

**COUNCIL: 30 JANUARY 2014**

**AGENDA ITEM:**

**RECOMMENDATIONS OF THE CONSTITUTION COMMITTEE**

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**VARIOUS RECOMMENDATIONS OF THE CONSTITUTION COMMITTEE**

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**Reason for this Report**

1. To introduce recommendations of the Council's Constitution Committee relating to amendments to the:
  - a. Budget Procedure Rules;
  - b. Members' Access to Information Rules; and
  - c. Employment Procedure Rules/Delegations.

**Budget Procedure Rules**

2. The special Procedure Rules that apply to Council Budget Meetings were adopted two years ago. A copy is attached at Annex A.
3. The Committee's view is that the Rules, read in conjunction with the revised general Council Procedure Rules, are fit for purpose.
4. In relation to the technical aspects of the Rules, the Committee was asked by officers to consider removing reference to the "Council's Corporate Asset Management Plan" in Rule 4. It is the view of the Council's Corporate Director Resources that this element need not form part of the formal budget report and would be better dealt with separately. Removing reference to the plan from this Rule 4 would enable it to be dealt with separately. The Committee supports this view and therefore recommends that this reference be removed.

**Access to Information Rules**

5. Rules governing the rights of the public and Members to access information relating to Council matters are contained in the Council's Access to Information Procedure Rules, as set out in the Constitution.

6. Members will be familiar with the principle that information can be classified as “exempt information”. Please refer to Rule 10.4 of the Rules for further details of the categories of information that can be classed as “exempt”.
7. As a general principle, exempt information is not accessible. However, there are exceptions to this general principle, including:
  - a. in certain circumstances, where the public interest in disclosing the information outweighs the public benefit of maintain confidentiality;
  - b. certain statutory or other legal rights of access such as:
    - Freedom of Information Act principles;
    - Environmental Information Regulations principles;
    - Local Government Act principles relating to inspection of accounts; and
    - Members’ common law “need to know” principles.
  - c. additional rights granted to Members of Scrutiny Committees in Rule 17; and
  - d. Rule 18.1 which provides Member’s additional rights of access in certain circumstances.
8. The Committee’s review focused on the rights of access granted under Rule 18.1 which grants Members additional rights to access certain information that relates to Cabinet or Full Council business. The proposed amendments are indicated in Annex B.
9. In summary the amendments recommended by the Committee:
  - a. remove a drafting anomaly in Rule 18.1(a) which made its application to exempt information falling within paragraph 6 of Rule 10 unclear;
  - b. maintain all Members’ enhanced rights to access certain exempt information that falls within paragraph 3 of Rule 10; and
  - c. grant additional rights to the leaders of each Political Group to access exempt information. When considering this issue, it should be noted that the Role Descriptions for Opposition Leaders (as recently approved by the Constitution Committee) include “*to provide constructive challenge of the Council’s policies*” and to “*constructively challenge the vision of the Council*”. The Committee has formed the view that that to enable Opposition Leaders to do so, enhanced access to information rights should be granted.

10. The Committee intends to monitor the suitability of the aspects of the Constitution that relates to this important issue and ensure that Members' individual common law "need to know" rights are properly protected. The Monitoring Officer has also been asked to clarify if the additional rights of access by Members of Scrutiny Committees extend to attending and observing all Council Scrutiny Committee meetings considering exempt or confidential items as part of their statutory roles in holding the executive to account, monitoring performance and service delivery.

### **Employment Procedure Rules/Delegations**

11. The Employment Procedure Rules ("the EPR") currently refer to the historic designations of 'Chief Operating Officer' and 'Corporate Chief Officer'. These references need to be updated following the revised senior management structure approved in October 2012 and implemented in 2013. The provisions of the Employment Procedure Rules also need to reflect the statutory requirements set out in the Local Authorities (Standing Orders) (Wales) Regulations 2006 ("the 2006 Regulations").
12. The 2006 Regulations require local authorities to adopt standing orders governing the appointment and dismissal of, and disciplinary action against, staff. Different arrangements are imposed for:
  - a. 'Chief Officers' and 'Deputy Chief Officers' (both statutorily defined);
  - b. officers below 'Deputy Chief Officer'; and
  - c. certain Statutory Officers (Head of Paid Service, Section 151 Officer and Monitoring Officer).
13. It is recommended that, to ensure compliance with the 2006 Regulations, the EPR should be amended to refer to the same terminology as the Regulations, i.e. 'Chief Officer' and 'Deputy Chief Officer', and to include the statutory definitions. A couple of other minor drafting improvements are also proposed. The recommended amendments to the Employment Procedure Rules are shown in Annex C to this report.
14. The 2006 Regulations provide that the appointment, dismissal and discipline of:
  - a. Chief Officers and Deputy Chief Officers must be discharged by Council or a Committee; and
  - b. all other officers (i.e. officers below Deputy Chief Officer) must be discharged by the Head of Paid Service or his nominee.
15. It should be noted that the statutory definitions are wider than the designations under the Council's management structure, that is:

