

CONSTITUTION COMMITTEE

17 SEPTEMBER 2014

Present: Councillor De'Ath (Chairperson)
Councillors Aubrey, Cowan, Goodway, Gordon, Hinchey, Hyde,
Knight, Magill, Walker and Woodman

48 : APOLOGY

An apology for absence was received from Councillor Marshall.

49 : COMMITTEE MEMBERSHIP

It was noted that Council at its meeting on 24 July 2014 approved the nomination of Councillor De'Ath as a Member and Chairperson of the Constitution Committee to replace Councillor Lent.

50 : DECLARATIONS OF INTEREST

The Chairman reminded Members of their responsibility under Article 16 of the Members' Code of Conduct to declare any interest, and to complete a Personal Interest form at the commencement of the item of business.

51 : MINUTES

The minutes of the meeting of the Constitution Committee held on 11 June 2014 were approved as a correct record and signed by the Chairperson subject to the following amendment which was agreed: -

Minute No 46 – Constitution Updates Page 6 recommendation 3

Delete recommendation and replace with the following which was voted upon at the meeting:

3. recommend that the current designation of 'Assistant Cabinet Member' should remain with no changes to the Constitution Article 7.5 heading 'Assistants to Cabinet Members'; and to recommend that assistants to Cabinet Members should not serve on a relevant Scrutiny Committee.

52 : ROLE OF PRESIDING MEMBER

This Committee at its meeting on the 19 March 2014 (Min No 35) requested a further report on the role of a "Presiding Member" in light of the new legislation and how the new role would relate to the current role of Chair of Council and the title "The Right Honourable the Lord Mayor of Cardiff.

The County Clerk and Monitoring Officer reminded Members of the Council's previous decision in 2012 to pursue the separation of the functions traditionally associated with the Lord Mayor with the intention of recognising

the governance and administrative functions of the position to be retained by a “Chair of the Council”; and the ceremonial and civic functions to become a stand alone role to be undertaken by the Lord Mayor. The separation of the roles involved a number of legal hurdles relating to the Letters Patent that created the title “The Right Honourable the Lord Mayor of Cardiff” that prevented this structure from being adopted immediately, and officers were tasked to investigate the possibility of obtaining new Letters Patent in relation to the use of the title to enable the separation. The Letters Patent was signed by the Queen and an honour that is bestowed upon the City.

The County Clerk and Monitoring Officer advised of the Welsh Government’s consultation on proposals to amend the Local Government Act 1972 as it relates to the position of Chair of Council and the creation of a position of “Presiding Member”, which the Council had responded to. .

The Welsh Government in its Local Government (Democracy) (Wales) Act 2013 had included a provision enabling the separation of the roles. This provision amended those of the Local Government Act 1972 as it relates to the position of Chair of Council. The new Act received Royal Assent on 30 July 2013 and the relevant provision came into force on 30 September 2013.

This new statutory framework allows for Council to determine if it should have a Presiding Member. If it is so determined, then the Presiding Member is elected by Council in addition to the Chair of Council normally at the Annual Meeting of Council. If Council appoints a Presiding Member, it must also elect a Deputy Presiding Member. Neither the Presiding Member nor the Deputy Presiding Member may be a member of the Executive. The role of Presiding Member would receive a Senior Salary however the Deputy role would not be remunerated. The legislation provides for Council to grant the Presiding Member any of the functions of the Chair of Council.

The County Clerk and Monitoring Officer advised that should a Council choose to adopt this structure, only the administrative functions of the Chair of Council as set out in Article 5 of the Constitution involved with chairing Council meetings and upholding and promoting the purposes of the Constitution would be transferred to the Presiding Member. The Presiding Member’s only function would be to preside over meetings of the Council and ensure Council meetings were conducted in line with the Council’s Constitution. This would leave the Chair of Council free to act as now as the ceremonial head of the Council and to represent the Council at all civic and ceremonial functions and to adopt the “Right Honourable the Lord Mayor of Cardiff” title. If the Council is minded to adopt the separation the Constitution would need to be amended to reflect the changes.

The Committee noted the report and indicated that they did not wish to progress with any proposal for a Presiding Member currently.

RESOLVED – That the legislative position be noted and no further action be taken at this time.

