

TITLE OF REPORT: ANNUAL AMENDMENTS TO THE CONSTITUTION

REPORT OF THE MONITORING OFFICER

1. SUMMARY

This report recommends amendments to the constitution as part of the annual review of the Council's governance arrangements.

2. FORWARD PLAN

This matter is not a key decision and therefore is not included in the forward plan.

3. BACKGROUND

3.1 This Council is required to prepare and maintain a constitution setting out prescribed governance information including: a summary, articles, the scheme of delegation to officers and terms of reference of committees for discharging the functions of the authority, the procedural and other standing orders, codes and protocols regulating the behaviour of members and staff, the scheme of members' allowances, details of the authority's staff management structure and of its executive members.

3.2 The Monitoring Officer has a duty to:

- keep the Constitution under review and report back to members at full Council any changes that are required to it. This would comprise any legislative or regulatory changes.
- to make recommendations for ways in which the Constitution can be amended to better achieve its purpose, which includes comparing practices within other Councils and considering examples of national best practice.

In May 2010, Council considered a report from the Acting Monitoring Officer recommending a series of amendments to the constitution carried out as part of a review of the Council's governance arrangements.

3.3 Since the Report to Council in May 2010 there have been many national changes and announcements which do or will impact on the way we do business in the future. These include:-

- The 16.2% reduction in our RSG.
- The Localism Bill.
- Other legislative and policy developments which could impact on local government.

3.4 In addition we await further information with regard to an expected review of the National Model form of Constitution. This review was effectively suspended pending the Localism Bill although we now expect it to move forward again. There are no known timescales at present.

- 3.5 In relation to a more fundamental review of our Constitution it could be abortive work to plough ahead with this in advance of any review of the National Model Constitution. Therefore it is proposed that subject to the National Model position being clarified a broader review of the Constitution is conducted in due course.

4. ISSUES

Local Issues & Considerations

The issues that need to be considered are:

- A. Sub-Committees of Overview and Scrutiny Committee.
- B. Substitutes.
- C. The 4 Year Leader.
- D. Other technical and procedural changes.

A. The Structure of Scrutiny and the Sub-Committees

In considering the current arrangements the comments of the Overview and Scrutiny Committee on 30th November 2010 have been taken into account. Briefly these were:

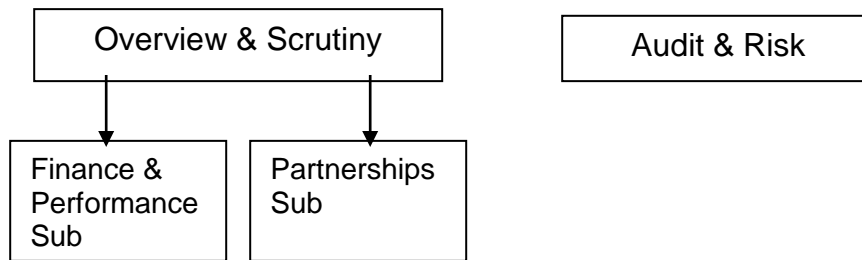
- We should consider the effectiveness of the current overview and scrutiny arrangements
- Papers are arriving too late in the day, when decisions are imminent and the ability to influence those was limited
- The scheduling of meetings could be improved
- The Committee consider their remit is to hold executive to account
- Membership rules were unnecessarily restrictive
- Emphasis on finance and suggestion to amend terms of reference of Finance and Performance Sub-Committee
- Return the work of the Partnerships Sub-Committee to the main Committee
- Comment was made about whether the Committee was undertaking enough of an 'overview' function

Many of these points are procedural and Officers have been asked to keep under review the administrative aspects and issue of papers.

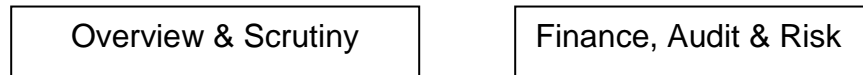
On the question of Sub-Committees it seems that an alternative structure may be more appropriate. It has been suggested by Officers and Members that the work of the Partnership Sub-Committee could be returned to the Overview and Scrutiny Committee. In relation to the Finance and Performance Sub-Committee the government are giving Councils a clear steer in relation to the performance element. There will be less information collected, less indicators and a review of all legislative requirements and burdens (over 1200 separate legislative requirements are being reviewed by DCLG). The remaining performance work we do could return to the parent Overview and Scrutiny Committee. The finance element could be incorporated within the Audit and Risk Committee agenda.

A combination of the above points could see both Sub-Committees deleted. The remaining structure would be as follows:

Current



Proposed



Another issue relates to the perceived effectiveness of the overview function. One option is a system similar to that used by Herts County Council . A topic is considered in one hit by a Task and Finish Group generally over one or maybe two days. Conclusions and recommendations are drawn up and passed to the relevant Executive Member for consideration and response. A criticism of our existing Task and Finish arrangements are that they take too long and in resource terms they are expensive. This approach will be “trialled” in the forthcoming scrutiny of the parking review.

There is no need to reconsider the frequency of the meetings in the proposed structure as the level of work they would have would be pretty similar to what they have at present. Subject to the requirements of the Budget timetable, meetings could be timetabled more effectively throughout the year. The three Group Leaders have indicated that they are comfortable with the proposals relating to the sub-committees and the nature of the Task and Finish process.

