

PLEASE NOTE VENUE

CONSTITUTION COMMITTEE AGENDA



Friday 6 October 2006

at 2.00pm

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. **MINUTES**
 - 3.1 To confirm the minutes of the meeting of the Constitution Committee held on 7 September 2006 (attached).
 - 3.2 To receive the minutes of the meeting of the Constitution Working Party held on 28 September 2006 (to follow).
4. **ITEMS REQUIRING DECISION**
 - 4.1 Procedure for the Decision Making Route for Scrutiny Final Reports (*Assistant Chief Executive*) (to follow).
 - 4.2 Proposed Selection Criteria – Dealing with Non-Mandatory Scrutiny Topic Referrals from the Authority's Regulatory Panels and Other Committees (*Assistant Chief Executive*) (to follow).
 - 4.3 Business Report (*Chief Solicitor*) (to follow).
5. **ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

7th September 2006

Present:

Councillor Richardson(In the Chair);

Councillors Griffin, Hall, James, A Marshall, Preece and Tumilty.

In accordance with Council procedure 4.2 Councillor Dr Morris was in attendance as substitute for Councillor Young.

Officers: David Cosgrove, Principal Democratic Services Officer
Peter Devlin, Legal Services Manager
Amanda Whitaker, Democratic Services Team Manager

48. Apologies for absence

The Mayor, Stuart Drummond and Councillors J Marshall and Young.

49. Declarations of interest by members

None.

50. Minutes of the meeting held on 24th April 2006

Confirmed.

51. Cancellation of Meeting

The Chairman expressed concern that the meeting of the Committee, scheduled for 25th August, had been cancelled by Officers. The Vice-Chairman stressed that it was not up to Officers to cancel meetings and that the decision to cancel the meeting had been taken against the wishes of elected members.

The Vice-Chairman considered that there had been a breach of the Constitution. It was noted that the Chief Solicitor had apologised but that apology was not considered satisfactory as the cancellation of the meeting should not have happened. Members supported the concerns expressed by the Vice-Chairman.

In the absence of the Chief Solicitor, the Legal Services Manager responded to the concerns which had been expressed and advised that he would convey the comments made by Members to the Chief Solicitor. Members again questioned whether a breach of the Constitution had occurred by the cancellation of the meeting, against the wishes of Members. The Legal Services Manager considered that the Constitution did not expressly refer to a procedure for the cancellation of meetings, any such “procedure” being a matter of convention between officers and members. The Chairman considered that if the Constitution did not refer to the procedure for the cancellation of meetings then the Constitution should be amended. It was suggested by the Legal Services Manager that a paragraph could be added to the Officer/Member protocol.

RESOLVED – That the concerns expressed by Members be conveyed to the Chief Solicitor and that a further report be submitted in relation to amending the Constitution/Officer/Member Protocol to reflect the procedure for cancelling Member meetings.

52. Accountability of Committees – General Purposes Committee and Standards Committee *(Chief Solicitor)*

At a previous meeting, a member had expressed dissatisfaction with the current regime, whereby the decisions of the General Purposes Committee and the Standards Committee were not available, as a matter of course, to members of the Council. The current practice being that minutes of committees were 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.

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.”*

Records of the Working Group meetings from the period when the Council's Constitution was being prepared had been examined to locate any views and decisions regarding the submission of committee minutes to Council.

Members were advised that 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.

Members expressed the view that it was appropriate for the Constitution Working Group to consider the Constitutional position to ensure that there is no abuse of influence by, for example, the General Purposes Committee. The unique nature of the Standards Committee was noted as was the option for the Constitution Working Group to co-opt individuals with specialist knowledge.

RESOLVED – That the report be referred to the Constitution Working Group.

53. Licensing Committee – Amendment to Delegation

(Assistant Chief Executive)

A report prepared by the Assistant Chief Executive reminded Members that the Constitution Working Group and Committee had 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 appeared 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 had been omitted.

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 added formality to the powers that 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. Members were assured that Officers still had the ability to act under powers contained within the various pieces of detailed legislation that governed these areas of public safety. The addition of the paragraph to the Committee's delegation simply formalised the situation in relation to the Licensing Committee itself.

RESOLVED- That Council be advised to approve the amended powers and duties of the Licensing Committee as appended to the report.

REASONS FOR RECOMMENDATIONS

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

54. ANY OTHER BUSINESS

The Chairman raised the following additional item of business:-

(i) Chairman – Absence from Council

Concern was expressed that legislation was such that when the Chairman is present at a meeting of the Council, s/he will preside. The implications and practicalities of the legislation was highlighted in terms of Council and other Committees.