53 :: INDIVIDUAL CABINET MEMBER DECISION MAKING

This Committee at its meeting in 22 January 2014 (Min No 28), resolved to further review the option of individual Cabinet Member decision making, in consultation with the Leader and Cabinet.

The County Clerk and Monitoring Officer advised that a key objective of the County Clerk's Directorate Delivery Plan for 2014/15 was to ensure that the Council's decision making was more effective and efficient as part of the governance strategy for the Council, Cabinet and its Committees and to make decision making accountable, robust and inclusive, representing the diverse views of the electorate of Cardiff. In addition the Wales Audit Office latest Corporate Assessment Report to Council found that "some processes intended to ensure good governance had not been implemented and decision making processes are inefficient and lack transparency." The report identified the need for efficient arrangements to support timely decision making with better co-ordination of activity, management of meetings including agendas. The report also commented on the length of cabinet agendas.

The Committee was reminded that under the 'Leader and Cabinet' model executive arrangements adopted by Cardiff (pursuant to the Local Government Act 2000), the Council may allocate responsibility for discharging its Executive Functions (which are prescribed by law) to the full Cabinet; any individual Cabinet Member; a Cabinet Committee or any officers. Any Executive Functions which are not allocated by the Council may, by law, be discharged (or delegated) by the Leader of the Cabinet. This legal position is reflected in the Constitution, Article 7.7 (The Cabinet, Responsibility for Functions).

The Council has discretion over the extent to which it sets out the detailed allocation of Executive Functions in the Scheme of Delegations itself, or leaves scope for the Cabinet (or its Leader, individual Members or Committees) to either discharge or delegate functions as permitted by law. However, the Welsh Government's Statutory Guidance advises that 'Councils should ensure that the scheme of delegations determined by the Council is sufficiently flexible to ensure the executive can discharge functions efficiently and effectively.' (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, SI 2006/56, paragraph 4.16).

The Council's current allocation of responsibility for Executive Functions is set out in the Scheme of Delegations (in Part 3 of the Constitution), specifically in Section 2 which lists various functions which are reserved to the (full) Cabinet, and Section 4, which delegates all other Executive Functions to the Council's senior officers. No provision is currently made in Cardiff's Constitution for the Leader or any individual Cabinet Members to discharge any Executive Functions, i.e. to exercise decision making powers (rather than the current consultation requirements).

The County Clerk and Monitoring Officer set out the legal requirements and the need for checks and balances for individual Cabinet Member decisions. Decisions taken by an individual Cabinet Member (if allowed under the Council's Constitution) would be subject to the same legal requirements as a full Cabinet decision, in respect of consultation, proper advice, record keeping, call-in and scrutiny.

The Welsh Government's Statutory Guidance sets out the need for appropriate checks and balances, such as:

- Ensuring that individual Cabinet Members are clear what exactly they can and cannot do (having particular regard to the broad well-being powers available to authorities under section 2 of the Local Government Act 2000);
- Ensuring that individual Cabinet Members are not permitted to actually sign contracts (they may approve the award of a contract, but the contract should be signed by the officer/s identified in the Council's Standing Orders, which in Cardiff's case is the City and County Solicitor or officer/s authorised by him);
- The need for protocols to ensure an individual Cabinet Member obtains any necessary advice from relevant officers before taking a decision, in the same way as decisions of the full Cabinet; and
- Ensuring that individual Cabinet Members are aware that any decisions they take will commit the authority to legal liability in the same way as collective Cabinet decisions, and that they are personally accountable for their decisions to any relevant Scrutiny Committee.

Members would recall that in the Delegations Report to this Committee in May 2013, the Scheme of Delegations adopted in Cardiff in or around 2002/03 gave individual Cabinet Members delegated authority, within their areas of responsibility, to make various decisions including:

- i. Agreeing responses to petitions in respect of services within their portfolio;
- ii. Agreeing submission of bids for additional resources;
- iii. Determining responses to reports from Scrutiny Committees;
- iv. Approving acceptance of tenders valued from £1,000,000 to £5,000,000;
- v. Approving the write-off of individual debts up to £50,000; and
- vi. Approving the sale or purchase of land valued £1,000,000 to £5,000,000 (Cabinet member with responsibility for Resources only).

