

CONSTITUTION COMMITTEE AGENDA



Friday 10 October 2008

at 2.00 pm

in Committee Room A, Civic Centre, Hartlepool

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors R Cook, Fenwick, Flintoff, James, Laffey, A Marshall, Morris, Preece, Richardson, Simmons

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To receive the minutes of the Constitution Working Group of 26 September 2008 (*to follow*)
 - 3.2 To confirm the minutes of the Constitution Committee of 29 August 2008.
- 4. ITEMS REQUIRING DECISION**
 - 4.1 Revisions to the Role and Remit of the Contract Scrutiny Panel – *Chief Solicitor*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

29 August 2008

The meeting commenced at 2.00 pm in the Civic Centre, Hartlepool

Present:

Councillor Carl Richardson (In the Chair)

Councillors Sandra Fenwick, Bob Flintoff, Ann Marshall, Arthur Preece and Chris Simmons.

Officers: Joanne Machers, Chief Personnel Officer
Christine Armstrong, Central Services Manager
Tony MacNab, Solicitor
Angela Hunter, Principal Democratic Services Officer

12. Apologies for Absence

Apologies for absence were received from The Mayor, Stuart Drummond and Councillors Rob Cook, Marjorie James, Pauline Laffey and Dr George Morris.

13. Declarations of interest by Members

None.

14. Confirmation of the Minutes

Constitution Working Group – 15 August 2008 – received.
Constitution Committee – 11 July 2008 – confirmed.

15. Matters Arising

Reference was made to minute 21 of the Constitution Working Group minutes from 15 August 2008 and the Chair clarified the neighbouring Council referred to in the minutes permitted Cabinet Members to wear the chains of office to participate in civic and ceremonial events on behalf of the Authority, subject to agreement of The Mayor.

16. Pre-Election Period (Purdah) and Ward Surgeries (Chief Solicitor)

A report was submitted by the Chief Solicitor which outlined the background to previous discussions of the Constitution Working Group in relation to the operation of ward surgeries during the pre-election period (purdah). The minutes of the meeting held on 15 August 2008 were also referred to.

A Member sought clarification of those discussions in relation to candidates who were actually standing for election and whether they should participate in ward surgeries. It was agreed that it was the intention of Members to recommend that where a current Member was standing for election, that Member should not participate in any ward surgeries during the pre-election (purdah) period.

Decision

- (i) That in the year where a current Member stands for re-election, they should not participate in any ward surgeries held during the pre-election (purdah) period.
- (ii) That up to 12 surgeries may be held in each ward per year and that any budget implications be forwarded to the Portfolio Holder for Performance.
- (iii) That on occasions when only 1 of the 3 ward Councillors wished to hold a ward surgery, then this be allowed subject to sufficient budget being available.
- (iv) That the Hartlepool Mail be approached to ascertain whether an article could be placed in the 'Whats On' column to promote dates of all ward surgeries.

17. General Purposes Committee – Decision Making Process (Chief Solicitor)

A report was submitted by the Chief Solicitor which outlined the background to previous discussions of the Constitution Working Group in relation to the above issue. Although Members did feel that this issue was thoroughly discussed at the meeting of the Constitution Working Group on 15 August, minute 20 refers the following was emphasised:

“Members felt that if a Chairman or Member of a committee requested information from an officer, this should be provided whether the officer felt this was particularly relevant or not. This of course, was subject to some exceptions, for example, in relation to child protection, vulnerable adults or business interests”.

The Chief Personnel Officer commented that there was an element of reasonableness and assessment required with any request for information.

For example, it may be worthwhile for an officer to present a summary of the information required or in a more appropriate format, rather than provide a lengthy document for that Member. However, Members accepted this course of action in certain circumstances, provided the Member requesting the information was in agreement.

Decision

Members noted the report.

18. Chains of Office (*Chief Solicitor*)

The Chief Personnel Officer presented a report which provided Members with the background to previous discussions held in relation to the Chains of Office. The financial considerations in relation to the Chair and Vice Chair attending simultaneous functions were included within the report and were calculated using information from the last 12 months which totalled 30 simultaneous events. The additional costs identified included the provision of a vehicle and an attendant and were estimated between £1500 and £2000 per annum.

Members were of the opinion that any clashes in events where it was felt the Council should support both events would be minimal across the year and that the Chairman should make the decision on whether both events should be attended. The Chief Personnel Officer suggested that in order to estimate the level of budget required, it might be useful to review the 30 events identified within the report to ascertain how many would realistically have been selected for attendance. Members agreed that this expenditure should be budgeted for, but felt that this was such a small amount of money, it ought to be made available should the Chairman of the Council require it and any overspend within the current budget would be inconsequential.

