

## CONSTITUTION COMMITTEE

10 SEPTEMBER 2010

Present: County Councillor Berman (Chairperson);  
County Councillors Aubrey, Howells, Kelloway,  
Elgan Morgan, Piper, Walker and Walsh

Apology: County Councillors Dixon, Goodway, Keith Parry and  
Dianne Rees

### 1 : CHAIRPERSON

The County Council at its Annual Meeting on 20 May, 2010 elected Councillor Berman as Chairperson of this Committee for the Municipal Year 2010/2011.

### 2 : MEMBERSHIP AND TERMS OF REFERENCE

The Committee noted that the County Council at its meeting on 20 May, 2010 appointed the Committee with the following Membership and Terms of Reference:

#### Membership

County Councillors Aubrey, Berman, Dixon, Goodway, Howells, Kelloway, Elgan Morgan, Keith Parry, Piper, Dianne Rees, Walker and Walsh

#### Terms of Reference

To review the Council's Constitution and to recommend to Council and/or the Executive any changes, except that the Committee will have authority (subject to the Monitoring Officer's advice) to make the following changes on behalf of the Council:-

- (a) Drafting improvements to enhance clarity and remove minor anomalies;
- (b) Updating to reflect legislative changes and matters of record;

- (c) Amendment to the Financial, Contracts and Land Procedure rules (subject to the advice of the Section 151 Officer being sought).

### 3 : MINUTES

The minutes of the meeting held on 12 March, 2010 were approved as a correct record and signed by the Chairperson.

### 4 : AMENDMENT TO COUNCIL PROCEDURE RULES – NOTICES OF MOTION

On 12 March 2010, this Committee considered an anomaly in the Constitution relating to notices of motion, which had been identified by a Member subsequent to changes made to the Constitution in July 2005. The current procedure rules incorrectly inferred, in paragraph 14.9(a) (ii), that the mover of a Motion had the right of reply at the close of a debate on an amendment. The Constitution had not been correctly amended when changes were made in July 2005.

The Committee had discussed the matter of the right of reply during notices of motion at Council and had agreed that the way that these debates were conducted provided for sufficient opportunity for the mover to reply and that the anomaly should be removed. The Committee, however, had considered that it would be appropriate for the mover of a motion to have one opportunity, after the conclusion of the debate, to respond to amendments prior to any such amendments being voted upon.

As requested at the last meeting, a draft amended procedure rule 14.9 (a) had been prepared for consideration by Members as set out below (*proposed changes were highlighted in bold italics*).

14.9 (a) The rights of reply at the close of a debate are as follows:

- (i) ***Prior to the vote on any amendment, the mover of the motion has a right to reply at the end of the debate on the motion and (any) amendment(s)***
- (ii) Except where a motion has been amended following a debate and a vote, and where the motion is to move disapproval under Rule 13(e) above, the mover of a motion has a right to reply at the end of the debate on the motion, immediately before ***the substantive motion*** is put to the vote.

- (iii) The mover of the amendment has no right of reply to the debate on his or amendment
- (iv) In relation to a motion which has been amended where the amendment has been altered or accepted by the mover, the mover of the original motion has the right of reply.
- (v) In relation to a motion which has been amended following debate and a vote, the mover of the amendment has the right to reply to the debate.

RESOLVED – That subject to the approval of Council the amendment to the Council Procedure Rules in relation to notices of motion, as indicated above, be approved.

## 5 : SCHEME OF DELEGATIONS

The City and County Solicitor reported on the following:

- (i) Allocation of responsibility for certain highways and public rights of way functions
- (ii) Corporate Director Delegations
- (iii) Compensation Payments in respect of Complaints

(i) On 15 January 2010 this Committee was informed of changes made by the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009 (SI 2009/260) – ‘the New Regulations’ and necessary amendments to the Scheme of Delegations as a result of the same.