Under Cardiff's current arrangements authority for most of the decisions listed above (with the exception of sub-paragraphs (iii) and (vi)) is delegated to the Council's senior officers (at Director level or above), in consultation with the relevant Cabinet Member/s in some cases. All such decisions are published in the Officer Decision Register and subject to call-in.

The County Clerk and Monitoring Officer set out the case for change which began in September 2012 when the then-Leader of the Council had written to

the Chair of Constitution Committee raising a number of issues for consideration including individual Cabinet Member decision making.

The Committee's attention was drawn to a review of items of Cabinet business undertaken on the period January to July 2014 (inclusive) details of which were set out in Appendix A of the report. It identified those items which, in the effort to improve agenda management and good governance, could potentially be suitable for individual Cabinet Member decision.

Business that was suitable for individual Cabinet Member decision would need to be analysed using a criteria such as:

- Policy impact – does the decision involve a substantive change to a Policy Framework policy with a significant impact?
- Key decision – would the decision be regarded as a 'key decision' under the legislative arrangements which apply in England (defined as an executive decision which is likely to result in significant expenditure or savings, having regard to the budget for that particular service or function; or is likely to be significant in terms of its effect on communities living or working in 2 or more wards of the authority – Regulation 8 of SI 2012/2089);
- Financial value; and or
- Local impact.

A high score on any of the agreed criteria could indicate that the matter was a key decision and should be reserved to full Cabinet, whereas a lower score would indicate that it may be suitable for individual Cabinet Member decision.

It was also suggested that the Leader and or Ward Members could be given the right to require an executive item scheduled for individual decision making to go to full Cabinet on request; and that it would also be open to an individual Cabinet Member to refer up any matter scheduled for their decision to full Cabinet.

Members were advised that various constitution updates would be required in order to reflect legislative and organisational developments.

The Chair invited discussion on the information and suggested approach on the analysis of Cabinet business and the following comments and observations were made:

- Members were assured that the County Clerk and Monitoring Officer would be responsible for applying the criteria for scoring decisions and would have the authority to refer matters to Cabinet should there be any dispute;
- Members identified the need for certainty that there were safeguards in place to ensure matters can be considered by Cabinet if requested;
- Members were keen to avoid the double handling of reports; and the need to not overburden agendas;

- the Committee underlined the need to review the Call-In procedure to Scrutiny Committees of all decisions;
- the importance of traceability; accountability and checks and balances to ensure robust decision making and good governance were underlined by the Committee;
- it was proposed that Party Groups be consulted on any changes to the process so that they can feed into the way forward;
- should the adoption of an individual Cabinet Member decision making scheme be agreed that this be trialled for 12 months and reviewed prior to full implementation.

RESOLVED – That:

1. the information and suggested approach for analysis of the categories of Cabinet business set out in this report be noted and the criteria for scoring of each decision be further developed;
2. the County Clerk and Monitoring Officer consult with the Leader and Cabinet on individual Cabinet Member decision making and bring a further report to the Committee with options for consideration.

54 : PUBLIC ENGAGEMENT WITH SCRUTINY & WIDER DEMOCRACY IN CARDIFF

The Committee received a report on the proposals for changes to the Constitution in the light of additional research commissioned by the Committee at its meeting in 22 January 2014 on recommendations of the Policy Review and Performance (PRAP) Scrutiny Committee's April 2013 Inquiry report titled "Public Engagement with Scrutiny" on the introduction of public questioning at scrutiny committee meetings in line with best practice across the UK.

The Operational Manager, Scrutiny Services drew attention to the two recommendations in the report that were directed at the Constitution Committee. The first recommendation involved the facility for members of the public to ask questions and speak at Scrutiny Committee meetings. The wording of recommendation 13 is:

- *"Recommendation 13: Members recommend that the Council's Constitution Committee arrange to amend the Council's Constitution to allow the public to speak, ask questions and make statements at Scrutiny Committee meetings in line with the Local Government Measure 2011. A detailed protocol should be agreed with Scrutiny Services within six months of the publication of this report to cover a number of issues around the timing, suitability and format for enabling public participation, with the current 'public questions to full Council meetings' providing a useful starting point."*

The Committee was advised of work undertaken to benchmark with other authorities who had successfully introduced scrutiny public question time

arrangements the detailed of which was set out in Appendix 2 of the report. In addition the Scrutiny Research Team had also undertaken analysis of local authorities who have Cabinet public question time procedures.