RESOLVED – That a report be submitted to the next meeting addressing the concerns highlighted by Members, including the Wolverhampton case referred to at the meeting.

CHAIRMAN

CONSTITUTION WORKING GROUP

MINUTES AND DECISION RECORD

28 September 2006

Present:

Councillor Richardson (In the Chair);

Councillors Sheila Griffin, Gerard Hall, Ann Marshall, Arthur Preece, and Victor Tumilty.

Also present: In accordance with Council Procedure Rule 4.2, Councillor Rob Cook as substitute for Councillor Marjorie James and Councillor Dr George Morris as substitute for Councillor David Young.

Officers: Mike Ward, Chief Financial Officer
Peter Devlin, Legal Services Manager
Charlotte Burnham, Scrutiny Manager
David Cosgrove, Principal Democratic Services Officer

12. Apologies for Absence

The Mayor, Stuart Drummond and Councillors Marjorie James, John Marshall and David Young.

13. Declarations of interest by members

None.

14. Confirmation of the minutes of the meeting held on 28 July 2006

Confirmed.

15. Procedure for the Decision Making Route for Scrutiny Final Reports *(Assistant Chief Executive)*

The Scrutiny Manager sought endorsement from the Working Group with regard to the implementation of a procedure to be used for co-ordinating the Cabinet and other Committees' responses to Scrutiny Final Reports and recommendations, prior to consideration by the Constitution Committee.

The Scrutiny Co-ordinating Committee at its meeting on 30 June 2006, endorsed a refined procedure for the decision making route for all Scrutiny Final Reports and forwarded that revised procedure to the Constitution Working Group and, thereafter, the Constitution Committee, prior to Council approval, for inclusion in the Authority's Constitution. The Scrutiny Manager stated that the new procedure would strengthen the scrutiny processes already included in the Constitution and would "close the loop" in terms of the executive reporting back to Scrutiny and providing update reports on progress made on the implementation of recommendations. The process had been recently piloted to test its robustness and had shown to work very well.

Members of the Working Group involved in Scrutiny indicated their support for the new procedure and commented that the recent pilot had proved the new procedure very valuable in giving scrutiny members updates on the implementation of the recommendations adopted by the Executive.

Recommendation

That the report and its proposals be endorsed and forwarded to the Constitution Committee meeting on 6 October 2006.

16. Proposed Selection Criteria – Dealing with Non-Mandatory Scrutiny Topic Referrals from the Authority's Regulatory Panels and other Committees (Assistant Chief Executive)

The Scrutiny Manager sought endorsement from the Working Group to the implementation of new selection criteria to be used when considering the appropriateness of undertaking a scrutiny investigation following receipt of a non-mandatory referral from the Authority's regulatory panels and other committees. This new procedure had been endorsed by the Scrutiny Co-ordinating Committee at its meeting on 30 June 2006 and also by Cabinet on 11 September 2006.

The new procedure built upon the Scrutiny Coordinating Committee's duty to consider the appropriateness of undertaking a scrutiny investigation, or not, following a referral from a Council regulatory panel or other committee. Under the new procedure the Scrutiny Co-ordinating Committee would assess suggested non-mandatory scrutiny topic referrals against the following proposed selection criteria:-

- (i) Affects a group of people living within the Hartlepool area;
- (ii) Relates to a service, event or issue in which the Council has direct responsibility for, significant influence over or has the capacity to act as public champion;
- (iii) Not be an issue which overview and scrutiny has considered during the last 12 months;
- (iv) Not relate to a service complaint; and
- (v) Not relate to matters dealt with by another Council committee, unless

the issue deals with procedure and policy related issues.

Members of the Working Group questioned who would be judging any referral against the criteria. The Scrutiny Manager reassured the Working Group that the Scrutiny Co-ordinating Committee would make that decision; there was still the duty for referrals to be reported to the Committee. The criteria would simply give an open and clear set of measures to judge the referral against.

Members also questioned criteria (iii) and were concerned that this could be too restrictive, particularly with issues that may arise as 'off-shoots' from an original investigation. The Scrutiny Manager stated that judgement would be for the Scrutiny Coordinating Committee to make.

Members also questioned if this criteria would be used for other referrals, such as those that may arise from outside the Council's regulatory panels and committees, such as from the public. The Scrutiny Manager indicated that it would be appropriate to use the criteria for such referrals but again that this would be for the Scrutiny Coordinating Committee to make the final decision.

Recommendation

That the report and its proposals be endorsed and forwarded to the Constitution Committee meeting on 6 October 2006.