In respect of the New Regulations, the Committee had recommended to Council certain amendments to the Scheme of Delegations; and had instructed the City and County Solicitor to consult with the service areas concerned as to the proper allocation of certain highways and public rights of way functions (which had been made local choice functions under the New Regulations), and to report back to the Committee with recommendations in this regard.

The City and County Solicitor reported that a full list of the highways and public rights of way functions, which were now matters for local choice, was set out in **Appendix A** to the submitted report. Responsibility for these functions (except for paragraph (a) of Appendix A, relating to the execution of highways works agreements, which remained a local choice function, and had previously been determined to be a Council function

and delegated to the Monitoring Officer and Chief Officer), must be determined by the Council.

During the service area consultation, it was noted that the majority of the functions in question were previously (prior to the 2007 regulations which inadvertently transferred responsibility to the Executive) Council functions exercised by the Planning Committee, without any noted impediment. The list of functions in Appendix A was marked to show the same. Further, the additional related highways functions added by the New Regulations were similar and complementary to those functions previously exercised by the Planning Committee.

The function of making ‘modification orders’ (under section 53 of the Wildlife and Countryside Act 1981) to add or change a public right of way on the Definitive Map which the Council was obliged to maintain, was thought to benefit from the opportunity of public airing offered by a Committee meeting, and it was suggested that this was the most effective way of dealing with these matters.

On the basis of the above, it was recommended that all the highways and public rights of way functions listed in **Appendix A** (save for paragraph (a) thereof) should once again be allocated as Council functions and delegated to the Planning Committee.

It was suggested that the Planning Committee may decide to further delegate some of these functions to officers as it considered appropriate, retaining responsibility for functions which would be more appropriate for the Committee to exercise.

(ii) The Committee on 15 January 2010 had also been asked to consider amending the Corporate Director delegations by delegating the same authority to the City and County Treasurer, City and County Solicitor and Chief People and Organisational Development Officer as that given to Corporate Directors under the Scheme of Delegations, such authority to be (i) exercisable by the specified officers in addition to any other delegated powers currently available to them as Chief Officers under the Scheme of Delegations and (ii) provided that where such officers exercised a Corporate Director delegation, they must comply with all requirements relating to Corporate Director decisions (eg as to form, publication, call-in).

It was further recommended that Corporate Directors should be empowered to make any decisions delegated under the Scheme of Delegations to a Chief Officer or Operational Manager, and that for the avoidance of doubt an amendment should be made for Chief Officers in respect of decisions delegated to Operational Managers

This proposal would ensure that the Council had a reasonable number of senior officers capable of exercising Corporate Director level decisions, so that decisions could be taken in a timely and efficient manner.

The delegations were outlined in Appendix B to the report.

(iii) The Council's Complaints Policy had been approved by Council in July 2007 and included the following provision:

‘1.11 Compensation

Chief Officers will have delegated authority to settle complaints in the most appropriate manner which may include an apology, rectification, or in exceptional circumstances a monetary payment up to a maximum of £100.

Chief Officers will have further delegated authority to settle Ombudsman's recommendations under Section 21 of the Public Services Ombudsman (Wales) Act 2005, up to a maximum of £1,000.’

Under the Scheme of Delegations, the ‘power to make payments or provide other benefits in cases of maladministration etc’ was a local choice function which had been allocated to Council but not delegated further. The Scheme of Delegations therefore needed to be amended to reflect the Council's approved Complaints Policy as set out.

The recommended amendments set out in Sections (i), (ii) and (iii) of the submitted report were shown on the Amended Scheme of Delegations attached at **Appendix C**.

RESOLVED – That Council is recommended to approve the following amendments to the Scheme of Delegations:

- (i) the local choice highways and public rights of way functions listed in **Appendix A** (save for paragraph (a) thereof) be allocated as Council functions and delegated to the Planning Committee;

- (ii) the Corporate Director delegations be amended as referred to in paragraphs 13 and 15 of the submitted report; and
- (iii) Chief Officers be given delegated authority to make compensation payments in respect of complaints as set out in paragraph 16 of this report,

as shown on the Amended Scheme of Delegations appended as **Appendix C**.