- a. "Chief Officer" includes the Head of Paid Service and Monitoring Officer, Section 151 Officer, Director of Social Services & Chief Education Officer ("statutory chief officers"), and any person who reports directly to the Head of Paid Service ("non-statutory chief officers"); and
  - b. "Deputy Chief Officer" includes any person who reports directly to a statutory chief officer or a non-statutory chief officer, as defined above.
16. Applying the Regulations to the Council's current management structure, means that the appointment, dismissal and discipline of the senior management team, i.e. the Chief Executive, Corporate Director for Resources, and all Directors, Assistant Directors and Chief Officers must be discharged by Council or a Committee. The Council has already delegated the appointment of these senior officers to the Appointments Committee. However, in order to fully comply with the requirements of the 2006 Regulations, it is recommended that the terms of reference of the Appointments Committee should be amended to:
  - a. expressly refer to the terminology used in the 2006 Regulations (Chief Officers and Deputy Chief Officer, as statutorily defined); and
  - b. include responsibility for discipline and dismissal, as required under the Regulations.
17. Officer delegations also require amendment to reflect the statutory requirement of the 2006 Regulations that the Head of Paid Service (or his nominee) must deal with all appointment, dismissal and discipline functions relating to all other officers (ie. officers below Deputy Chief Officer). The necessary amendments are:
  - a. Amendment of the Chief Executive's delegation reference CE2 (in Section 4E of the Scheme of Delegations) to cover the full range of HR functions for which he is statutorily responsible; and
  - b. Amendment of the Director and Assistant Director delegations reference CD1 and CO1 to reflect their statutory authority, as nominees of the Head of Paid Service, to exercise the full powers of the Head of Paid Service with respect to HR functions within their directorates, and delete the stated exceptions which are not compliant with the 2006 Regulations.
18. The recommended amendments to the Scheme of Delegations in respect of the Appointments Committee (reference paragraph 6.6 above) and the HR officer delegations (reference paragraph 6.7 above) are shown in Annex D to this report.

### **Legal Implications**

19. The Local Government Act 2000 requires the Council to keep its Constitution under review and up to date.

20. Where relevant certain legal aspects relating to issues covered in this report are contained in the body of the report.

### **Financial Implications**

21. There are no direct financial implications arising from this report. However, it is noted that Property forms a significant part of the Council's recurring revenue and capital expenditure and it is essential that the Corporate Property Asset Management Plan ensures the Council has a sustainable asset base. It is also important that sufficient regard and consideration is given by officers and members to property. Whilst any asset management plans, whether they are property or infrastructure need not be considered at the same time as budget proposals, it is essential that they have regard to each other in determining recommendations including assessments of affordability.

### **RECOMMENDATIONS**

It is recommended:

#### **Budget Procedure Rules**

- a. That reference to the "Council's Corporate Asset Management Plan" be removed from Rule 4 of the Budget Procedure Rules.

#### **Access to Information Rules**

- b. The Access to Information Rules be amended as set out in Annex B.

#### **Employment Procedure Rules / Delegations**

- c. The changes to:
- the Employment Procedure Rules, as set out in Appendix C; and
  - the Scheme of Delegations, Appointments Committee Terms of Reference and HR officer delegations, as set out in Appendix D be approved.

**MARIE ROSENTHAL**  
**County Clerk and Monitoring Officer**  
**23 January 2014**

Annex A – Budget Procedure Rules

Annex B – Proposed Amendments to Rule 18.1 of the Access to Information Procedure Rules

Annex C – Employment Procedure Rules – Recommended Amendments

Annex D – HR Delegations – Recommended Amendments

## BUDGET MEETING PROCEDURE RULES

No. Rule

### 1. BUDGET MEETINGS

Budget meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. Budget meetings will be held in accordance with the following Council Meeting Procedure Rules, subject to the variations set out in these Budget Meeting Procedure Rules.

### 2. TIME AND PLACE OF MEETINGS

The time and place of meetings will be determined by the Council or in the case of meetings called under Rule 4.1(a)(ii) by the Lord Mayor and in the case of meetings called under Rule 4.1(a)(iii) by the Proper Officer and notified in the summons.