17. Proposed Review of the Council's Financial Procedure Rules *(Chief Financial Review)*

The Chief Financial Officer informed the Working Group that in line with good financial management it was appropriate to review the Council's current Financial Procedure Rules (FPRs) as set out in the Constitution. The current rules had been in place some three years and the Council's approved Statement of Internal Control had identified the need to review the current procedure rules. Members themselves had already identified virement procedures as an area in need of review.

The report sets out a proposed strategy to implement a phased approach to the review of FPRs in accordance with best practice and the requirements identified when completing the Statement on Internal Control (SIC) for 2005/06. It was expected that the process would take around six months which would allow for the new rules to be approved by the Annual Meeting in May 2007.

Recommendation

The proposed review of the Council's Financial Procedure Rules was endorsed.

18. Response to Member Enquiries *(Chief Solicitor)*

The Legal Services Manager reported that Members had indicated they wished to establish a protocol to the effect that enquiries to officers by members should be responded to within the same 10 day time scale that applies to officers responses to enquiries from members of the public. At the last meeting of the Working Group, members concluded that a protocol should be established to require Members to respond to correspondence received from members of the public within 10 days, and in any event, for the avoidance of doubt a period not exceeding 10 days and that this protocol be monitored.

The protocol which exists for officer responses to enquiries from members of the public originated as a Citizens Charter Performance Indicator (P.I.) which has continued to date. Compliance with the ten deadline is monitored by each department or division and, in the case of the Chief Executive's department is reported to the portfolio holder as part of the Departmental Service Plan monitoring report.

It was considered that an extension of the protocol to cover enquiries from members would be relatively easy to achieve. The Members Services Officer has indicated that the extent to which Members Services are requested by members to provide correspondence by way of response to enquiries of members of the public is relatively low; many members seeming to prefer to respond direct. Any significant level in the reliance upon Members Services for such responses would, however, have resource implications.

A protocol for members responses to enquiries received from members of the public could be established and incorporated in a revision of the existing protocol but would need to be backed up by a mechanism for members reporting responses delivered direct rather than through the Members Services.

Some Members commented that they received very few letters from the public as many tended to telephone. Some members did receive e-mails and it was considered that these could be monitored in the same way. The Chairman commented that there were on occasions due to past problems, those constituents that Members would not respond to. The Legal Service Manager commented that all responses to the public should be courteous and respectful, however, if a particular constituent should become vexatious in their correspondence with a Member, it would be appropriate to indicate that the Member would not respond further.

Members discussed the use of Council stationery for correspondence and there was a debate on the use of such stationery when responding to requests for job references for constituents known to Councillors. The Legal Services Manager advised that Members should only be using Council stationery for correspondence linked to their role as a Councillor and not for 'personal' purposes. Members would also need to be guarded to the promotion of political views in correspondence using Council stationery.

Recommendation

1. That the Working Group recommends that the Constitution Committee approve the adoption of a protocol for responses to member enquiries.
2. That it is proposed that the operation of the protocol be monitored and be subject to periodic review through the Constitution Committee.

19. Honorary Aldermen and Freeman – Process for Election *(Chief Solicitor)*

The Legal Services Manager indicated that at Appendix 1 to the report was a copy of the article placed in Hartbeat inviting comments on the process for the election of freemen. The draft procedure/process was also set out at Appendix 2. One written response has been received, though this only made a suggestion as to candidates for election, rather than as to the process. In light of the fact that no comments had been received on the actual procedure it was suggested that it be referred to Constitution Committee for their consideration and approval prior to submission to full Council. In response to Members questions, the Legal Services Manager indicated that any nomination to award Freeman or Alderman status needed the approval of two thirds of the Council.

Recommendation

That Constitution Committee be recommended to confirm the draft process for the appointment of Honorary Freeman and Aldermen and as reported.

20. Chairman – Absence from Council *(Chief Solicitor)*

The Legal Services Manager reported that at the last Constitution Committee meeting, the Chairman requested a report on the standing of the Chair of the Council, when an event e.g., illness (temporary or otherwise) prevented the Chair presiding at a meeting of Council.

The Legal Services Manager indicated that if it was unavoidable that the Chairman of Council might be unable to continue to officiate part way through a meeting, the options were determined by the expected duration of the Chairman's indisposition: -

- (i) If it is expected to be of short duration, it would not be unreasonable for the Chairman to suspend the meeting for a few minutes whilst s/he recovers his/her composure the Chairman leaving the Council Chamber briefly for this purpose. The meeting would resume as soon as the Chairman feels fit to continue.
- (ii) However, if the Chairman's indisposition were to be of a duration that it would be unreasonable to proceed as in (i), then the Chairman would relinquish the chair to the vice chairman. The Chairman would be required to leave the Council Chamber as the Local Government Act

1972 provides that when the Chairman is present at a meeting of the Council, s/he will preside.

