

CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE

A meeting of the Constitution and Members' Development Committee was held on 11 November 2016.

PRESENT: Councillors Bloundele (Chair), Brady, Cox, Harvey, J Hobson, C Rooney and N Walker.

OFFICERS: C Lunn and B Roberts.

APOLOGIES FOR ABSENCE Councillor T Mawston.

DECLARATIONS OF INTERESTS

There were no Declarations of Interest made at this point in the meeting.

1 **MINUTES - CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE - 11 MARCH 2016**

The Minutes of the Constitution and Members' Development Committee meeting held on 11 March 2016 were submitted and approved as a correct record.

2 **REVIEW OF THE COUNCIL'S CONSTITUTION**

The Head of Legal and Democratic Services presented a report, the purpose of which was to consider proposed amendments to the Council's Constitution and to consider specific queries that had been raised.

By way of a general introduction to the proposed changes, Members were advised that the previous version of the Constitution, which consisted of 329 pages, had been split into three separate but interconnected documents: the Constitution; the Scheme of Delegation; and the Financial and Contract Procedure Rules. It was explained that this change was intended to make locating information easier for the majority of users, and to facilitate navigation of the main constitutional document.

It was explained to the Committee that following the initial separation of the Constitution into these three sections, work had been undertaken with the aim of simplifying its content. The current report had been prepared to take into account the areas that the previous Monitoring Officer had agreed would be raised, and also areas that the present Monitoring Officer was seeking guidance and views on. It was highlighted that the document was completely open to discussion, with Members free to discuss any further matters that they may have wished to change or make comment upon. Reference was made to a further document that had been circulated to Members, which contained a list of proposed additional modifications to the Constitution. These would be considered as the report was addressed.

Members were referred to paragraph 5a of the submitted report. It was explained that Article 10 of the Constitution referred to Area Committees and Forums, which had not been utilised in recent years. It was felt that if the Constitution was to be a more usable document, it was perhaps prudent to remove irrelevant sections/references. Members agreed with this view and to the removal of this section.

Members were referred to paragraph 30 of the Council Procedure Rules. It was explained to the Committee that, at present, the timescale for receipt of questions and/or comments in respect of Chair, the Elected Mayor and Executive Member reports, did not incorporate the proceedings of the Overview and Scrutiny Board (OSB). Members were asked to consider whether this paragraph should have been amended to include questions for the Chair of OSB.

During discussion, Members considered the administrative reasoning behind the current arrangement, i.e. for the business of the meeting to be appropriately planned. It was felt that the paragraph in its entirety required amendment as, contextually, it was concerned with Executive Member reports; a revision note to clarify that this referred to Executive Member

reports was required. Furthermore, as the information was not relevant to the Chair and Elected Mayor, i.e. 24 hours' notice was not required to ask a question of the Elected Mayor, these references ought to have been removed. Similarly, it was felt that reference to the Chair of OSB was not required.

A discussion ensued with regards to reports of the Elected Mayor. A Member commented that it was difficult to raise questions as the Mayor often reported verbally at meetings; questions could not have been prepared in advance. A Member indicated that matters often raised by the Mayor related to recent events, and therefore tended to arise after the meeting papers had been circulated. It was felt that the current arrangements had not caused any issues to date.

It was acknowledged that there were two decisions to be made in respect of this matter. Firstly, should the paragraph have been amended in order to reflect what it should have stated initially, and what occurred at the moment? Members felt this to be the case, and agreed to the amendment. Secondly, did the Committee feel that the Elected Mayor should have produced written reports? During discussion, a Member indicated that it may have been difficult for the Mayor to provide a written report in advance of the meeting, particularly in line with the agenda distribution timescales. However, in order to facilitate questioning from Members, it was suggested that a series of bullet points could have been provided.

Consideration was given to the preparation of reports for referral purposes; it was highlighted that there was no obligation for Executive Members to provide reports.

In light of the varying viewpoints, a vote was taken to determine whether Members felt that the status quo should have remained (i.e. the Elected Mayor would have continued to provide verbal reports, with questions being asked of him at the Council meeting - option A), or whether the Elected Mayor ought to have circulated a written report seven days in advance of meetings, with bullet points of matters to be raised (option B). There was a general consensus that option A was most appropriate.

Members were referred to paragraphs 40 and 42 of the Council Procedure Rules, which referred to public questions and Electors of the Borough. Members heard that the previous Monitoring Officer had received representation querying why this had not included businesses, and that this should have been expanded to accommodate businesses.

