

CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE

A meeting of the Constitution and Members' Development Committee was held on Wednesday 16 August 2023.

PRESENT: Councillors J Rostron (Chair), J Walker (Vice-Chair), I Blades, J Ewan, L Hurst, J Kabuye, M Saunders, N Walker and G Wilson

ALSO IN ATTENDANCE: M. Humphrey (Chartered Institute for Public Finance and Accountancy)

OFFICERS: C Benjamin, S Bonner and J Weston

APOLOGIES FOR ABSENCE: Councillors B Hubbard and M Storey

14 **WELCOME AND EVACUATION PROCEDURE**

The Chair welcomed all those present and explained the fire evacuation procedure.

15 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

16 **MINUTES - CONSTITUTION AND MEMBER DEVELOPMENT COMMITTEE - 20 FEBRUARY 2023**

The Minutes of the Constitution and Members' Development Committee meeting of the 20 February 2023 were submitted and approved as a true record.

17 **MINUTES - CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE - 13 APRIL 2023**

The Minutes of the Constitution and Members' Development Committee meeting of 13 April 2023 were submitted and approved as a true record.

18 **REFRESH OF THE COUNCIL'S CONSTITUTION**

The Chair invited the Monitoring Officer to introduce the report. As part of those introductions Members were advised the refresh of the Constitution was intended to make both its format and content more understandable. There was a recognition the Constitution was a working document that underpinned good governance. The Department for Levelling Up, Housing and Communities identified having a robust constitution was a feature of good governance.

Work to refresh the Constitution was started under the previous administration but paused until after the local elections of May 2023. A representative from the Chartered Institute of Public Finance and Accountancy (CIPFA), who was in attendance at the meeting, had undertaken most of the work.

Members were told the Council's Finance and Contract Procedure Rules had been recently considered by the Corporate Affairs and Audit Committee. These had been broadly supported albeit with minor amendments. There was also a desire to involve all Members in the refresh of the Constitution prior to it being considered at full Council.

The Chair stated the Constitution was a live document which could be changed if necessary. The representative from CIPFA was invited to summarise the changes that had been made to the Constitution.

One of the main drivers for the refresh was accessibility. There were elements of the existing document that were not fit for purpose, some of which were written in legalese. The general structure of the document was analysed and changed to suit a question-and-answer format. Where possible technical language had been changed to make it more accessible.

Any statutory references that were footnotes were changed to be hyperlinks. This was intended to improve the flow for the reader. The new Constitution also included greater detail around statutory role profiles, such as the s.151 officer. As part of the document's restructure the Council Procedure Rules were now contained in the Council section of the document, meaning relevant content now sat in the same place.

Descriptions of Council owned companies was made clearer and the threshold for Key Decisions was increased from £150,000 to £200,000. The Chief Executive had suggested this threshold increase to £250,000 as Executive would not have to consider decisions that were sometimes operational in nature. Increasing the threshold to £250,000 would also bring Middlesbrough in line with other Teesside authorities. In the CIPFA representative's opinion increasing the Key Decision threshold to £250,000 would be appropriate for a Council the size of Middlesbrough.

A Member commented the current threshold had been in place for too long which sometimes led to delays in decision making.

A discussion took place about the benefits of increasing the Key Decision threshold. A motion was put, and agreed, suggesting the Key Decision threshold be increased from its current proposal of £200,000 to £250,000.

The CIPFA representative continued with her presentation advising Members an extensive list of definitions had been created to explain any technical terms and that the policy framework list had been updated. The Financial and Contract Procedure Rules were now contained in the main body of the document and were consistent.

There had been small changes made to the Call-In procedures in that Call-In categories were now principle based rather than prescriptive. Changes to the Schemes of Delegation were now reflective of relevant legislation and more information had been provided about key committees, for example the inclusion of Terms of Reference for regulatory committees.

Members were advised the Corporate Affairs and Audit Committee would be separated into the Corporate Affairs Committee and the Audit Committee. One of the reasons for this was Corporate Affairs and Audit Committee potentially being able to audit one of its own decisions.

The refreshed Constitution also clarified the roles of both Political and Mayoral Assistants as well including the Nolan Principles.

A Member queried, in relation to Audit Committee on page 93, paragraph 9.6.6e, if the control of pollution and management of air quality was supposed to sit at that point in the Constitution. This was likely to have been in the original document but would be reviewed. It was also raised if the Treasury Management and Investment Policy would be included as p.68 stated the Audit Committee was expected to receive reports on this. It was stated this was part of the CIPFA Treasury Management code and it was important this was included.

