

CONSTITUTION COMMITTEE AGENDA



31st January, 2006

at 4:00 p.m.

in Committee Room A

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond,

Councillors: Fenwick, Flintoff, Griffin, James, A Marshall, J Marshall, Dr. Morris,
Preece Richardson and Young

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To confirm the minutes in respect of the meeting of the Constitution Committee held on 30th November 2005 (attached)
 - 3.2 To receive the minutes in respect of the meeting of the Constitution Working Group held on 17th January 2006 (attached)
- 4. ITEMS REQUIRING DECISION**
 - 4.1 Honorary Aldermen and Freemen – Process for Election - *Chief Solicitor*
 - 4.2 Licensing – *Head of Public Protection and Housing*

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

30th November 2005

Present:

Councillor Richardson (In the Chair)

Councillors Flintoff, Griffin, James, A Marshall and Preece

Officers: Tony Brown, Chief Solicitor
Amanda Whitaker, Democratic Services Team Manager
Angela Hunter, Principal Democratic Services Officer

22. Apologies for Absence

The Mayor, Stuart Drummond and Councillors Fenwick and Young

23. Declarations of interest by members

None

24. Minutes of the meeting of the Constitution Committee held on 10th October 2005

Confirmed

25. Minutes of the meeting of the Constitution Working Group held on 17th November 2005

Received

26. Matters Arising from the Minutes of the Constitution Working Group held on 17th November 2005

Minute 26 – Ward Surgeries – Councillors James and Richardson advised that they had not received a full copy of the judgement, in respect of DPP v Luft, as they had previously requested. In response, the Chief Solicitor undertook to ensure that a full copy of the judgement was sent to the Members concerned.

Minute 27 – Honorary Alderman and Freeman – Process for Election – It was noted that a reminder had not yet been sent to Political Group Officers and Independent Members seeking their views on the proposed amendments to the process for the election of Honorary Alderman and Freeman. The Democratic Services Manager undertook to send out that reminder letter.

27. Council Procedure Rules – Time for Putting and Responding to Questions (Chief Solicitor)

At its meeting on 17th November the Constitution Working Group had considered the Chief Solicitors Briefing Paper relating to the disparities which existed within the Council Procedure Rules, regarding the time available for a member to respond to a question, depending upon the particular provision under which the question was put. The Constitution Working Group were of the opinion that, together with the time limits for putting questions, the provisions should be altered in order to achieve consistency of approach.

The relevant provisions of the procedure rules are set out below (the text suggested by the Constitution Working Group to be amended shown struck through, and the suggested substitution shown in square brackets in each case):

10 QUESTIONS FROM THE PUBLIC

10.7

- (iv) *A member of the public asking a question will have a maximum of one minute to put his/her question at the meeting and up to ~~two minutes~~ [one minute] for each supplementary question. A Member of the Executive answering a question will have a maximum of five minutes to put his or her answer to the question and up to ~~one minute~~ [two minutes] for each supplementary answer.*

11. QUESTIONS BY MEMBERS

11.1 Questions about recent decisions of the Executive

- (iv) *A Member asking a question will have a maximum of ~~two minutes~~ [one minute] to put his/her question at the meeting and up to ~~two minutes~~ [one minute] for each supplementary question. A Member of the Executive answering a question will have a maximum of five minutes to put his or her answer to the question and up to two minutes for each supplementary answer.*

(v)

- (vi) *Questions on notice at full Council.*

- (vii) *A Member asking a question will have a maximum of one minute to put his/her question at the meeting and up to one minute for each supplementary question. The relevant Member answering a question will have a maximum of ~~three~~ [five] minutes to put his or her answer to the question and up to ~~one minute~~ [two minutes] for each supplementary answer.*

28. Decision

That the proposed amendments to the Council Procedure Rules relating to the time allocated for posing and answering questions, as outlined above, be approved and referred to the Council meeting to be held on 15th December 2005.

28 North Neighbourhood Consultative Forum

Councillor Griffin referred to her recent attendance at a meeting of the North Neighbourhood Consultative Forum. During that meeting a presentation had been made to the Forum and reference had been made to the views of the Council having been expressed in favour of a particular option. It transpired, however, that the views expressed had been those of a Portfolio Holder.

Members of the Committee considered that it was important that correct terminology be used. The Chief Solicitor highlighted that although not something referred to in the Council's Constitution, it was something which needed to be reviewed.