During discussion, Members acknowledged that there may have been rules within Community Councils that entitled business owners to attend meetings and raise questions. However, in terms of Middlesbrough Council, it was felt that there was sufficient opportunity already in place for business representatives to engage with Executive Members, the Elected Mayor or the Council itself. It was also indicated that appointments with Executive Directors could have also been made, if required.

Members discussed the term 'Elector' and the checking of the Electoral Register to ensure that individuals submitting questions were registered.

For the reasons outlined, the Committee agreed that there would not be any changes made to paragraph 40.

With regards to paragraph 42, it was indicated to Members that an external representative had contacted the authority with the opinion that, due to the timescales involved, the general public was unable to raise questions on the content of Council papers (papers were to be published five clear working days ahead of the meeting date, whereas the deadline for questions was seven clear working days). The Chair advised that the Constitution was drafted like this for a purpose, i.e. Council meetings were scheduled for the discussion of Council business and for Members to make decisions; the public were invited to attend and observe, but not to participate. Consequently, Members felt that changes to paragraph 42 were not necessary.

Members were referred to paragraph 63 of the Council Procedure Rules and asked to consider whether amendments were required to urgent motions, specifically in respect of the associated notice timescale of three working days. It was explained to Members that the

purpose of the urgent motion was to raise town or area-wide matters that had occurred after the circulation of the Council meeting papers. Members discussed the current administrative arrangements that were in place, and the potential impact upon these if altered. Members discussed the differentiation between an emergency motion and an urgent motion, and the potential opportunity for groups to discuss emergency motions prior to submission. Mention was made of group meetings and the scheduling of these in relation to Council meetings. Members agreed that, because there had not been any problems encountered with the timescale to date, and that the Chair had the ability to, with the agreement of Council, waive procedural rules and resolve the time requirement, the current timescale would remain in place.

Members were referred to paragraph 18 of the Officer Code of Conduct (freemasonry) and asked to consider whether the Council wished to retain the attached provisions. The Committee discussed the historical reasoning for the declaration of Freemason membership. Reference was made to other public sector organisations in respect of this matter. Members felt that there would no longer be an expectation, as an authority, to discipline or dismiss an employee for failing to declare Freemason membership, and therefore agreed to the removal of this section.

Members were referred to the Financial and Contract Procedure Rules - paragraph 11.7 - Providing Services to External Purchasers. Members heard that, under the current arrangements, if the Council or part of the Council looked to provide services to other public bodies, Executive approval was required. The proposal in this regard was that, under the Middlesbrough Manager framework, this decision would have now been taken by the respective Manager - i.e. officers would have had the freedom and the flexibility to determine whether or not services could have been provided. Following a short discussion, Members agreed to this suggestion, as it was felt that this would have reduced the timescales involved, and would have allowed the Council to work more competitively.

Members were referred to section 21.8 of the Financial and Contract Procedure Rules, which related to the practicalities of executing contracts. Members were advised that the Constitution currently required two signatures plus a third witness. It was felt that acknowledgment by way of a single signature would have been sufficient; Members agreed to this amendment.

The Committee was directed to a new addition to the Constitution - section 26.2. It was explained that this concerned the requirement for consultants to provide copies of their indemnity insurance. It was felt that this seemed a reasonable request and was therefore approved by Members.

This concluded the items that were noted in the Head of Legal and Democratic Services' submitted report; Members were subsequently directed to the list of proposed additional modifications that had been circulated.

Members were referred to the Council Procedure Rules. It was suggested to the Committee that, at the end of paragraph one, the following be inserted in order to clarify the position of the Chair in addressing any matters that arose outside of Council meetings: 'In the event that circumstances arise outside the meeting which would ordinarily require a decision of, or action by, the Chair of the Council, the Chair is enabled to take such action as they consider appropriate.' Members agreed to this addition.

Members were referred to paragraph 116 of the Council Procedure Rules. It was indicated that the following amendment be undertaken in order to ensure clarity of the associated legislation: '... section 100A of the Local Government Act 1972 (as amended), as set out in...' be inserted prior to the words '... the Access to Information Rules in Part 3 of this Constitution ...' Members agreed to this addition.

Members were referred to paragraph 122 of the Council Procedure Rules, which concerned allocations. At present, the Council, at its Annual General Meeting, authorised the Monitoring Officer to appoint substitutes. In order to avoid the necessity for this decision to be taken every year, the following amendment was suggested to the Committee: replacement of the

words '... at the Annual Meeting will authorise ...' with the word '... authorises ...' Members agreed to this amendment.