The Proper Officer may in case of urgency or at the request of the Lord Mayor vary the date, time and place of meetings, subject to proper notice of the change being given.

### 3. NOTICE OF AND SUMMONS TO MEETINGS

The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules. At least three clear days before a meeting, the Proper Officer will send a summons (notice of meeting) signed by him or her by post to every Councillor or leave it at their usual place of residence or at some other place specified by notice in writing given by the Councillor to the Proper Officer. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

### 4. CABINET BUDGET REPORT

1. The Cabinet Budget report shall enable the Cabinet

(i) To submit to Council their proposal of the estimates of expenditure and income in order to set the Council Tax in accordance with the Local Government Finance Act 1992;

(ii) To recommend to Council on the strategy and plan for the control of the Authority's borrowing and capital expenditure for the forthcoming year (the Annual Treasury Management Strategy);

(iii) To recommend to Council the adoption of CIPFA's Treasury Management Code of Practice 2009 by formal acceptance of the Four Clauses of Treasury Management and Treasury Management Policy Statement as Council policy;

(iv) To recommend to Council the Prudential Code Indicators and the Council's Minimum Revenue Provision

Policy;

(v) To set the rent levels for Housing Revenue Account properties, service charges and management fees for leaseholders;

(vi) To agree the rates of fees and charges for Council services; and

(vii) To agree the key themes and conclusions from the Council's Corporate Asset Management Plan.

## 5. SPEAKING ORDER AND CONDUCT OF DEBATE

A maximum of 45 speakers will be allocated proportionally between political groups. The allocation of speakers will be notified to Whips in advance of the Budget meeting. Any 'independent' Member who is not affiliated to any party or group will also be allowed to speak in the general debate. The speaking order will be as follows:

- (i) Cabinet Proposals (including any alternative proposals as per rule 13 (h) of the Council Procedure Rules)

Cabinet Member with responsibility for Finance 10 mins

Leader of the Council 4 mins

Each Other Cabinet Member 4 mins

- (ii) Party Group Finance Spokespersons/Movers of alternative proposals (as per Rule 12.9 or Rule 13(j) of the Council Procedure Rules), as appropriate.

The Finance Spokesperson of each opposition political group and the seconder of any alternative proposal will then be invited to speak in rotation by reference to each of the political groups in size order (largest group first).

**(If more than one amendment is to be moved by one political group then all such amendments will be moved by the relevant Finance Spokesperson at the same time)**

Opposition Group spokesperson: 5 minutes

Secunder of any alternative proposal: 3 minutes

- (iii) General Debate on Cabinet proposal and all alternative proposals - including any further alternative proposals moved and seconded. As indicated above the allocation of speakers will be proportionately based per political group and notified to Whips prior to the meeting.

Opposition Group Leaders 4 minutes

Each other speaker 3 minutes

No Councillor, with the exception of the Councillor with the right of reply at the end of the debate, to speak twice during this item.

The debate will be run in accordance with the rules agreed for the consideration of Notices of Motion, and each amendment will be voted on individually.

- (iv) Reserving Right to Speak  
Any Member, apart from proposers of the Budget or alternative proposals, may reserve the right to speak later in the debate but any such Member will only be entitled to speak for 3 minutes during the general debate.
- (v) Right of Reply  
The Cabinet Member with responsibility for Finance (or the proposer of an approved alternative proposal) will have the right of reply: 5 minutes

## 6. EXCLUSION OF NOTICES OF MOTION AND FORMAL QUESTIONS

Formal questions from Councillors and Notices of Motion shall not be received and considered and the respective Council Meeting Rules shall accordingly not apply.

For the avoidance of doubt, public questions may be asked (Council Meeting Procedure Rule 11 applies), other reports may be considered and motions without a notice may be moved (Council Procedure Rule 13 applies).





## 18 Additional Rights of Access for Members

### 18.1 Material relating to Council and Cabinet Business

All Councillors will be entitled to inspect any document which is in the possession or under the control of:

- (i) the Council relating to business transacted or to be transacted at a meeting of the council, or a committee or a sub-committee; or
- (ii) the Cabinet (or its committees) relating to any business transacted at a decision making meeting following the conclusion of that meeting or relating to any decision made by an individual member of the Cabinet where allowed by the Scheme of delegations immediately after the decision has been made;

unless either (a) or (b) below applies:-

(a) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information in Rule 10 ~~or it contains exempt information falling within paragraph 6 of those categories relating to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract~~; or

(b) in respect of Cabinet material it contains the advice of a political adviser.

Provided that the restriction in rule 18.1(a) above shall not apply to a Councillor who is the Leader of a Political Group in accordance with the Local Government (Committees and Political Groups) Regulations 1990.