The Chairman indicated his concern that if he was not being able to continue to Chair Council, he would also lose his ability to represent his constituents by virtue of having to leave the meeting. This concern was echoed by other Working Group Members. The Legal Service Manager referred to a case involving Wolverhampton Council and the requirements of the Local Government Act 1972 which clearly stated that when the Chairman of the Council is present at a meeting of the Council, s/he will preside. Members commented that the issue should possibly be taken up with the Member of Parliament for Hartlepool.

Recommendation

That the report and the comments of the Working Group be forwarded to the Constitution Committee.

21. Contract Scrutiny Panel - Remit *(Chief Solicitor)*

The Legal Services Manager reported that at the meeting on the 9 March 2006 the Working Group discussed the role of the Contract Scrutiny Panel. Members considered that the use of the term 'scrutiny' within the title of the Panel was considered to be misleading and something of a misnomer. Members also considered that instead of the members of the Panel being selected from a rota, the Panel should be appointed at the Annual Council meeting. It was further considered that Officers should ensure that all appropriate information be presented to the Panel particularly that relating to the examination of the outcome of price/performance and partnering contracts letting provides. The report set out the current remit of the Contracts Scrutiny Panel as included in the Council's constitution.

Members considered that the role of the Contract Scrutiny Panel should be reviewed in its entirety. Members were still of the belief that the name of the Panel was misleading and needed to be changed as a fundamental part of the review.

Recommendation

That the role of the Contracts Scrutiny panel be reviewed in detail by the Working Group and that the Chairman of the Panel be invited to meeting(s) when the review was being undertaken.

CARL RICHARDSON

CHAIRMAN

CONSTITUTION COMMITTEE

6 October 2006



Report of: Assistant Chief Executive

Subject: PROCEDURE FOR THE DECISION MAKING ROUTE
FOR SCRUTINY FINAL REPORTS

1. PURPOSE OF THE REPORT

- 1.1 To seek endorsement from Members of the Constitution Committee with regard to the implementation of a procedure to be used for co-ordinating the Cabinet and other Committees' responses to Scrutiny Final Reports and recommendations together with its inclusion within the Authority's Constitution (supported by the Constitution Working Group on 28 September 2006).

2. BACKGROUND INFORMATION

- 2.1 At a meeting of the Scrutiny Co-ordinating Committee held on 30 June 2006, Members were informed that provision is currently made within the Authority's Constitution in dealing with the Cabinet and other Committees formal responses to Scrutiny Final Reports (Part 4, page 146 of the Overview and Scrutiny Procedure Rules refers).
- 2.2 Whilst the current procedure essentially deals with the 'reporting back' to the relevant Scrutiny Forum the Cabinet and other Committees' formal response, it was noted that there was a need to further develop the current procedure. As such the Scrutiny Manager presented a refined procedure (as outlined in paragraph 3 below) that will enable the relevant Scrutiny Forum to monitor/follow through the recommendations on implementation demonstrating the 'added value' outcomes of the Scrutiny investigation.
- 2.3 Members of the Scrutiny Co-ordinating Committee at this meeting, endorsed the refined procedure for the decision making route for all Scrutiny Final Reports and agreed that it be considered by the Constitutional Working Group and the Constitution Committee thereafter, prior to inclusion within the Authority's Constitution.

3. PROPOSED SCRUTINY FINAL REPORTS PROCEDURE

- 3.1 The proposed process, endorsed by the Scrutiny Co-ordinating Committee and the Constitution Working Group contains a number of stages:
- (a) Where a Scrutiny Forum has completed and produced a Final Report on an issue it has been examining and it has been approved by the Scrutiny Co-ordinating Committee, it would then be forwarded to the Authority's Cabinet or other Committees for consideration;
 - (b) Should the Final Report not be approved, the relevant Cabinet Member and Director/Chief Officer would formally report this back to the relevant Scrutiny Forum*;
 - (c) Should the Final Report be approved, the service area produces an 'action plan' which identifies all relevant actions recommended by the Scrutiny Forum along with relevant timescales for the implementation of recommendations. An appropriate officer is then assigned to each recommendation to ensure the action is carried out*;
 - (d) The service area in conjunction with the relevant Cabinet Member would formally feedback to the relevant Scrutiny Forum on the recommendations contained within the Scrutiny Final Report together with service area response known as the 'action plan' (displayed in a table format) within 12 weeks of the Authority's Cabinet/other Committees initially considering the report;
 - (e) The Final part of the process would be to monitoring the approved recommendations. Hence an appropriate IT system would then be developed by the Scrutiny Support Team which would track the progress of scrutiny reports and recommendations to ensure that all timescales are met. However, in the short-term, a progress report would be required, as part of one of the recommendations is in 6 months time from considering the Final Report; and
 - (f) The whole process above would be co-ordinated by Scrutiny Support Team.