The possibility of using a local taxi service was discussed and the Chief Personnel Officer added that should the Chains of Office be worn, an attendant must accompany the Chair/Vice Chair for security reasons plus Council's fleet management was a more cost effective provision of transport.

Decision

- (i) That the Vice Chair does not wear the Chair's Chains of Office in the absence of the Chair.
- (ii) That the Vice-Chair be given access to the Alderman's medallion when requested to attend events/functions by the Chair, until such time as the Chains of Office were replaced.
- (iii) That the Chairman has the option to delegate an event/function to the Vice-Chair on occasions when more than one invitation was

received for an event/function being held at the same time and that any budget implications be forwarded to the Portfolio Holder for Performance.

The meeting concluded at 2.35 pm.

CHAIRMAN

CONSTITUTION COMMITTEE

10 October, 2008



Report of: Chief Solicitor

Subject: REVISIONS TO THE ROLE AND REMIT OF THE
CONTRACT SCRUTINY PANEL

1. BACKGROUND

1.1 The Constitution Working Group and Constitution Committee have previously given consideration to a review of the remit of the Contract Scrutiny Panel. To encompass previous discussions, Members were concerned to ensure that the Contract Scrutiny Panel had a recognised and meaningful role which provided “Members of the Panel with a greater involvement in the contracting process”. Following their meeting on 11th January, 2008, the Constitution Working Group recommended that the Panel should be appointed on an annual basis, in line with other Committees and Forums in order to ensure a consistent approach across the Council. Members were reminded that the exercise of letting contracts was an Executive function and this should be recognised within any role given to the Contract Scrutiny Panel. With this in mind, the Working Group indicated that both Executive and Non-executive Members should work together on the formative stage of procuring a contract to the formal awarding process. Members were reminded, that the “packaging” of contracts could engage European Union procedures and the “disaggregation” of a project into ingredient parts. It was also noted, that the Finance Portfolio Holder had recently considered a report on the “Procurement Strategy 2007-2010”, which had addressed some of the Members concerns. Following on from those discussions the following recommendations were made;

- (i) That the Contract Scrutiny Panel be appointed on an annual basis as with other Committees and Forums to ensure a consistent arrangement is in place. The membership of the Panel to include Executive and Non-executive Members.
- (ii) That the Panel be involved in the monitoring of contract performance – it was considered that this would be best achieved by the Panel selecting a number of contracts to examine as part of its work programme. It was recognised that Members did not need to be involved in technical aspects associated with the award of contracts. Difficulties arising from Executive Members being involved in the monitoring of contracts were highlighted.

2. RESPONSIBILITY FOR FUNCTIONS

2.1 Under part 3 of the Council's Constitution "Responsibility for Functions" the remit of the Contract Scrutiny Panel is as follows;

- (i) To receive and examine tender lists.
- (ii) To open tenders.
- (iii) To receive and examine reports on the outcome of price/performance and partnering contracts and letting procedures.

2.2 Mention has also been made of the Council's own procurement strategy and cognisance should also given to the National Procurement Strategy for Local Government as well as the statutory requirements contained under Part II of the Local Government Act 1988 (ie., to ensure there is no "anti-competitive" behaviour) and in compliance (where applicable) with European Union directives. An extract is provided herewith (**Appendix 1**) of the 'Guidance' provided ostensibly to officers, upon "issues and procedures" in the procurement process and the mention to the role of Members, particularly the Contract Scrutiny Panel (para 1.4.1 refers), for information purposes. Members will also be aware, that the provisions of the Local Government Act, 1999, provide a statutory context for the requirements to achieve Best Value placed upon local authorities and guidance upon Best Value and "value for money" considerations, is also contained within the provisions of the ODPM Circular 03/2003. Essentially, locally authorities need to be aware that in providing services the following principles should be recognised;

- (i) that the services are responsive to the needs of citizens.
- (ii) of a high quality and cost effective.
- (iii) are fair and accessible to all who need them.

2.3 The Council as an all purpose unitary authority is engaged in the procurement of a wide variety of services which primarily entails; the purchase of goods, materials and related services, the execution of works and the provision of other services ie consultancy based services. Clearly, strict adherence is required to the Council's own contract procedure rules as well as the statutory parameters mentioned above. In addition, the then DETR guidance on the "principles of decision making" are also pertinent, as follows;

- (i) Proportionality
- (ii) Due consultation and the taking of professional advice from Officers.
- (iii) Respect for human rights.

- (iv) A presumption in favour of openness.
- (v) Clarity of aims and desired outcomes.

