

CONSTITUTION COMMITTEE AGENDA



Thursday 7 September 2006

at 5.00pm

in Committee Room A

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors Fenwick, Griffin, Hall, James, A Marshall, J Marshall, Preece, Tumilty, Richardson and Young

1. **APOLOGIES FOR ABSENCE**
2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
3. **CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 24 APRIL 2006**
4. **ITEMS REQUIRING DECISION / DISCUSSION**
 - 4.1 Accountability of Committees– General Purposes Committee and Standards Committee - *Chief Solicitor* (To Follow)
5. **ANY OTHER NOTIFIED BUSINESS**

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

24th April 2006

Present:

Councillor Carl Richardson (Chair)
Councillors Sandra Fenwick, Bob Flintoff, Sheila Griffin, Marjorie James,
Anne Marshall, Dr George Morris and Arthur Preece

Officers Peter Devlin, Legal Services Manager
David Cosgrove, Principal Democratic Services Officer

43. Apologies for Absence

Apologies were submitted on behalf of The Mayor, Stuart Drummond.

45. Declarations of interest by members

None.

46. Minutes

(i) The minutes of the Constitution Committee held on 30 March 2006 were confirmed.

(ii) The Minutes of the meeting of the Constitution Working Group held on 11 April 2006 were submitted.

Members commented that they did not feel that the minutes fully reflected the comments made by members during the discussion of the General Exception and Special Urgency Rules (minute 24 refers). Members specifically referred to the second paragraph on page 3 of the minutes and considered that the phrase "...the Committee had been concerned that the procedures could be used to 'get around the decision making system'" was not strong enough and Members had commented that they believed the system was being abused by officers. Members requested that prior to the minutes of the working group being submitted to the next Working Group for confirmation the minutes should be amended to reflect their recollection of the debate.

47. General Exception and Special Urgency Provisions

A copy of the Chief Solicitor's briefing paper submitted to the working party was submitted to the Committee. The paper set out the source and nature of the General exception and Special Urgency rules which are statutory rules imposed by the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000. As the rules are statutory rules, the Council are required to comply with the rules and there is no scope for variation of the rules. However, as indicated in the briefing paper, the Council are able to provide guidance as to the judgments to be made in applying the rules and consideration could also be given to 'bolting-on' procedures (e.g. a protocol for consultation; the provision of additional information etc).

At the meeting of the working group, members concerns focussed exclusively on the general exception procedure with particular reference to the number of occasions upon which that procedure was invoked. In responding to the members' concerns the Chief Solicitor accepted that, to some degree, the reliance upon the general exception procedure arose from a failure by an officer to anticipate the need for a decision, or to recognise the decision as a key decision. It was apparent that the frequency of application of the rule had diminished in the time that the executive arrangements had been in operation, presumably as a greater appreciation of the requirements of the arrangements developed. But the Chief Solicitor was very clear that there was no underlying motive of excluding members from participation in the decision-making process.

The Chief Solicitor commented on his role in the process, whereby any wish to implement the procedure was referred to him for approval. Arising from that responsibility, the Chief Solicitor was able to offer two suggestions to the working group as to future practice –

1. that in considering whether to authorise the use of the procedure, particular regard would be had to the justification, in the particular case, for the denial of public awareness (other than the 5 days statutory notice) of the decision
2. that when issued, a special exemption notice would be accompanied by sufficient details of the background to enable the Chair of Scrutiny Coordinating Committee to have an appreciation of the reasons and justification for the matter proceeding to a decision without prior inclusion in the forward plan.

The Committee supported these proposed amendments to the procedures set out in the Constitution being submitted to Council for approval. Members commented that the same 'substitute' arrangements utilised in other areas of the constitution be utilised in the proposed amendment 2, above. Therefore, in the absence of the Chair of the Scrutiny Coordinating Committee, the Chair of the Council, or in their absence, the vice-chair of the Council be consulted as appropriate.

RESOLVED: -

That Council be recommended to approve that the proposals made by the Chief Solicitor, as amended, to be incorporated into the Access to Information Rules as a 'Practice Note'.