C RICHARDSON

CHAIRMAN

CONSTITUTION WORKING GROUP

MINUTES AND DECISION RECORD

17th January 2006

Present:

Councillor Carl Richardson (In the Chair)

The Mayor, Stuart Drummond

Councillors: Sheila Griffin, Marjorie James, Ann Marshall, Arthur Preece, and David Young.

Officers: Tony Brown, Chief Solicitor
Ralph Harrison, Head of Public Protection and Housing
Graham Frankland, Head of Procurement and Property Services
David Cosgrove, Principal Democratic Services Officer
Angela Hunter, Principal Democratic Services Officer

23. Apologies for absence

Apologies for absence were received from Councillors Sandra Fenwick, Bob Flintoff and John Marshall.

24. Declarations of interest by Members

None.

25. Confirmation of the minutes of the meeting held on 17 November 2005

Due to a distribution error, the confirmation of the minutes was deferred until the next meeting.

26. Contract Procedure Rules (*Head of Procurement and Property Services/Chief Solicitor*)

The Head of Procurement and Property Services introduced the report which set out proposed changes to the Contract Procedure Rules adopted by the Council as part of the Constitution in 2002. The proposed changes arose from the adoption of a revised Procurement Strategy which had been approved by Cabinet in January 2005 and subsequently revised by the Performance Management Portfolio Holder in August 2005.

The detailed changes were set out in the appendix to the report. Members considered that the changes to the procedure rules were not readily apparent within the appendices and asked that a revised version be submitted to the next meeting of the Working Group more clearly defining the proposed amendments.

Decision

That consideration of the revised Contract Procedure Rules be deferred to the next meeting of the Working Group.

27. Review of Future Arrangements for Licensing

Committees (*Head of Public Protection and Housing / Assistant Chief Executive / Chief Solicitor*)

On 16th December 2004, the Constitution Committee recommended to Council that a Licensing Act Committee be established to discharge the Council's responsibilities relating to the Licensing Act 2003. Council resolved that this Committee be established and that the situation be reviewed after six months. This review was delayed due to the transitional period of the Licensing Act and the large number of applications being considered by the Committee itself.

The Licensing Act 2003 requires local authorities to establish Committees consisting of between ten and fifteen members, with sub-committees of three members to consider licence applications.

Due to the high volume of work expected during the Licensing Act transitional period it was resolved that the new Licensing Act Committee should operate independently of the already established Licensing Committee although many of the same Members serve on both. As the transitional period has now been successfully completed and the number of licence applications to be heard by the Licensing Act Committee has reduced to a more manageable level, it was now appropriate to consider whether to combine the committees.

If Council is minded to combine both Committees it would also be appropriate to consider whether some of the functions currently undertaken by the Licensing Committee should be reviewed. This may include whether licence applications, such as those from taxi drivers, should be considered by a sub-committee rather than the full Committee as is presently the case.

It was also highlighted that there were a number of other 'non-licensing' powers and duties included in the remit of the Licensing Committee. The Head of Public Protection considered that this may also be an opportunity to consider if these powers should also transfer to a 'new' Licensing Committee or, possibly more appropriately, be allocated to a more appropriate body such as the General Purposes Committee.

The Head of Public Protection reported that a joint meeting of the Licensing

Committee and the Licensing Act Committee was to be held on 25 January 2006 to consider this report and to make comments to be reported to the Constitution Committee meeting on 31 January 2006.

The Working Group supported in principle the amalgamation of the two committees. Members requested that as well as seeking comments from the members of the two committees at the joint meeting, the Head of Public Protection also seek the committees' views on the use of the sub committees for taxi licensing matters and the issue of the 'non-licensing' powers and duties.

Decision

That the Working Group support, in principle, the amalgamation of the Licensing Committee and Licensing Act Committee subject to the views of the membership of the two committees being reported to the next meeting of the Constitution Committee as requested.

CARL RICHARDSON

CHAIRMAN

CONSTITUTION COMMITTEE

31st January 2006



Report of: Chief Solicitor

Subject: HONORARY ALDERMEN AND FREEMEN –
PROCESS FOR ELECTION

1. PURPOSE OF REPORT

To inform members of the current position.

2. BACKGROUND

At their meeting on 17th November 2005, the Constitution Working Group, having considered a draft procedure, recommended that a reminder be sent to the Group Leaders and Independent Members seeking their views on the proposed amendments to the process for election of Honorary Alderman and Freeman, with a report to be presented to this meeting of the Constitution Committee.