***For the avoidance of doubt, rule 18.2 remains unchanged.***

## Employment Procedure Rules

### Interpretation

For the purposes of these Rules:

<u>“Chief Officer”</u>	<u>has the same meaning as in the Local Authorities (Standing Orders)(Wales) Regulations 2006, namely, the Head of Paid Service; the Monitoring Officer; a statutory chief officer mentioned in paragraph (a), (c) or (d) of section 2(6) of the Local Government and Housing Act 1989; or a non-statutory chief officer within the meaning of section 2(7) of the same 1989 Act</u>
<u>“Deputy Chief Officer”</u>	<u>has the same meaning as in Section 2(8) of the Local Government and Housing Act 1989, being a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers</u>

### 1. Recruitment and appointment

These rules do not apply to school-based employees, who are subject to separate procedures.

#### (a) Declarations

- (i) With the intention of ensuring that employment processes are fully informed and transparent, the Council requires any candidate for appointment as an officer to state in writing whether they are related to or have any close personal association with any member or senior employee of the Council.
- (ii) Deliberate omission to make such a disclosure would disqualify the candidate, and if the omission is discovered after appointment, the candidate will be liable to dismissal.

#### (b) Seeking support for appointment

- (i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor or employee for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) Subject to paragraph (iii), no Councillor will seek support for any person for any appointment with the Council. A member or an employee will not try to improperly influence the choice of a candidate for any appointment

- (iii) The impartiality of employees must be preserved. Accordingly Members must not give written references to support a candidate seeking employment with the Council.

2. **Recruitment of ~~Chief Executive, Chief Operating Officers, Corporate Chief Officers and~~ Chief Officers**

- (a) A vacancy for the post of ~~Chief Executive, Chief Operating Officer, Corporate Chief Officer or~~ Chief Officer must be reported to the Council or body delegated to do so which will consider whether the post should be filled, and if so, the terms and conditions of employment and method of appointment.
- (b) Where the appointment is not to be made from existing employees, the Council will arrange for the following to be prepared:-
- (i) A statement of the duties of the officer concerned and the required qualifications or qualities to be sought in the person appointed, which is sent to any person on request;
- (ii) Advertising of the post to bring it to the attention of people who are qualified to apply.
- (c) Following advertisement, the Council will arrange for either all qualified candidates to be interviewed; or a shortlist to be prepared of qualified applicants and those candidates interviewed. If no suitably qualified person has applied, or if the Council decides to re-advertise the appointment, the post will be re-advertised in accordance with paragraph (b) above.

3. **Appointment or Dismissal of ~~Chief Executive, Chief Operating Officers, Corporate Chief Officers and~~ Chief Officers and Deputy Chief Officers**

- (a) The appointment or dismissal of ~~the Chief Executive, Corporate Directors and~~ Chief Officers -or a Deputy Chief Officer will be made by the Council or by a Committee of Members delegated by the Council to make the appointment or dismissal, which Committee must contain at least one Cabinet member, but not more than half of the members of that Committee shall be Cabinet members.
- (b) Where a committee is discharging on behalf of the Council the function of the appointment or dismissal of the Chief Executive, the Council shall approve that appointment before an offer of appointment is made, or as the case may be, must approve that dismissal before notice of dismissal is given.

4. **Other appointments**

- (a) **Officers below Deputy Chief Officer.** The appointment of officers below Deputy Chief Officer (other than assistants to political groups) must be discharged ~~, on behalf of the Council,~~ by the Chief Executive or by an officer nominated by the Chief Executive. All Council employees shall be appointed in accordance with the Councils Recruitment and Selection Policy.

- (b) **Assistants to political groups.** Any appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

5. **Disciplinary Action**

**Head of Paid Service, Monitoring Officer & Chief Finance Officer**

- (1) No disciplinary action in respect of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (except action described in (2) below), may be taken by the Council or on its behalf, other than in accordance with a recommendation in a report made by a designated independent person under Regulation 9 of the Local Authorities (Standing Orders)(Wales) Regulations 2006.
- (2) The action mentioned in the above paragraph is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension will be on full pay and will terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.
- (3) Where it appears that an allegation of misconduct which may lead to disciplinary action has been made against the Council's Head of Paid Service, its Monitoring Officer, or its Chief Finance Officer, ("the relevant officer"), as the case may be, the Council shall appoint a committee ("an investigation committee") to consider the alleged misconduct.
- (4) The investigation committee must consist of a minimum of 3 members of the Council, be politically balanced (in accordance with section 15 of the Local Government and Housing Act 1989); and must, within 1 month of its appointment, consider the allegation of misconduct and decide whether it should be further investigated.
- (5) For the purpose of considering the allegation of misconduct, the investigation committee may make such enquiries of the relevant officer or any other person it considers appropriate; may request the relevant officer or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary within a specified time limit; and may receive written or oral representations from the relevant officer or any other person it considers appropriate.
- (6) Where it appears to the investigation committee that an allegation of misconduct by the relevant officer should be further investigated, it shall appoint a person ("the designated independent person") for the purposes of these Rules.
- (7) The designated independent person who is appointed shall be such person as may be agreed between the Council and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or where there is no such agreement, shall be such person as is nominated for the purpose by the National Assembly for Wales.

