

CONSTITUTION COMMITTEE

11 SEPTEMBER 2009

Present: County Councillor Berman (Chairperson);
County Councillors Aubrey, Burley, Goodway,
Greening, Howells, Keith Parry, Piper, Dianne Rees,
Walker and Walsh

Apologies: Councillor Elgan Morgan

9 : MINUTES

The minutes of the meeting held on 27 July, 2009 were approved as a correct record and signed by the Chairperson.

10 : COUNCILLORS COMMISSION EXPERT PANEL REPORT

In December 2007, the Councillors Commission published a report entitled “Representing the Future”, which made a total of 61 recommendations.

In March 2008 the Welsh assembly Government established a panel of experts to consider the above report and the position of local government in Wales. The Expert Panel included two current Cardiff Councillors (Councillors Lansdown and Patel) and was also chaired by a former Cardiff Councillor.

As part of its work the Expert Panel considered the following specific themes:

- the role of Councillors;
- public perception and understanding of Councillors and the role of the media;
- balancing working and family life with being a councillor;
- supporting, recognising and rewarding councillors; and
- recruiting and retaining a diverse range of councillors.

The Expert Panel’s report, entitled “Are we being served”, was published for consultation on 14 August 2009.

The Welsh Assembly Government was seeking views on the 35 recommendations made by the Expert Panel.

The Monitoring Officer suggested that the report and summary of recommendations be referred to Members for consultation and report back to this Committee via the Groups.

RESOLVED – That

- (1) the report and summary of recommendations of the Councillors Commission Expert Panel in Wales be noted;
- (2) copies of both documents be circulated to all Members, with a request that any comments from individual Members be submitted to the Clerk to the Council by 12 October 2009;
- (3) the matter be reported back to this Committee following consideration by Groups.

11 : REVIEW OF CONSTITUTIONAL ARRANGEMENTS: PLANNING COMMITTEE MEETINGS

The Monitoring Officer reported that in October 2006 the Council received a report concerning the Wales Audit Office baseline assessment of the Planning Service. As a result the Planning Service revised its processes and procedures.

On 6 July 2007 this Committee considered a draft Members Planning Code of Good Practice, which was endorsed for further consultation with the Planning Committee. This Committee had also considered a draft protocol for Members and officers involved in the Planning process.

On 17 October 2008 this Committee agreed to undertake a review of the constitutional procedures and arrangements for the Planning Committee and as a result it was agreed that all Members should be consulted on potential changes to the role of, and arrangements for, meetings of the Planning Committee.

Members were invited to complete and return a questionnaire. This Committee on 27 July 2009 outlined its responses to the various proposals and these were submitted as an appendix to the Committee. The Committee also considered potential changes to the existing Constitution that it would wish to recommend to Council.

The Committee further considered the proposals before them and the Monitoring Officer answered any queries arising during the discussions. The proposed changes were considered and accepted. It was formally agreed that consideration would be given to the introduction of webcasting of Planning Committee meetings.

RESOLVED – That

- (1) the draft Members' Planning Code of Good Practice as set out in Appendix A to the report be approved for recommendation to Council;
- (2) the proposed changes to the Planning Committee meeting arrangements as set out in Appendix B to the report be approved;
- (3) the draft Planning Committee procedure Rules as set out in Appendix C to the report be approved for recommendation to Council.

12 : AMENDMENTS TO SCHEME OF DELEGATIONS

Following a review of the Council's constitutional arrangements undertaken at the request of this Committee, Council adopted a revised Scheme of Delegations with effect from 1st October 2006, and resolved to review the same in light of operational experience.

In light of operational experience of the Scheme of Delegations, a number of issues had been identified where minor amendments were considered necessary to improve the efficacy and clarity of the Scheme. The proposed amendments were marked on the Scheme of Delegations appended at Appendix A.

The Monitoring Officer had delegated powers to amend errors, update matters of record, make drafting improvements and remove minor anomalies in the Constitution. The following paragraphs (i) and (ii) came within the Monitoring Officers delegated authority.

- (i) Officer delegations (Section 4 of the Scheme)– All delegations to officers are subject to the overall limitations set out in the Scheme of Delegations (paragraph 2 of the Introduction to Section 4 Delegations to Officers), namely that the decision must be: a) within budget; b) in accordance with the Council's policy framework; c) in

accordance with Council's Financial and Land Procedure Rules and Contracts Procedure Rules; d) in accordance with their Service Area Business Plan; and e) not a matter specifically reserved for Full Council, a Committee of the Council, the Executive or a Statutory Officer. It is suggested that this could be made clearer by the proposed amendments to the beginning of each section of the officer delegations in the Scheme (4B, C, D, E and F). Further minor amendments to Section 4 are also proposed (as shown in Appendix A) in the interests of clarity and ease of reference.