The results of this review found that the majority of authorities conduct their Cabinet scrutiny in a very similar way to the way Cardiff Scrutiny Services does currently. Most authorities therefore require the relevant Cabinet Member to attend a Scrutiny meeting which is exploring an item/s that are within their portfolio.

There were however, a small number of authorities which used an alternative technique, generally referred to as Cabinet question time. This practice involved Cabinet Members attending a scrutiny committee on a timely cycle to report and answer questions on the whole of their portfolio. It usually involved a written report being produced prior to the meeting detailing certain information which would then be followed by a brief presentation. The Scrutiny Committee would then have the opportunity to question the Cabinet Member on any aspect within their portfolio before writing a letter as a result of their questioning. Each Cabinet Member was therefore held to account once per year by an overarching scrutiny committee whilst the leader would often appear twice. This report is commended to Members of this Committee for information as its implications are potentially wide reaching and might benefit from wider Member consultation, including with Scrutiny Chairs, before any changes to the Council's Constitution would be considered.

The second recommendations targeted towards Constitution Committee was around the potential co-option of people other than Cardiff Councillors onto scrutiny committees and / or task and finish groups, beyond current arrangements (which see the co-option of four co-optees onto scrutiny committees considering schools matters as part of a statutory approach across Wales) as set out in recommendation 14: -

- *“Recommendation 14: Members recommend that the Council’s Constitution Committee arrange to amend the Council’s Constitution to provide for the potential co-option of further non-Councillor Scrutiny Committee members. The possibility of co-opted members and their length of appointment should be considered by each Committee at the first meeting of the Committee following the Council elections. Chairs should be able to draft in members relevant to the agenda item when desired. Apart from existing statutory co-optees, they should not be given a vote. A Person Specification and Job description should be drawn up for each co-optee, and co-optees should sign up to an appropriate code of conduct, based on the existing Code followed by Councillors.”*

It was proposed that this would be the subject of a further report in due course.

The Chair invited discussion on the suggestion of public question time at

Cabinet or Scrutiny Committees and whilst it was considered to be a good step forward in the public engagement at meetings there were a number of concerns about the process including the procedure to be adopted for Cabinet and Scrutiny; the need for questions to be relevant to the business on the agenda; the need for the methodology to be scoped; consideration of the time allocated; the number of questions that can be asked; timing for responses. If a proposal was to be agreed it was proposed that a pilot be introduced so that lessons can be learnt and improvements made prior to full implementation. There was some concern about the lengthening of meetings and the need for greater agenda management control by Chairs and Officers.

RESOLVED – That

- 1 the content and recommendations of the Policy Review and Performance Scrutiny Committee's report "Public Engagement with Scrutiny" be noted
- 2 further consideration be given in consultation with the Leader and Cabinet on Cabinet public question time and develop a protocol to guide this;
- 3 further consultation with Members of Policy Review and Performance Scrutiny Committee and the Scrutiny Committee Chairs be undertaken to agree to introduce public question time at Cardiff Scrutiny Committees and develop a protocol to guide this;
- 4 the County Clerk and Monitoring Officer be authorised to draft a suitable amendment to the Constitution should the introduction of public question time be approved in due course;

54 : SCRUTINY CALL-IN

The Committee received a report on the Council's current Call-in procedures in light of matters raised at previous meeting by Members on the process; operational experience and best practice.

It was agreed that further work was required particularly in light of the proposed introduction of Individual Cabinet Member decisions, and that it was important that those Members who had raised issues be involved in the review. A number of Members expressed the view that the process need to be simpler to empower individual Members to hold the Cabinet to account and to allow smaller Party Groups to have the option to call decisions in. It was recognised that the legitimate reasons for call in should be detailed.

RESOLVED – That the consideration of the Scrutiny-Call-In procedure be deferred to a future meeting to allow for the commission of further work to review and investigate potential changes to procedures.

55 : DATE OF NEXT MEETING

It was proposed that the next meeting scheduled for 17 December 2014 be brought forward to 19 November 2014 at 5.00pm

Chairperson: _____

Date: _____