B. Substitutes

If we have no sub-committees then the question of whether or not members of the Sub-Committee can have substitutes not on the parent committee falls away. However, the previous decision of the Council on this matter has been clarified in the Constitution already.

Some other questions on the matter of substitutes have emerged in discussion with Group Leaders. These are explained below but some background to the legal position is set out first.

- There is no express statutory authority for any substitution scheme. That means that when drawing up a substitution scheme one has to go back to first principles and draw up a scheme which is consistent with existing legislation. It was the introduction of the political proportionality requirements in the Local Government and Housing Act 1989 that gave rise to the issue of substitution, to enable political groups to maintain their control at committees in the event that one or more of their members was unable to attend. The Schemes primarily operate for the benefit of members to allow them to, from time to time, excuse themselves from meetings.
- Substitution schemes are adopted by a large number of authorities in order to make the day-to-day business of Council Meetings manageable for Members. A Council can operate without a substitution scheme, and indeed some do. However, there is nothing unlawful about a substitution scheme which is consistent with existing legislation.

- There is a “model” scheme recommended by the then Office of the Deputy Prime Minister. Standing Order number (4) in the Council’s Constitution is in accordance with the model. It does not state a maximum number of substitutes for each Committee, the Council has adopted 3 as the limit. The Council could choose to revisit this.
- Appointment to Committees including substitutes should be made by full Council (Local Government Act 1972 s101 and s102 as amended).

The two points to be considered are:

- i) The matter of substitutes on bodies other than the main committees.
- ii) The limit of 3 on the number of substitutes.

i) Substitutes on bodies other than the main committees

This relates to a number of possible bodies, e.g. working parties, task and finish groups, project boards, etc.

It is proposed that our scheme of substitution should relate to Overview and Scrutiny Committee, Audit and Risk Committee and Planning Control Committee. It is not necessary or required for Cabinet, Licensing and Appeals and obviously Area Committees to have substitutes.

ii) The limit of 3 on the number of substitutes

This issue has been raised by the Leader of the Council who sees the limit as disadvantageous to larger political groups. If say four members of the Administration cannot attend Overview and Scrutiny only three substitutes can attend.

All leaders could see the practical problems of removing the limit completely.

Opposition Group Leaders point out that if there are no substitutes small groups may be left, on occasion, at Committee with no representative if 1 or 2 colleagues cannot make a meeting.

There is validity in all these points so Council would be the proper place to debate any change to the number of substitutes to be allowed.

C. The 4 Year Leader

The Council has already made a decision on this matter at its meeting on 14 December 2010 and consequential drafting amendments will be made to the Constitution. Given the government’s intention to repeal this requirement this may change in future however as there has not yet been any withdrawal or repeal of the legislative requirements the Council’s decision will come into force at the 2011 annual meeting of the Council.

D. Technical and Procedural Issues

A number of minor drafting issues can be usefully considered. These include:

- Updating financial regulations.
- Aligning Contract Procurement Rules with Portfolio Holder delegations.
- Technical amendments relating to values for land disposals.
- Delegation in relation to NHH Board votes to reflect previous decisions.
- Deletion of the reference to Area Committees having responsibility for the Council's allotments and open space in line with current practice.
- Consequential amendments that may be required pursuant to Agenda Item 6 (Organisational Restructuring).

5. LEGAL IMPLICATIONS

Section 37 Local Government Act 2000 requires the Council to have in place a constitution and to keep that constitution under review.

Only full Council can sanction amendments to the constitution save for any delegation that full Council may agree to the Acting Monitoring Officer.

Section 102 of the Local Government Act 1972 provides that Council appoints committees and that committees appoint sub-committees.

6. FINANCIAL AND RISK IMPLICATIONS

None arising from this report.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

None arising from this report.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

None arising from this report.

9. RECOMMENDATIONS

- 9.1 That the Council note that subject to the National Model Constitution position first being clarified a broader review of the Constitution is conducted in due course.
- 9.2 That the Council considers the proposal in section 4 (A) of the Report regarding the proposed Committee structure for an Overview and Scrutiny Committee and a Finance, Audit and Risk Committee, and if satisfied resolves to approve that proposal.
- 9.3 That the Council considers and notes that substitutes will only be permitted for Overview and Scrutiny Committee, Finance, Audit and Risk Committee and Planning Control Committee.
- 9.4 That the Council considers and resolves how it would like to finalise any limit on the number of substitutes permitted.

- 9.5 That the Council delegates authority to the Chief Executive and Strategic Director of Finance Policy and Governance, in consultation with the Leader and Portfolio for Finance and IT to approve the drafting amendments referred to at section 4 (D) of the Report.
- 9.6 That the Council delegates authority to the Monitoring Officer to make all consequential changes to the Constitution that are required to record to reflect these decisions.

10. REASONS FOR RECOMMENDATIONS

To ensure the Council meets its statutory obligations and continues to improve its working practices.

11. ALTERNATIVE OPTIONS CONSIDERED

None.

12. APPENDICES

None.

13. CONTACT OFFICERS

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14. BACKGROUND PAPERS

None.