(ii) Delegations to Joint Committees – The Council and the Executive may establish joint arrangements with other authorities, and Article 10 of the Constitution makes provision in this regard. Article 10.1(d) requires that details of joint arrangements, including delegations to joint committees shall be set out in the Scheme of Delegations. The delegation to the Welsh Purchasing Consortium is to be added to Section 5 of the Scheme of Delegations.

The Monitoring Officer referred to a number of substantive issues which had been identified as requiring amendment. These were as follows:

(1) Proper Officer appointments – The Council was required under various statutes to appoint and or authorise specific officers to discharge specified functions on its behalf – such officers are known as 'Proper Officers' or 'Authorised Officers'. A Proper Officer may or may not be an officer of authority. The Scheme of Delegations currently makes the following provision in this regard:

CE10 The Chief Executive is empowered to make Proper Officer appointments where required by law for the performance of executive functions. This authority is not further delegable.

LD1 The Monitoring Officer is empowered to authorise an officer of the Authority to perform any executive function where statute requires an Authorised Officer for that purpose.

LD2 The Monitoring Officer is authorised to carry out all Proper Officer functions not allocated to other officers.

The appointment of Proper Officers was required for a range of operational matters, such as (public health) communicable disease

control, and such appointments needed to be kept under constant review and new appointments made from time to time when the need arose. It was considered impractical and unnecessary for such Proper Officer appointments to be made by the Chief Executive.

Accordingly, it was proposed to amend the Scheme of Delegations (LD1) to permit the Monitoring Officer to make Proper Officer appointments (where required by law for the performance of executive functions), which may then be further delegated as appropriate in respect of the particular legislative requirement, for example to the Chief Officer of the relevant service area.

(2) Financial assistance – The authority to determine applications for financial assistance (grants) and assistance in kind, in accordance with any policy or strategy approved by the Executive, was delegated to the relevant Corporate Director (CD9), Chief Officer (CO9) or Operational Manager (OM4), depending upon the value of the assistance. It had been requested that the word ‘(grants)’ be removed from these delegations in recognition of the fact that financial assistance offered by the Council could include other forms of financial assistance, for example, loans. It was proposed that the delegation should apply to all forms of financial assistance (as well as assistance in kind).

(3) Discharge of the Council’s role as shareholder (or member) or various bodies – The Council (as a corporate body) was a shareholder or member of a number of companies and other bodies, such as the Millennium Stadium Plc, Cardiff Bus, Cardiff & Co, and others. This role covered a wide range of matters, including administrative matters (for example attending general meetings, exercising voting rights, requisitioning a general meeting, receiving copies of the accounts of the body, demanding a poll etc), as well as the pursuance of the wider objectives of the Council’s involvement in the particular body in accordance with any Council approved policy or strategy, and ensuring that any concerns in this regard were raised in an appropriate manner. Whilst the Scheme of Delegations currently made provision for specific matters such as the representation of the Council at Cardiff Bus’ AGM (delegated to the City and County Treasurer under delegation reference FS50), there was no general provision covering the range of decisions potentially required. The authority to exercise the rights and responsibilities of the Council in this regard could properly be delegated to the Corporate Director with responsibility for

the matter in question (with the proviso that such authority should not be further delegable to officers below OM1, and subject always to the overall limitations referred to in paragraph relating to Officer delegations). A new delegation reference CD10 has been inserted in Section 4B of the Scheme of Delegations to this end. It should be noted that if such delegation was added to the Scheme of Delegations, the Scheme provided (in Section 4A paragraph 3.4) that a decision may nevertheless always be referred up to the Executive or a Committee wherever appropriate, for instance where a decision was politically significant or had policy implications.

(4) Trust funds – The Council was trustee and administered a number of charitable and other trust funds, in pursuance of its statutory powers and duties. The management of the same was considered to fall within the City and County Treasurer’s delegation (reference FS5), and this delegation had been exercised accordingly. However, it was suggested that the words ‘and trust funds including charitable trust funds where the Council and or its officers are trustees’ should be added for the avoidance of any doubt.

RESOLVED – That

- (i) the amendments to the Scheme of Delegations referring to officer delegations and delegations to Joint Committees be noted;
- (ii) the amendments to the Scheme of Delegations set out in paragraph 6 of the report and outlined above be approved;
- (iii) the adoption of the revised Scheme of Delegations appended as Appendix A to this report be recommended to Council.