3. FUTURE REMIT OF THE CONTRACT SCRUTINY PANEL

3.1 As indicated, the actual letting of contracts is an executive function, with delegated authority given to Officers particularly in the evaluation of tenders plus tender negotiations and the actual award of contracts. It is evident, that the Members of the Constitution Working Group/Committee wish to see an increased role of the Members of the Contract Scrutiny Panel. Indeed at their meeting on 27th June, 2008, Members recorded that any “monitoring” role had to be meaningful, with the ability “to track particular contracts”. It was suggested at that meeting, the possible additional “functions” as indicated below;

- The monitoring and review of performance of selected contracts in compliance with predetermined performance criteria.
- To consider and give views on the Council's procurement strategy.
- To consider and give views on risk management of procurement of services and awards of contracts.
- To develop protocols to guide the better procurement of Council services.
- To inspect contract registers/maintenance of select lists.
- To receive reports on the Council's engagement of purchasing organisations and other consortia.
- To make general recommendations upon the attainment of Best Value/Value for Money in procurement and in the awarding of contracts.

3.2 In view of the representations of Members of the Constitution Working Group, attached herewith (**Appendix 2**) is a proposed model, revising the current role and remit (and designation) of the Contract Scrutiny Panel. This report and the appended documents were considered at a meeting of the Constitution Working Group on 26 September. Members of the Committee are therefore requested to consider this report in conjunction with the minutes of that Working Group meeting.

4. RECOMMENDATIONS

- 4.1 That Members note and discuss the contents of this report.

5. CONTACT OFFICER

Peter Devlin, Chief Solicitor

Appendix 1**1.4.1 The Role of Members***The Executive or the Council*

Most contracts will relate to executive functions i.e. functions that can only be carried out by the Executive (either full Cabinet or an individual Portfolio Holder or an officer discharging delegated executive functions, as the case may be). Except for the large number of routine contracts, which are wholly dealt with by an officer under day-to-day management responsibilities, when contracts relate to executive functions, the Executive will have the responsibility:

- To determine the project including general aims of the construction, or service to be acquired
- To establish the level of expenditure for the project
- To approve lists of selected tenderers
- To determine the nature of the contract – best price, price/performance or partnering
- To determine the Price/Quality ratio in respect of a price/performance Contract or a Partnering Contract or other basis of assessment
- To determine the Budget Price in respect of a Partnering Contract
- To waive any element of the Contract Procedure Rules in the case of an individual contract or class or group of contracts

Occasionally, a contract may arise in connection with non-executive functions. In such a case the relevant roles set out above, will be carried by the Council.

The Contracts Scrutiny Panel

In order to ensure probity and transparency in the awarding of contracts, the Contracts Scrutiny Panel will participate by monitoring compliance with the Contract Procedure Rules at a number of stages, both during and after the completion of the contract procedure. The Panel will have the responsibility:

- To receive and examine tenderers lists
- To open tenders. Except tenders obtained by an In-house Provider for the purpose of compiling a tender for submission by the In-house Provider, subject to the financial limit imposed by the Contract Procedure Rules – currently £100K.
- To receive and examine reports on the outcome of best price contracts when the contract is not awarded to the tenderer with the 'best price'.
- To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures
- To examine and receive reports on any exception from the Contract Procedure Rules.

It should be noted that as the role of the Contract Scrutiny Panel (other than opening tenders) is one of monitoring outcomes, the process of reporting to the Panel is not

intended to delay the procurement process. The process can continue, without waiting for the position and/or outcome to be reported to the Panel.

Quotations are not tenders. Consequently contracts/quotations for works up to £50K and goods & services up to £25K do not need to be referred to the Contract Scrutiny Panel, whether for opening quotations or for reporting outcomes. However, exceptions to the Contract Procedures Rules applicable to quotations must be reported.

Contract Scrutiny Committee	
Membership:	5 Chair:
Quorum:	3
FUNCTION	DELEGATION
1. To receive and examine tender lists.	
2. To open Tenders.	
3. Functions relating to the scrutiny of contracts; (a) The monitoring of contracts (at the discretion of the Committee) subject to the formal quotation procedures under the Council's Contract Procedure Rules relating to; (i) Best Price Procedures (ii) Price/Performance Contracts (iii) Partnering Contracts (b) To receive and examine reports on the outcome of best price contracts when the contract is not awarded to the tenderer with the 'best price'. (c) To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures. (d) To receive and examine reports on any exception from the Contract Procedure Rules.	

Contract Scrutiny Committee (continued)	
4. To act as a consultee on the annual review of the Council's sustainable procurement strategy and 5 year procurement plan.	
5. Power to consider and make recommendations on the risk management of procurement of contracts in accordance with the Council's Contract Procedure Rules.	
6. Power to monitor contract register and the maintenance of select lists.	