Members also queried if, by having a plain English approach, the Constitution's meaning had been lost. It was clarified there were moves to simplify language in the legal profession while retaining its meaning. The representative from CIPFA reassured Members that her legal background gave her the experience to simplify legalese effectively. It was also clarified changes could be made to the draft Constitution until it was considered by Council on 18 September 2023. Any comments could be sent to the Monitoring Officer. It was also clarified Members could test the hyperlinks contained in the Constitution.

A Member pointed out the Council Management Structure needed inserting and officers agreed this would happen. It was also queried how the Constitution's length compared to other Councils. It was clarified the Constitution was quite long, but the level of detail was appropriate. Other constitutions were considerably shorter, and this could be the case of Middlesbrough in the future. However, the length of the Constitution was appropriate at this time.

A discussion took place regarding Council procedure and differentiating between types of question, particularly those with notice and without notice. The Monitoring Officer commented there was a gap in existing procedure for members of the public to ask questions at committee

meetings. The new Constitution provided that Council Procedure Rules would apply to all committees unless otherwise stated. Any questions submitted to committees would be reviewed in the same way as those submitted to Council.

With regards to the Constitution's length, a Member commented as it was approaching 700 pages could a paragraph be included explaining the document needed to be read extensively by some staff but not all. It was suggested a table could be used for this purpose. The Monitoring Officer commented the new Constitution would be accessed on an as-and-when basis, rather than cover to cover.

The representative from CIPFA handed over to the Head of Finance and Investment who explained the Council had a governance qualification some which applied to finance. The previous version of the Financial Procedure Rules was not easy to understand. Therefore, the starting point in refreshing those rules was to include clearer detail. While the increased length of the refreshed Financial Procedure Rules was debated the increase was deemed acceptable. Another important factor was ensuring all staff could understand the Financial Procedure Rules, not just Senior Management. In conjunction to the refresh, it was commented an Operational Management handbook was to be created providing an overview of how financial procedures worked.

It was also commented most breaches relating to contract rules tended to be around contract extensions. As such there was a need for both the Financial and Contract Procedure Rules to be reviewed regularly, including bringing any updates back to Constitution and Member Development Committee. Ultimately, the Financial and Contract Procedure Rules were now mandatory and had been refreshed to improve flow for the reader.

The key changes to the Financial and Contract Procedure Rules included identifying how budgets were set and monitored and what the implications would be should the procedures not be followed. The updates also included additional details about virements. In terms of increasing the Key Decision Threshold to £250,000 this would not have a significant impact on how decisions were made. There was greater clarity on how fees and charges were set and how these could be changed as well as improved clarity around assets including how they were purchased and disposed of.

The Contract Procedure Rules were important as a significant amount of money was spent on contractual arrangements. As such there needed to be effective controls for this. There was also more information in relation to internal audit functions and how this affected Council operations.

The Contract Procedure Rules were longer than the Financial Procedure Rules as the Council spent large sums of money on contractual arrangements so needed to contain greater detail and clarity of process. The Contract Procedure Rules also needed to reflect the Brexit position given the move away from EU to British procurement processes. Another key change was the removal of references to Standing Orders. Exemptions were another important feature of the Contract Procedure Rules, as there were occasions when something was exempted from the process. However, it was realised these needed to be tightly controlled.

An e-learning package for the Contract Procedure rules had been created and was mandatory for staff to complete.

A Member queried if there were any written consequences should the Contract Procedure Rules be broken. It was clarified this would lead to a disciplinary matter and was codified in both the Financial and Contract Procedure Rules. It was also clarified Members were not allowed to be involved in procurement processes with any breaches resulting in a Standards matter.

Regarding the frequency of updates to the Financial and Contract Procedure Rules it was clarified the usual time frame was 12 months, but the first review would take place between six and nine months from the point of approval.

The Chair thanked the representative from CIPFA, Council Officers and Members of the Committee for their work in updating the Constitution. The Chair also clarified Member briefings would take place to allow all Members to have input into the Constitution refresh process.

ORDERED:

1. That the current proposal of the Key Decision financial threshold £200,000 be increased to £250,000 and recommended to Council;
2. To review if pollution control and management is within the remit of the Audit Committee;
3. That the Council Management Structure be inserted the Constitution; and
4. That the information presented be noted.

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ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.

None.