A letter was circulated by Democratic Services who advise me that the following responses have been received –

- Administrative Group – a member of their group will comment at the meeting
- Labour Group – the matter would be considered at the meeting of their group on 2nd February 2006
- Lib Dem Group – “No comment”.

3. RECOMMENDATION

The committee may, therefore, wish to await the response of the Labour Group before progressing the matter.

CONSTITUTION COMMITTEE

31st January 2006



Report of: Head of Public Protection and Housing

Subject: PROPOSED CONSOLIDATION OF LICENSING COMMITTEES

SUMMARY

1. PURPOSE OF REPORT

- 1.1 To consider whether the Licensing Act Committee and the Licensing Committee should be combined into one Committee.
- 1.2 To consider whether membership of the Committee dealing with Licensing Act matters should remain at fifteen.
- 1.3 To consider whether all licence applications should be heard by sub-committees and if so, the constitution of such sub-committees.

2. BACKGROUND

- 2.1 On 16th December 2004, the Constitution Committee recommended to Council that a Licensing Act Committee be established to discharge the Council's responsibilities relating to the Licensing Act 2003.
- 2.2 Council resolved that this Committee be established and that the situation be reviewed after six months. This review was delayed due to the transitional period of the Licensing Act and the large number of applications being considered by the Committee itself.
- 2.3 The Licensing Act 2003 requires local authorities to establish Committees consisting of between ten and fifteen members, with sub-committees of three members to consider licence applications.

- 2.4 Due to the high volume of work expected during the Licensing Act transitional period it was resolved that the new Licensing Act Committee should operate independently of the already established Licensing Committee although many of the same Members serve on both.
- 2.5 As the transitional period has now been successfully completed and the number of licence applications to be heard by the Licensing Act Committee has reduced to a more manageable level, It is now appropriate to consider whether it would be appropriate for both Committees to combine.
- 2.6 If Council is minded to combine both Committees it would also be appropriate to consider whether some of the functions currently undertaken by the Licensing Committee should be reviewed. This may include whether licence applications, such as those from taxi drivers, should be considered by a sub-committee rather than the full Committee as is presently the case.

3. ISSUES

- 3.1 Combining Committees.
- 3.2 It is a statutory obligation for the Council to maintain a Licensing Committee to consider Licensing Act matters. This Committee must consist of between ten and fifteen members.
- 3.3 The current Licensing Act Committee consists of fifteen Members. Membership was set at the maximum permitted level in order to facilitate the expected heavy demand on Members time during the busy transitional period and also to ensure that conflicts of interest for members could be more easily avoided.
- 3.4 The Licensing Committee, which hears all licensing matters other than those related to the Licensing Act, consists of nine members.
- 3.5 Committee meetings alternate each month meaning that each Committee sits approximately every two months.
- 3.6 The Licensing Committee considers matters of policy but also hears individual licence applications, such as those from taxi drivers whose fitness to hold a licence has been placed into question.
- 3.7 If Council were minded to resolve that all licence applications should be considered by sub-committee, this would reduce the workload placed on the current Licensing Committee and therefore perhaps reduce the overall workload for a combined Committee to an acceptable level.

- 3.8 Constitution of Committee.
- 3.9 Members may wish to consider whether a new combined Committee should consist of fifteen Members or whether this should be reduced. As detailed earlier in this report, it is a legal requirement that a Committee responsible for hearing Licensing Act matters consists of no less than ten Members.
- 3.10 It is therefore possible to reduce the size of any new Committee to as low as ten but as sub-committee members will be drawn from this Committee, any reduction in the number would mean more frequent sub-committee meetings for the remaining members. The maximum size of the committee with five sub committees gives greater flexibility in the arrangement of meetings, avoids situations of member conflicts of interest more easily, and spreads the workload across a larger group of members. Ensuring that all members of the parent committee are involved in the sub committees also gives all members experience of the implementation, and indeed ownership, of the Licensing Policy.
- 3.11 If sub-committees were to be used to consider all licence applications, including taxi driver applications, the number of sub-committee meetings may be higher than the current level. However, it is not envisaged that the sub committee workload would reach the level experienced during the transitional period.
- 3.12 Future Role and Constitution of Sub-Committees.
- 3.13 As the current Licensing Committee sits approximately every two months, and taking into account the time needed to publish agendas etc, a licence applicant may be required to wait for up to ten weeks before their licence application can be considered. For many people, such as taxi drivers, this could mean not being able to work for up to ten weeks.
- 3.14 If Council were minded to agree that sub-committees should hear all licence applications, including Licensing Act applications and taxi applications, it would be possible for a sub-committee to hear all pending licence applications at one sitting. Using the experience recently gained from administering the Licensing Act, these sub-committees could be called as and when required. The new parent Licensing Committee could then continue to meet on a quarterly basis, the same as the current Licensing Act Committee.
- 3.15 It is a legal requirement that Licensing Act sub-committees are made up of three Members. It is therefore suggested that this may be an appropriate number for sub-committees considering all other licensing matters such as taxi driver applications.
- 3.16 Choosing the same number of Members for all licence applications would allow one sub-committee to hear all licensing matters brought before it. This would not be possible if sub-committees varied depending upon the type of licence due for consideration.