Members were referred to paragraphs 128 and 129 of the Council Procedure Rules, which related to disturbances at meetings. It was explained to the Committee that, should a person or group of people have been ejected from a meeting for causing a disturbance, then those individuals were not entitled to return to that meeting. There was also flexibility for the barring of those involved from future meetings. The following amendments to these paragraphs were suggested in order to clarify this position:

- At the end of paragraph 128, the words 'A member of the public so removed will not be entitled to return to the meeting' be included; and
- At the end of paragraph 129, the words 'All members of the public involved in the general disturbance will not be entitled to return to the meeting, and may be subject to restrictions on their attendance at future meetings' be included.

In response to an enquiry, it was indicated to the Committee that this same ruling would have applied to Councillors (there was case law in existence that supported this approach). Members agreed to these amendments.

The Committee discussed the recording of Council meetings. Members accepted that the public were entitled to record proceedings; however, this must have been undertaken in such a way that would not have impacted upon the transaction of business. Consideration was given to devices used, where recording had been taking place, room layout, and associated guidelines and legislation. It was highlighted that, if the Chair of the Council had felt that an individual or group of people were disturbing the conduct of the meeting, then the Chair was entitled to ask those involved to stop recording.

A Member queried whether the following note could have been applied to paragraph 148, in addition to paragraphs 128 and 129: '... and may be subject to restrictions on their attendance at future meetings.' In response, it was felt that this was a good suggestion, as it both clarified and strengthened the Council's position. Members agreed to the amendment of this paragraph.

With regards to social media and the Members' Code of Conduct, it was suggested to the Committee that, in order to reinforce the point that when discussing Council business on social media Councillors were regarded as acting within this capacity, the following addition be inserted under paragraph 2.9: '2.10 When discussing Council business through social media.' A short discussion ensued regarding this topic; Members agreed that this amendment was required.

Members considered the following proposal and agreed to it being actioned:

At the end of paragraph 1 of the procedure for Code of Conduct complaints, the words 'If it appears to the Monitoring Officer that the complaint constitutes a 'tit-for-tat' or purely frivolous complaint, the Monitoring Officer may decide that no further action shall be taken, and if so shall inform the complainant accordingly' be inserted.

Members considered the following proposal in respect of paragraph 2 of the procedure for Code of Conduct complaints: replace the wording with the following:

'The Monitoring Officer considers the complaint and determines whether the conduct complained of has occurred within the six months immediately preceding the submission of the complaint. If it has not, the Monitoring Officer will notify the Complainant that the complaint is out of time, and closes the Complaints file; if it has, the Monitoring Officer determines whether there is prima facie evidence to support the complaint. If there is insufficient evidence, the Monitoring Officer will notify the Complainant that the complaint accordingly; if there is sufficient evidence, the Monitoring Officer will contact the Independent Person to discuss the content of the Complaint, and to consider whether an investigation is warranted'.

A short discussion ensued regarding this. A Member made reference to social media and commented that some matters may have been on-going for longer than six months. In response, it was explained to Members that all complaints would have been reviewed in a reasonable manner. It was also indicated to the Committee that, were a complaint to be submitted without any evidence attached, the Monitoring Officer would have had the authority to advise that no evidence had been provided, without having to refer the matter to the Independent Person. Members agreed to this amendment.

Members were advised that the current Code of Conduct was dated 2015; the Committee agreed to the changing of all noted dates to 2016.

Members were referred to the Access to Information Procedure Rules. For purposes of clarification, Members were requested to consider the following amendment in respect of the third paragraph: replacement of the words '... subject only to the exceptions in these rules' with the words '... subject only to the exceptions in section 100A of the Local Government act 1972 (as amended).' Members agreed to this.

Members were referred to page 97 of the Constitution (within the Access to Information Procedure Rules). The following amendment and insertion of an additional paragraph were suggested to the Committee:

In the tabular definition of 'Exempt Information', replacement of the title 'a.5 Meaning of exempt information (health scrutiny)' with the title '10.5 Meaning of Exempt Information (Health Scrutiny)'; and

Addition of the following paragraph:

'10.6 Disturbance

Members of the public may be excluded from meetings, to suppress or prevent disorderly conduct or other misbehaviour, in accordance with section 100A(8) of the Local Government Act 1972 (as amended).'

Members agreed to both the amendment and the insertion of paragraph 10.6, which had been proposed to ensure clarity of the associated legislation.