* Note - For Health Scrutiny Reviews the NHS body must formally report back to the Adult and Community Services and Health Forum within 28 days from their formal consideration of the Final Report.

- 3.2 For ease, **Appendix A** summaries the above-mentioned process in chart format.

4. RECOMMENDATIONS

- 4.1 It is recommended that the Constitution Committee endorses the refined decision making route procedure for responses to Scrutiny Final Reports, to strengthen the current provision outlined in Authority's Constitution.

October 2006

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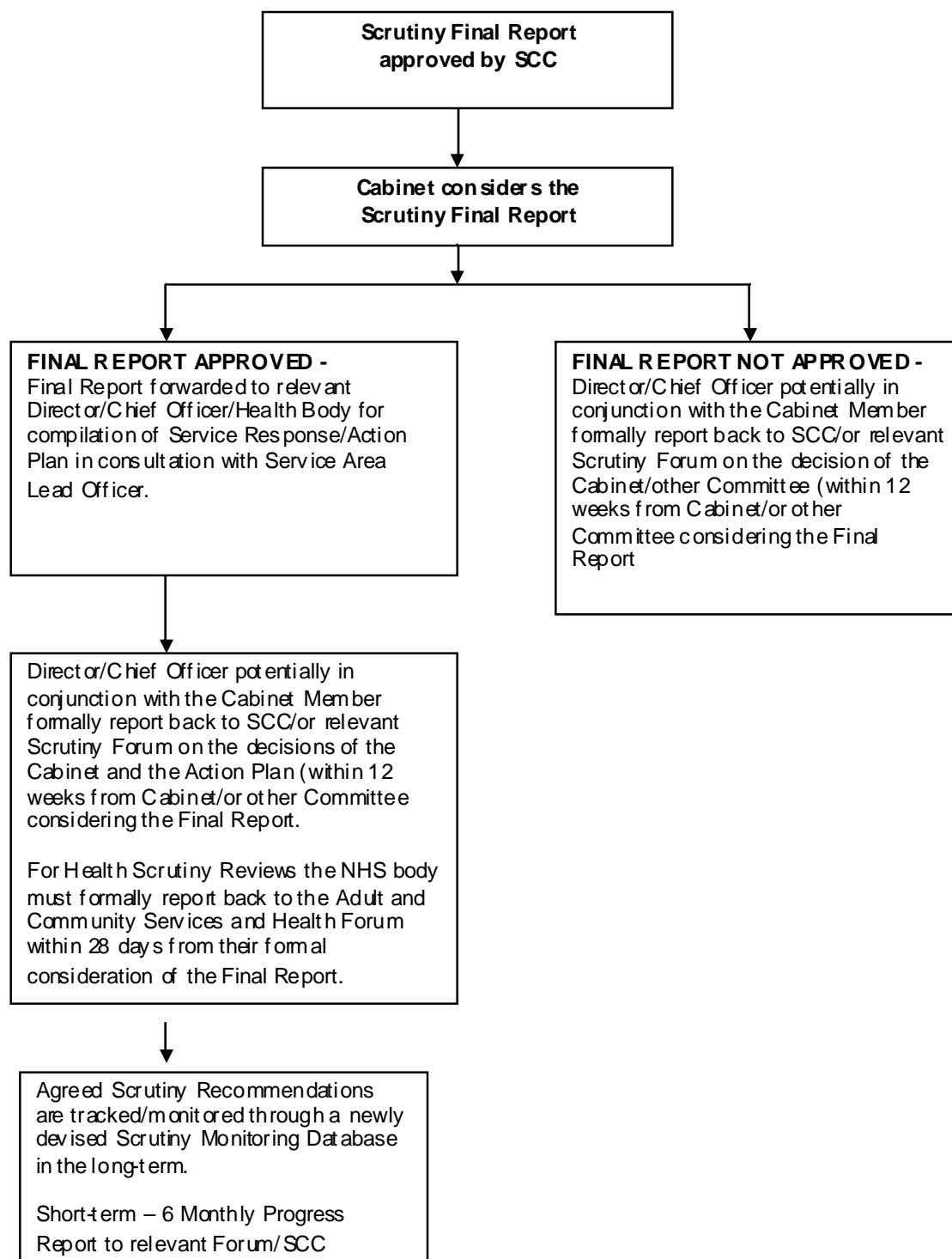
BACKGROUND PAPERS

The following background papers were used in the preparation of this report:-

- (i) Report of the Scrutiny Manager entitled 'Procedure for the Decision Making Route for Scrutiny Final Reports' presented to the Scrutiny Co-ordinating Committee held on 30 June 2006.
- (ii) Minutes of the Scrutiny Co-ordinating Committee held on 30 June 2006.
- (iii) Report of the Assistant Chief Executive entitled 'Procedure for the Decision Making Route for Scrutiny Final Reports' presented to the Constitution Working Group held on 28 September 2006.
- (iv) Minutes of the Constitution Committee held on 28 September 2006.