- (8) The designated independent person –
- (a) may direct:
    - (i) that the Council terminate any suspension of the relevant officer;
    - (ii) that any such suspension is to continue after the expiry of the period referred to in paragraph (2) above);
    - (iii) that the terms on which any such suspension has taken place are to be varied in accordance with the direction; or
    - (iv) that no steps by the Council or on its behalf by way of disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph (d);
  - (b) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council, or which the Council has power to authorise the designated independent person to inspect;
  - (c) may require any Member or member of staff of the Council to answer questions concerning the conduct of the relevant officer;
  - (d) shall make a report to the Council –
    - (i) stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officer; and
    - (ii) recommending any disciplinary action which appears appropriate for the Council to take against the relevant officer; and
  - (e) shall no later than the time at which the report is made under sub-paragraph (d), send a copy of the report to the relevant officer.
- (9) Subject to paragraph (10), the relevant officer and the Council shall, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.
- (10) Where there is no agreement under paragraph (9), the designated independent person shall set a timetable as that person considers appropriate within which the investigation is to be undertaken.
- (11) The Council shall consider the report prepared under paragraph (8)(d) within 1 month of receipt of that report.
- (12) The Council shall pay reasonable remuneration to a designated independent person appointed by the investigation committee and any costs incurred by, or in connection with, the discharge of functions under this Rule.

**Dismissal and or Disciplinary Action - Other Employees**

- (a) The Chief Executive, or an officer nominated by the Chief Executive, is responsible ~~to the Council~~ for the ~~discipline and dismissal of, and taking disciplinary action against, other~~ employees below Deputy Chief Officer (other than assistants for political groups), in accordance with ~~the Council's Discipline any relevant Council P~~policy and ~~associated~~ procedures.
- (b) Councillors will not be involved in any disciplinary action of any officer other than the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer, as set out above, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, or where a right of appeal to members is allowed in respect of dismissal or demotion.

## 6. **Right of Appeal**

Any employee who has been dismissed with or without notice or relegated must be informed immediately of the right of appeal, in line with the Council's agreed Disciplinary Policy and Procedures, which may confirm the action taken, withdraw it or substitute another disciplinary penalty.

**AMENDMENTS TO DELEGATIONS – CORRECTIONS TO REFLECT THE STANDING ORDERS**  
**REGULATIONS 2006 (SI 2006/1275)**

**Appointments Committee** (convened as and when required)

To ~~discharge the functions of the authority in respect of the appointment and dismissal of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders)(Wales) Regulations 2006), in accordance with the Employment Procedure Rules and any other relevant Council policies and procedures. shortlist, interview, make the appointments of any officer at Chief Officer / Assistant Director level and above and conclude contractual matters with the successful applicants on behalf of the Council.~~

**Chief Executive's Delegations** (Section 4E of the Scheme)

CE2 To be Head of Paid Service ~~and discharge the functions of appointment and dismissal of, and taking disciplinary action against, any member of staff, in accordance with the Council's HR and financial procedures and subject to appropriate consultation as outlined therein, except where such functions have been reserved to the Appointments Committee.~~

**Directors' & Chief Officers' Delegations** (Sections 4B and 4C of the Scheme)

CD1 & CO1 (identical terms):

Authority to manage the human resources within their area of responsibility, including the appointment, establishment, salary/grade, training, terms and conditions of employment, health and safety, discipline, suspension and dismissal of staff, in accordance with the Council's HR and financial procedures and subject to appropriate consultation as outlined therein, ~~except where any proposal:-~~

~~(1) involves the probability of redundancies and/or cannot be implemented within existing budgets, and/or~~

~~has significant effects on the employment of existing staff in that or any other Council Service Area~~

~~(Note: in relation to the above it remains the Council's policy to avoid compulsory redundancies where possible. Officer delegations can only be discharged within the Council's Human Resources policies and procedures).~~

**Qualification: This may not be further delegated.**