#### 6 : DELEGATION UNDER S36 FREEDOM OF INFORMATION ACT 2000

The Committee was advised that formal delegations of powers to make decisions under the Freedom of Information Act (FOIA) to come into force on 1 January 2005 had been superseded by the current Scheme of Delegations approved by Council on 20 July 2006. The current scheme, however, does not provide for decisions under s36 FOIA which form the basis of exemption decisions.

Unlike all other decisions under FOIA which are now exercised by Officers as required under the general Scheme of Delegations, s36 of FOIA requires that the exemption can only be used "... if, in the reasonable opinion of a qualified person, disclosure of the information under this Act ..." would have one of the effects set out in the section, which for the purposes of a local authority are:

- Inhibiting, or being likely to inhibit, the free and frank provision of advice;
- Inhibiting, or being likely to inhibit, the free and frank exchange of views for the purposes of deliberation; or
- Prejudicing, or being likely to prejudice, the effective conduct of public affairs.

The November 2004 delegation delegated both the power to give an opinion and to make decisions on the public interest test; that is whether to actually disclose the information requested.

However since 1 January 2005 numerous decisions of the Information Commissioner and the Information Tribunal have confirmed that two separate decisions are involved:

- The giving of an opinion by the qualified person as to whether and on what basis the section 36 exemption is engaged; and if it is engaged
- A decision whether to disclose the information held after applying the public interest test contained in s2(2)(b) of FOIA

Further the Information Tribunal has held that it is not normally appropriate for the two decisions be made by the same person (as the current delegation requires). The reasons are essentially that the factors which need to be considered are different and there is potential to confuse the issues, and also that reserving the second decision to the qualified person is likely in practice to mean that the second decision cannot be the subject of an independent review should an applicant desire one. It is therefore now recommended that the delegation required deals with the first decision only, leaving the second decision, which is effectively no different to any other FOIA release decision, to be dealt with as with other FOIA decisions, by appropriate officers under the general scheme of delegations.

RESOLVED – That

- (1) the delegations under the Freedom of Information Act 2000 ('FOIA') which were agreed by the Executive on 4th November 2004 and superseded by the current Scheme of Delegations approved by Council on 20th July 2006, be noted;
- (2) it be noted that under the current Scheme of Delegations, general decisions in respect of FOIA functions are exercisable under the 'General Delegation' by the officer with responsibility for such matters, subject to the limitations set out therein;
- (3) the power to give opinions as the 'qualified person' for the purposes of s36 FOIA be delegated to the Monitoring Officer.

## 7 : PROPOSED LOCAL GOVERNMENT (WALES) MEASURE

The proposed Local Government (Wales) Measure was introduced in the National Assembly for Wales on 12 July 2010. Details of the proposed Local Government (Wales) Measure were summarised and submitted for Members' information. The Legislation Committee established by the

National Assembly for Wales, had invited any views on the Measure by 1 October 2010. As part of the consultation exercise the Legislation Committee had set out a number of questions. These were submitted for Members' information.

It was noted that Council had previously considered some of the provisions contained in the Measure as part of the submissions to the Welsh Assembly Government in response to consultation on proposals relating to Scrutiny and Political Structures in March 2010 and in response to the recommendations of the Councillors Commission Expert Panel Wales in November 2009.

The City and County Solicitor reported that a number of organisations had been consulted including the WLGA and SOLACE, who would be responding. A summary of the provisions contained in the Local Government (Wales) Measure was submitted and Members commented on each proposed measure.

RESOLVED – That

- (1) the content of the proposed Local Government (Wales) Measure and the previous consultation responses submitted by the Council on related matters be noted;
- (2) the responses made at Committee be circulated to those Members who were present at this meeting for their observations and the response be then forwarded to Council;
- (3) Members be invited to a presentation by the City and County Solicitor at 3.30pm prior to Council on 23 September on the Local Government (Wales) Measure.