APPENDIX A

SUGGESTED PROCEDURE FOR THE DECISION MAKING ROUTE FOR SCRUTINY FINAL REPORTS



CONSTITUTION COMMITTEE

6 October 2006



Report of: Assistant Chief Executive

Subject: PROPOSED SELECTION CRITERIA – DEALING WITH NON-MANDATORY SCRUTINY TOPIC REFERRALS FROM THE AUTHORITY'S REGULATORY PANELS AND OTHER COMMITTEES

1. PURPOSE OF THE REPORT

- 1.1 To seek endorsement from the Constitution Committee with regard to the implementation of a selection criteria to be used when considering the appropriateness of undertaking a scrutiny investigation following receipt of a non-mandatory referral from the Authority's regulatory panels and other committees (endorsed by the Scrutiny Co-ordinating Committee on 30 June 2006, Cabinet on 11 September 2006 and Constitution Working Group on 28 September 2006).

2. BACKGROUND INFORMATION

- 2.1 As outlined within the Authority's Constitution, the Scrutiny Co-ordinating Committee has the discretion to consider the appropriateness of undertaking a scrutiny investigation following a referral from the Authority's regulatory panels and other committees, in addition to those referrals, which this Committee have a mandatory obligation to further examine.
- 2.2 The Constitution clearly states that should the Scrutiny Co-ordinating Committee decide not to examine a particular 'referral', the decision must be justified and reported to Council and the referring body.
- 2.3 The Scrutiny process within Hartlepool welcomes both mandatory and non-mandatory 'referrals' from the Authority's Council, Cabinet, regulatory panels and other committees. However, non-mandatory referrals are currently considered by the Scrutiny Co-ordinating Committee on a case by case basis without any selection criteria.

3. PROPOSED SELECTION CRITERIA

- 3.1 As we continue to raise the profile of Overview and Scrutiny in Hartlepool through various mechanisms, Members of the Scrutiny Co-ordinating Committee at their meeting on 30 June 2006 welcomed the implementation of the proposed selection criteria (as outlined below) to assist them in determining the appropriateness of undertaking non-mandatory 'referrals', which in time could be extended to receiving suggestions worthy of scrutiny from members of the public. In addition to this, Cabinet also endorsed the proposed selection criteria at their meeting on 11 September 2006 along with the Constitution Working Group on 28 September 2006.
- 3.2 The Scrutiny Co-ordinating Committee also agreed that the proposed selection criteria would assist the Committee in ensuring the referral was an area worthy of review and would also assist in the management and delivery of the yearly Overview and Scrutiny Work Programme in particular the on-going capacity and workload constraints of the four standing Scrutiny Forums.
- 3.3 In terms of the process, the Scrutiny Co-ordinating Committee would assess the suggested non-mandatory scrutiny topic referral against the proposed selection criteria as outlined below :-
 - (i) Affects a group of people living within the Hartlepool area;
 - (ii) Relates to a service, event or issue in which the Council has direct responsibility for, significant influence over or has the capacity to act as public champion;
 - (iii) Not be an issue which overview and scrutiny has considered during the last 12 months;
 - (iv) Not relate to a service complaint; and
 - (v) Not relate to matters dealt with by another Council committee, unless the issue deals with procedure and policy related issues.

4. RECOMMENDATION

- 4.1 It is recommended that the Constitution Committee endorses the proposed selection criteria for inclusion within the Authority's Constitution.

October 2006

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BACKGROUND PAPERS

The following background papers were used in the preparation of this report:-

- (i) Report of the Scrutiny Manager entitled 'Proposed Selection Criteria – Dealing with Non-Mandatory Scrutiny Topic Referrals from the Authority's Regulatory Panels and Other Committees' presented to the Scrutiny Co-ordinating Committee held on 30 June 2006.
- (ii) Minutes of the Scrutiny Co-ordinating Committee held on 30 June 2006.
- (iii) Report of the Assistance Chief Executive entitled 'Proposed Selection Criteria – Dealing with Non-Mandatory Scrutiny Topic Referrals from the Authority's Regulatory Panels and Other Committees' presented to the Cabinet held on 11 September 2006.
- (iv) Minutes of the Cabinet held on 11 September 2006.
- (v) Report of the Assistance Chief Executive entitled 'Proposed Selection Criteria – Dealing with Non-Mandatory Scrutiny Topic Referrals from the Authority's Regulatory Panels and Other Committees' presented to the Constitution Working Group held on 28 September 2006.
- (vi) Minutes of the Constitution Committee held on 28 September 2006.