C RICHARDSON

CHAIRMAN

CONSTITUTION COMMITTEE

7th September 2006



Report of: Chief Solicitor

Subject: ACCOUNTABILITY OF GENERAL PURPOSES AND STANDARDS COMMITTEES

1. PURPOSE OF REPORT

To invite the Committee to address issues regarding the accountability of the General Purposes and Standards Committees

2. BACKGROUND

- 2.1 At a previous meeting of the Constitution Committee or Working Group, a member expressed dissatisfaction with the current regime, whereby the decisions of the General Purposes Committee and the Standards Committee are not available, as a matter of course, to members of the Council.
- 2.2 The current practice is that minutes of committees are presented to Council only where necessary to complete the decision making process i.e. the committee does not have delegated powers to make a decision. In such circumstances, a report of the Committee, presented by the Committee Chair is presented to Council. Where the committee has delegated powers, then no report is presented to Council.
- 2.3 The previous, traditional, procedure, whereby the minutes of every meeting of every committee were presented to Council, was discontinued at the time of adoption of the new executive arrangements. It was a recognised feature of the new arrangements that a Council meeting would no longer be characterised by the submission of large quantities of minutes – rather, the Council meeting would be a forum for determination of the Council's budget and policy framework, public debate, appointment of committees, etc. The DCLG guidance document "New Council Constitution – Guidance to English Authorities", published to assist local authorities in the preparation of their constitutions, comments -

“The council meeting will be the forum at which all members of the local authority (whether they are members of the executive or not) discuss and decide the local authority's policy framework and budget. Local authorities will need to consider how the role of the council meeting in policy determination can be enhanced, by considering:

- *whether it might be appropriate for the council to meet more frequently at certain times of year and less often at others;*
- *how the structure and style of council meetings may need to change to allow for more debate on the policy framework, perhaps at more than one stage in the policy development process, including how the executive should present proposals for the policy framework and budget;*
- *what arrangements will be necessary to enable open and informed debate on reports from overview and scrutiny committees; and*
- *how public participation in the council meeting can be encouraged.”*

- 2.4 Records of the Working Group meetings from the period when the Council's Constitution was being prepared are being examined to locate any views and decisions regarding the submission of committee minutes to Council.
- 2.5 An alternative to the routine presentation of committee minutes would be to include their decisions in the arrangements currently employed for the dissemination of executive decisions i.e. the circulation of decision records direct to members by post or e-mail.

3. RECOMMENDATIONS

That the Committee consider the options available.

4. CONTACT OFFICER

Tony Brown, Chief Solicitor

CONSTITUTION COMMITTEE

7 September 2006



Report of: Assistant Chief Executive

Subject: LICENSING COMMITTEE – AMENDMENT TO DELEGATION

1. PURPOSE OF REPORT

To propose an amendment to the Officer Delegation detailed in the powers and duties of the Licensing Committee as approved by Annual Council on 25th May 2006.

2. BACKGROUND

The Constitution Working Group and Committee considered the revision to the powers and duties of the Licensing Committee earlier in the year when Members approved the transfer of several 'non-licensing' duties to the General Purposes Committee. It appears, however, that in re-drafting the functions and delegations for the Licensing Committee, a necessary paragraph allowing the Director of Neighbourhood Services to act in protecting the well-being of the public was omitted.

3. PROPOSALS

The current delegation of powers to the Director of Neighbourhood Services in regards to the powers and duties of the Licensing Committee states: -

"Power to carry out all of the functions of the Committee with the exception of the power to refuse, revoke or suspend any licence or registration".

In the past, the following additional paragraph was also set out: -

"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 addressed as a matter of urgency".

The second paragraph effectively adds formality to the powers that, for example, Public Health Officers would utilise to safeguard the public in closing food retail premises or taking taxis off the road, if after an inspection it was deemed to be in the interests of public safety.

In order to reassure Members, Officers still have the ability to act under powers contained within the various pieces of detailed legislation that govern these areas of public safety. The addition of the paragraph to the Committee's delegation simply formalises the situation in relation to the Licensing Committee itself.

5. RECOMMENDATION

That Council be advised to approve the amended powers and duties of the Licensing Committee as attached at Appendix 1

6. REASONS FOR RECOMMENDATIONS

To formalise the delegated powers of the Director of Neighbourhood Services.

7. BACKGROUND PAPERS

The HBC Constitution
The minutes of Annual Council Meeting on 25 May 2006.

8. CONTACT OFFICER

David Cosgrove
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Licensing Committee	
Membership:	15 Councillors:- Kaiser (Chair), Dr Morris (Vice-Chair), S Allison, Brash, R Cook, S Cook, Griffin, Hall, Jackson, Johnson, Lilley, Rayner, Rogan, Tumilty and Worthy.
Quorum :	3
FUNCTION	DELEGATION
<p>All licensing and registration functions set out in Part B of Schedule 1 to the Regulations except those relating to Commons Registration, Roads and Highways (Planning Committee).</p>	<p><i>Director of Neighbourhood Services</i></p> <p>Power to carry out all of the functions of the Committee 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 addressed as a matter of urgency.</p>