted on proposed changes to dates.</p>	
8	Responsibility for Functions Annex B (Scheme of Delegated Authority to Officers); and Article 9	Page 101-123 Page 49-53	It is proposed that the post of Strategic Director for Commissioning position be deleted. This decision is due to be considered by General Functions Committee on 21 March. Subject to GFC's decision, it is recommended that references to the position and relevant delegated authority be deleted from the Constitution. To note, the position's delegated authority would transfer to the CE who has the authority 'To make any decision delegated to another officer'.	Agreed as per report
9	Meeting Procedure	Page 125-136	The current rules relating to Members' Items only allow	Agreed as per report

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
	Rules		<p>Members to submit a Members Item to a committee or sub-committee to which they have been appointed to. The revised arrangements for Area Committee Budgets (being reported to the Community Leadership Committee on 9 March 2016) recommend that any Member should be able to sponsor an application to the Area Committee Budgets via a Members Item. Section 6 of Meetings Procedure Rules has been amended to give effect to this proposal.</p>	
10	Meeting Procedure Rules	Page 125-136	<p>The Council's Constitution is currently silent in the event that a MP or GLA Member, or elected member from another neighbouring council makes a request to give an oral representation at a Planning Committee.</p> <p>Currently the following Meetings Procedures Rules may be referred to:</p> <p>“4.3 Any procedural issues or challenges to the conduct of the meeting that arise during the course of a meeting shall be determined by the person presiding at the meeting.</p> <p>4.4 The Chairman shall have the power to invite any persons or bodies with a particular expertise on a given agenda item to give evidence to the Committee and answer questions. This power is in addition to the Public Participation Rules elsewhere in the Constitution.”</p> <p>However this has been challenged as:</p>	Agreed as per report

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
			<ol style="list-style-type: none"> 1. Invoking Meeting Procedure Rule 4.3 contradicts Public Participation rule 4.3 which states “In respect of planning committees only, there can be a maximum of two speakers in favour or against an application” 2. It is inaccurate to describe an elected member as having ‘particular expertise’. Also, invariably they will not have been invited by the Chairman, but instead have requested to speak. <p>It is currently not clear whether or not the ‘external’ elected representatives should be treated as members of the public for the purposes of Public Participation and Engagement Rules’ (currently in practice they are not).</p>	
11	Responsibility for Functions	Page 55-60	In order to increase the visibility of statutory role of the Lead Member for Children’s Services (LMCS), the Commissioning Director for Children’s Services has requested that a Member Role Profile for the LMCS be created and posted on the council’s website and that explicit reference is made to the role profile in the Constitution. The role profile will be updated on a regular basis to reflect changes to regulations / government guidance and reflect best practice.	Agreed as per report
12	Responsibility for Functions, Annex A (Membership and Terms of Reference of	Page 61-99	As part of a number of improvements to children’s governance arrangements, it is proposed that the constitution includes a specific responsibility in the terms of reference of the	Agreed as per report

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
	Committees, Sub-Committee and Partnership Boards)		Children, Education, Libraries & Safeguarding Committee to receive and consider reports from the Corporate Parenting Advisory Panel. The purpose of the proposed amendment is to improve the linkages between the Panel and the Committee.	
13	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	To strengthen the role of the Lead Member for Children's Services, it is proposed to enable the LMCS to present an annual report on critical children's issues to the Children, Education, Libraries & Safeguarding Committee	Agreed as per report
14	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	The Commissioning Director for Children's & Young People has identified that the current arrangements for the Children's Trust Board are not facilitating the statutory duty to cooperate (as required by Section 10 of the Children's Act 2004). It is proposed that the current terms of reference of the Children's Trust Board be deleted and updated including: i) updated terms of reference; and ii) a proposal that the Board meets as an Annual Children and Young People's Conference	Agreed as per report
15	Meetings Procedure Rules	Page 125-136	To strengthen the role of the Lead Member for Children's Services, it is proposed that the he/she be given additional rights to address committees, sub-committees or partnership boards which consider matters relating to children and young people	Agreed as per report, subject to the deletion of the words 'untimed' from Section 8.4

No.	Section	Reference (papers submitted to Committee)	Changes contained in the report to Constitution, Ethics and Probity Committee	Recommendation to Full Council
16	Meetings Procedure Rules	Page 125-136	To strengthen the role of the Lead Member for Children's Services, it is proposed that the he/she be given additional rights to present Members Items to committees, sub-committees or partnership boards of which they are not a Member when those bodies are considering matters relating to children and young people	Agreed as per report

9. COMMITTEE SYSTEM AND CONSTITUTION REVIEW - SUMMARY OF OUTCOMES

The Monitoring Officer introduced the report which summarised the outcomes of the Committee System and Constitution Review.

RESOLVED that the committee note the outcomes of the review.

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

There were none.

The meeting finished at 7.55 pm