CONSTITUTION COMMITTEE

6TH October 2006



Report of: Chief Solicitor

Subject: Briefing Paper

1. Purpose of the Report

The information contained within this 'Briefing Paper', follows on from that received by members of the Constitution Working Group at their meeting on 28th September 2006, and the recommendations from that Working Group.

2. Response to Member Enquiries

Members have indicated that they wish to establish a protocol to the effect that enquiries to officers by members should be responded to within the same 10 day time scale that applies to officers responses to enquiries from members of the public. Members of the Working Group agreed that a protocol should be established to require Members to respond to correspondence received from members of the public within 10 days, and in any event, for the avoidance of doubt a period not exceeding 10 days and that this protocol be monitored.

Compliance with the 10 deadline is monitored by each department or division and, in the case of the Chief Executive's department is reported to the portfolio holder as part of the Departmental Service Plan monitoring report. It is envisaged that monitoring agreements would be initiated in respect of responses to member enquiries. However, a mechanism for members reporting responses delivered direct rather than through the Members Services, would require close co-ordination of responses.

Recommendations:

1. That Constitution Committee agree to the adoption of a protocol for responses to member enquiries.
2. That the operation of the protocol be monitored and be subject to periodic review through the Constitution Committee.

3. Honorary Alderman and Freeman – Process for Elections

The Council have invited comments on the process for conferring the appointment of honorary freeman. Whilst responses received made nominations for such appointment, none contained representation on the procedure or process to be adopted.

Recommendation:

That members confirm the procedure and process as set out in the attached document (Appendix 1).

4. Chairman – Absence from Council

At the previous Constitution Committee, the chairman requested a report on the standing of the Chair of the Council, when an event e.g., illness (temporarily or otherwise) prevented the Chair presiding at a meeting of Council.

It is unavoidable that a Chairman of Council might be unable to continue to officiate part way through a meeting. In such circumstances, the options are determined by the expected duration of the Chairman's indisposition -

- (i) If it is expected to be of short duration, it would not be unreasonable for the Chairman to suspend the meeting for a few minutes whilst s/he recovers his/her composure the Chairman leaving the Council Chamber briefly for this purpose. The meeting would resume as soon as the Chairman feels fit to continue.
- (ii) However, if the Chairman's indisposition were to be of a duration that it would be unreasonable to proceed as in (i), then the Chairman would relinquish the chair to the vice chairman. The Chairman would be required to leave the Council Chamber as the Local Government Act 1972 (Schedule 12, para 5(1)) provides that when the Chairman is present at a meeting of the Council, s/he will preside.

In *Re Wolverhampton Borough Council's Aldermanic Election* (1961), which concerned an election of aldermen for which the Mayor was a candidate, the Mayor vacated the chair just before the Council proceeded to the election of aldermen but he delivered a voting paper and remained in the Council Chamber.

The Court held; it was Parliament's intention that at a meeting of the Council the Mayor's place, and his only place, should be in the chair. When he is not in the

Mayoral chair ... then, since his functions are one and indivisible, he has lost his right to exercise any of them so far as taking part in the meeting is concerned.

Recommendation:

That the report be noted.

5. Contract Scrutiny Panel - Remit

At their meeting on the 9th March 2006 the Working Group discussed the role of the Contract Scrutiny Panel. The use of the term 'scrutiny' within the title of the Panel was considered to be misleading and something of a misnomer. Views were also expressed that instead of the members of the Panel being selected from a rota, the Panel should be appointed at the Annual Council meeting. It was further considered that Officers should ensure that all appropriate information be presented to the Panel particularly that relating to the examination of the outcome of price/performance and partnering contracts letting provides. It was resolved that the role and remit of the Contracts Scrutiny Panel should be examined.

The Contract Procedure Rules contains the following entry regarding the function of the Contract Scrutiny Panel –

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

- *To receive and examine tenderers lists*
- *To open tenders*
- *To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures”*

The point made by members on 9th March 2006 was that whilst the Panel had a role during the contract letting process – and members were of the view that that role itself was unclear – its activities did not amount to a 'monitoring' role.