Members were referred to the Council Scheme of Delegation. At the third bullet point on page one, in relation to the definition of the Head of Legal Services, it was proposed to Members that, in order to clarify the role of the Monitoring Officer, after the words '... associated job titles ...' the following be inserted '... to substitute members in accordance with the Council Procedure Rules, and to replace members at Group Request, subject to reporting and ratification of such replacement at the next practicable Ordinary Meeting of the Council...' Members agreed to this amendment, and briefly discussed the legal process involved in the substitution of Members.

Members were referred to the Licensing Powers within Part 1 of the Council Scheme of Delegation - Allocation of Functions, Section B. The Committee was advised that, following the recent transfer of the Licensing function from Public Health to Supporting Communities, the title of the respective Director for that service area, noted on pages 5-10, required amendment (i.e. from 'Assistant Director Improving Public Health' to 'Assistant Director Supporting Communities'). Members agreed with this.

Members were referred to page 16 of the Council Scheme of Delegation. As duplicate entries of paragraphs 35-38 had been identified, the Committee agreed to the removal of these.

Within the Council Scheme of Delegation, Members considered and agreed the following proposal: '... on Page 17, add entry 54: 'Power to designate a Chief Inspector of Weights and Measures' to be exercised by 'Assistant Director Improving Public Health'.

The Chair made reference to Part 1 of the Council Scheme of Delegation, and explained to

the Committee that Members of the Planning and Development Committee had raised concerns regarding the proposed amendments relating to the number of objections received. It was explained that, at present, if three or more objections were received to planning applications, the application was to be referred to the Planning Committee for consideration. The proposal had been to increase this number to five. Members of the Planning Committee had felt that if five objectors were required before applications were forwarded to the Committee, there would be very few meetings scheduled (as there were seldom five objectors to any single application). It was felt that the current system functioned well because the applications progressed to the Planning Committee were valid and often contentious. It was therefore proposed that the number of objections required for an application to be considered by the Planning Committee be retained at three. Following discussion, Members agreed with this view.

During discussion, Members agreed that the notion of three separate but linked documents was a positive move forward. A Member made reference to the recent European Referendum result and the potential impact in terms of reviewing the Council's Constitution in the future. The Chair of the Committee highlighted that the Constitution was a live document and therefore open to amendments at any time.

AGREED that:

1. Article 10 of the Constitution, which referred to Area Committees and Forums, would be removed as these were no longer utilised by the authority.
2. Regarding paragraph 30 of the Council Procedure Rules, references to the Chair and Elected Mayor would be removed, with clarification provided that the paragraph referred only to Executive Member reports. Reference to the Chair of OSB was not required. There would be no change to the current arrangements regarding Elected Mayor reports - i.e. verbal reports would continue to be provided at Council meetings, with opportunity for receipt of questions from Members.
3. Paragraphs 40 and 42 of the Council Procedure Rules would remain as they were - no amendments required.
4. Paragraph 63 of the Council Procedures Rules would remain as it was - no amendments required.
5. Paragraph 18 of the Officer Code of Conduct (freemasonry) would be removed.
6. Regarding paragraph 11.7 of the Financial and Contract Procedure Rules (Providing Services to External Purchasers), amendments would be made to indicate that managers, under the Middlesbrough Manager framework, were now permitted to agree to the provision of services to other external public bodies, without the need for Executive approval.
7. Regarding paragraph 21.8 of the Financial and Contract Procedure Rules, amendments would be made to indicate that a single signature was required to execute contracts, as opposed to the current arrangements of two plus a third witness.
8. Regarding the Financial and Contract Procedure Rules, a new paragraph (26.2) would be inserted to identify the requirement for contractors to provide copies of their indemnity insurance.
9. Regarding the Council Procedure Rules, the following note would be inserted at the end of paragraph one: 'In the event that circumstances arise outside the meeting which would ordinarily require a decision of, or action by, the Chair of the Council, the Chair is enabled to take such action as they consider appropriate.'
10. The following words would be inserted in respect of paragraph 116 of the Council Procedure Rules: '... section 100A of the Local Government Act 1972 (as amended), as set out in ...' prior to the words '... the Access to Information Rules in Part 3 of this Constitution ...'
11. Paragraph 122 of the Council Procedure Rules, the words '... at the Annual Meeting will authorise ...' would be replaced with the word '... authorises ...'
12. At the end of paragraph 128 of the Council Procedure Rules, the following would be inserted: 'A member of the public so removed will not be entitled to return to the meeting.'
13. At the end of paragraph 129 of the Council Procedure Rules, the following would be inserted: 'All members of the public involved in the general disturbance will not be entitled to return to the meeting, and may be subject to restrictions on their attendance