4. LEGAL ISSUES

- 4.1 A number of legal/constitutional issues need to be recognised and reflected in the arrangements.
- 4.2 With one exception, the power of the committee established under the 2003 Act to deal with Licensing Functions under that Act is a power to discharge the functions of the Council as the licensing authority. This means that the power is vested directly in the Committee, rather than the Council i.e. when acting in relation to 2003 Act functions, the committee would not be exercising delegated powers, and is not accountable to the Council as a body.
- 4.3 The one exception to the principle set out in the last paragraph is with regard to the approval and publication of the Licensing Policy. The legislation is such that the Council is able to exercise the function of approving and publishing the Licensing Policy – though the Council can, if it thinks fit, by delegated authority, enable the Licensing Committee to deal with that function also.
- 4.4 The legislation enables the committee set up to deal with 2003 Act functions also to deal with other matters related to licensing – such as hackney carriages etc. If the combined committee is to deal with other forms of licensing then in doing so, the committee would be exercising powers delegated to it by the Council. Functions delegated by the Council can be exercised by the Council before the delegated power has been exercised.
- 4.5 Though of unlikely practical significance, it could be of importance to recognise this distinction, which can most succinctly be put in this way
- (a) When dealing with 2003 Act licensing functions (but not the Licensing Policy), the committee is exercising its own statutory powers
 - (b) When dealing with anything else, the committee is exercising powers delegated to it by the Council.
- 4.6 A combined committee will thus need to have delegated to it the powers to deal with the matters referred to at 4.5(b) above.
- 4.7 It may also be appropriate at this time to consider whether all of the functions and delegations detailed in Appendix I remain appropriate for a Licensing Committee.
- 4.8 This report was considered by the Constitution Working Group on 17th January 2006. The Working Group recommended agreement, in principle, to combining the two existing Licensing Committees, but considered more detailed matters would best be commented on by Members of the Joint Licensing Act/Licensing Committees meeting on 25th January 2006.

5. RECOMMENDATIONS

- 5.1 That the Constitution Committee recommend to Council that the Licensing Act Committee and Licensing Committee be consolidated into one Committee to be referred to as the Licensing Committee.
- 5.2 Subject to approval of 5.1, that:
- (i) the new Committee consist of fifteen Members
 - (ii) all Licence applications be considered by three person sub-committee
 - (iii) that Members consider whether the remit and functions of the new Committee should be as detailed in Appendix 1.

Appendix I

Licensing Act 2003

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If an objection made	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Application for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is relevant frivolous vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

Other Matters

FUNCTION	DELEGATION
1. All licensing and registration functions set out in Part B of Schedule 1 to the Local authority (Functions and Responsibilities) (England) Regulations 2000 (No2853) except those relating to Commons Registration, Roads and Highways (Planning Committee)	<p><i>Director of Neighbourhood Services</i></p> <p>Power to carry out all of the functions of the Committee in paragraphs 1-8 adjacent with the exception of the power to refuse, revoke or suspend any licence or registration.</p> <p>Power to refuse, revoke or suspend any licence or registration in cases where eligibility criteria are not met or in cases where there is judged to be a clear risk to the well-being of the public which needs to be addresses as a matter of urgency.</p>
2. Functions relating to health and safety at work (as set out in Part C to the Regulations)	
3. Functions relating to sea fisheries	
4. Power to make closing orders with respect to take away shops	
5. The discharge of any functions relating to the control of pollution or the management of air quality	
6. The service of an abatement notice in respect of a statutory nuisance	
7. The inspection of the authority's area to detect any statutory nuisance	
8. The investigation of any complaint as to the existence of a statutory nuisance	