Members commented that no information was presented to the Panel as to the course of the contract, following the letting process. The Panel were therefore unable to examine compliance, and financial issues arising during the life of a contract. Although the relevant portfolio holder would receive information on a regular basis which would reveal on-going problems with a particular contract,

members felt that examination of such issues by the Contract Scrutiny Panel would be a valuable role in assisting the Council to manage its contracts portfolio.

Recommendation:

1. That Members consider the role and remit the Contract Scrutiny Panel.
2. An invitation be extended to the Chair of the Contract Scrutiny Panel to assist the Working Group in its considerations of the above.

Appendix 1

Draft Process relating to the nomination and election of Honorary Freeman Aldermen

1. NOMINATIONS

1.1. FREEMAN OF THE BOROUGH OF HARTLEPOOL

- 1.1.1 Nominees for election as an honorary freeman should
- (a) have been born in the Borough, or
 - (b) reside or have resided in the Borough, or
 - (c) have or have had strong established links to the Borough and/or
 - (d) in some manner have brought distinction upon the Borough
- 1.1.2 Nomination for election as honorary freeman may be made by any –
- (a) Hartlepool Borough Councillor
 - (b) political party or group connected with the Council
 - (c) voluntary organisation operating in the borough
 - (d) corporate body with premises in the borough
 - (e) public or charitable body, or
 - (f) member of the public
- 1.1.3 The nominee must be either –
- (a) an individual person (not a body corporate), or
 - (b) a group of individual persons,
- but a person may not nominate him/herself
- 1.1.4 Nominations must be in writing and may be submitted to the Chairman of the Council, the Mayor or the Chief Executive. A nomination should state the person or body making the nomination and his/her/its address and include an explanation of why the person nominated is considered appropriate to be elected as honorary freeman.
- 1.1.5 Invitation to submit nominations for election as freeman of the borough shall appear in two editions of Hartbeat prior to the closing date for nominations, and shall be posted on the Council's website www.hartlepool.gov.uk

1.2 HONORARY ALDERMEN

- 1.2.1 Nomination for election as honorary alderman may be made by any –
- (a) Hartlepool Borough Councillor;
 - (b) Political party or group connected with the Council
- 1.2.2 Nominations must be of a person who has formerly served as a Councillor of Hartlepool Borough Council
- 1.2.3 Nominations must be in writing and may be submitted to the Chairman of the Council, the Mayor or the Chief Executive. A nomination should be signed the person or on behalf of the group making the nomination and include an explanation of why the person nominated is considered appropriate to be elected as honorary alderman.

2. CONSIDERATION OF NOMINATIONS

- 2.1 Nominations for election as honorary freeman and honorary alderman considered by the proper officer to comply with the requirements of paragraph 1 (but for this purpose disregarding paragraph 1.1.1) shall be referred to the next meeting of the Civic Honours Committee. The committee will consider each nomination (including its compliance with paragraph 1.1.1) and may resolve to recommend the nomination to the Council.
- (Note – the proper officer for the purposes of paragraph 2.1 is the Chief Executive or his nominee).

The committee shall comprise

- (i) The Leaders/Co-ordinator of the three main groups (Labour, Liberal Democrat and Administrative Groups) or their substitutes)
- (ii) An independent member (the Mayor or his/her substitute)
- (iii) One Resident Representative, and
- (iv) One representative from the Community Empowerment Network

(Note: the Resident Representative and the representative from the Community Empowerment Network, being non-voting members of the committee)

- 2.2 A nominee whose nomination is resolved to be referred to the Council will be invited, on a confidential basis, to indicate whether s/he would accept the relevant honour if offered.
- 2.3 Following confirmation of the nominee's prospective acceptance, at the next ordinary meeting of the Council the Council will determine whether or not they are minded to elect the nominee as honorary freeman or

alderman, as the case may be. Before the matter is considered the Chairman will invite the Council to resolve to exclude the press and public pursuant to Local Government Act 1972 Schedule 12A paragraph 2.

- 2.4 If the Council resolve that they are minded to elect the nominee as honorary freeman or alderman the matter shall be deferred to be dealt with at an extraordinary meeting of the Council convened especially for that purpose.
- 2.5 The date for the extraordinary meeting to confer the honour shall be fixed either by the Council at the meeting referred to in paragraph 2.4 or by the Chairman

(Note – the proper officer for the purposes of paragraph 2.1 is the Chief Executive or his nominee)

Appendix 2

Contract Scrutiny Panel	
Membership:	5 Chair: Councillor Lilley The remaining four members will be selected from a rota maintained by the Proper Officer.
Quorum:	3
FUNCTION	DELEGATION
1. To receive and examine tender lists	
2. To open tenders	
3. To receive and examine reports on the outcome of price/performance and partnering contracts' letting procedures.	