- at future meetings.'
14. Paragraph 148 of the Council Procedure Rules, the following would be inserted: '... and may be subject to restrictions on their attendance at future meetings.'
 15. Regarding the Members' Code of Conduct, the following paragraph would be inserted: '2.10 When discussing Council business through social media.'
 16. At the end of paragraph one of the procedure for Code of Conduct complaints, the following would be inserted: 'If it appears to the Monitoring Officer that the complaint constitutes a 'tit-for-tat' or purely frivolous complaint, the Monitoring Officer may decide that no further action shall be taken, and if so shall inform the complainant accordingly'.
 17. In respect of paragraph two of the procedure for Code of Conduct complaints, the paragraph would be replaced with the following: 'The Monitoring Officer considers the complaint and determines whether the conduct complained of has occurred within the six months immediately preceding the submission of the complaint. If it has not, the Monitoring Officer will notify the Complainant that the complaint is out of time, and closes the Complaints file; if it has, the Monitoring Officer determines whether there is prima facie evidence to support the complaint. If there is insufficient evidence, the Monitoring Officer will notify the Complainant that the complaint accordingly; if there is sufficient evidence, the Monitoring Officer will contact the Independent Person to discuss the content of the Complaint, and to consider whether an investigation is warranted'.
 18. The Code of Conduct would be updated to show the year as 2016.
 19. Regarding the third paragraph of the Access to Information Procedure Rules, the words '... subject only to the exceptions in these rules' would be replaced with the words '... subject only to the exceptions in section 100A of the Local Government act 1972 (as amended)'.
 20. Regarding Access to Information Procedure Rules, the following amendment would be made: '... in the tabular definition of 'Exempt Information', replace the title 'a.5 Meaning of exempt information (health scrutiny)' with the title '10.5 Meaning of Exempt Information (Health Scrutiny)'.
 21. Regarding Access to Information Procedure Rules, the following paragraph would be inserted:
'10.6 Disturbance
Members of the public may be excluded from meetings, to suppress or prevent disorderly conduct or other misbehaviour, in accordance with section 100A(8) of the Local Government Act 1972 (as amended).'
 22. Regarding the Council Scheme of Delegation, at the third bullet point on page one, after the words '... associated job titles...' the following would be inserted '... to substitute members in accordance with the Council Procedure Rules, and to replace members at Group Request, subject to reporting and ratification of such replacement at the next practicable Ordinary Meeting of the Council...'
 23. Regarding Licensing Powers within Part 1 of the Council Scheme of Delegation - Allocation of Functions, Section B - following the recent transfer of the Licensing function from Public Health to Supporting Communities, the title of the respective Director for that service area, noted on pages 5-10, would be changed from 'Assistant Director Improving Public Health' to 'Assistant Director Supporting Communities'.
 24. Regarding the Council Scheme of Delegation - page 16 - the duplicate entries of paragraphs 35-38 would be deleted.
 25. Regarding the Council Scheme of Delegation - page 17 - entry 54 would be added, as follows: 'Power to designate a Chief Inspector of Weights and Measures' to be exercised by 'Assistant Director Improving Public Health'.
 26. Regarding Part 1 of the Council Scheme of Delegation - Planning and Development Committee - the number of objectors that were required before applications were forwarded to the Committee for consideration would be retained at three.
 27. The revised Constitution would be submitted to the 30 November 2016 Council meeting for approval.

consider the support for a revised Member Development Policy for 2017/2018.

It was explained to Members that the current allocation within the Members' budget for training and development was £6,000. However, in recognition of a more ambitious programme, it was proposed that this be increased in 2017/2018 to £20,000 (in order to cover the costs of additional training that needed to be provided through the proposed Members' Competency Skills Framework). Further costs were also likely to have arisen from the introduction of the Senior Members' Delivery Framework. It was indicated that the increase could have been funded through an underspend in the Members' budget.

During discussion, a Member commented that, in terms of delivering the framework, mentoring and delivering training would be an important aspect of it; it was agreed that appropriate references would be inserted into the report. In addition, it was requested that a reference to E-learning be added to the list of learning resources that would be utilised in delivering the framework, shown at page 324 of the submitted report.

A Member queried whether the revised amount of £20,000 would cover transportation costs to and from training and development events. In response, it was confirmed that it would.

AGREED that:

1. Appropriate references to mentoring, delivering training and E-learning would be added to the Member Development Policy and associated framework.
2. The increased budget attached to the revised Member Development Policy be approved.
3. The information, as provided, be noted.