

CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 15 February 2012 at 9.30 am in Austen Room, Council Offices, Cecil Street, Margate, Kent.

Present: Mr Robin Hills (Chairman); Councillors Mr B Hinchley (Independent Member), K Gregory, Nicholson, Watkins and Wright

16. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Hayton; Councillor K Gregory was present as his substitute.

17. DECLARATIONS OF INTEREST

There were no declarations of interest.

18. MINUTES OF PREVIOUS MEETING

The minutes of the meeting 20 October 2011 were agreed and signed by the Chairman.

19. REVIEW OF CONTRACT STANDING ORDERS AND PURCHASING GUIDE

Karen Paton, Procurement and Contracts Manager outlined her report explaining that the Contract Standing Orders needed to be realigned in the wake of the corporate restructure. She added that the audit of Contract Standing Orders had resulted in a substantial level of assurance and that a cross party recommendation from Members had asked for Cabinet and Shadow Cabinet Members to be present at tender openings.

Members asked why if Cabinet and Shadow Cabinet Members or their substitutes weren't available, it was proposed to carry on with a tender opening without any Member present. Ms Paton explained that tendering often followed a tight timescale and that carrying on with an opening if the invited Members couldn't make it was not meant as a way of excluding Members. She confirmed that she would have no issue with having a pool of substitute Members that could be contacted if either the Cabinet Member or Shadow Cabinet couldn't attend an opening.

Ms Paton then explained that in response to suggestions from Members the Contract Procedure rules had been amended to include clauses in the first two stages that allowed, only if everything else was equal, for consideration to be given to Thanet based firms.

In response to a query from Members, Harvey Patterson, Corporate and Regulatory Services Manager explained that the Council did not operate a preferred list of suppliers; in addition he clarified that a Thanet firm would only be awarded a contract if it was the best quote.

Members also queried why the Council often said how much it had to spend on a project before tendering and that it gave firms the opportunity to artificially inflate prices to the level of funds the Council had to spend.

Mr Patterson confirmed that at no point within the tendering process would potential tenderers ever get to know how much the Council had to spend on a project.

Ms Paton then added that the Contract Procedure Rules needed to be amended allow for Officers to undertake a tender process where there was only one possible tenderer without having to apply for an exemption, which was a time consuming and unnecessary step. She added in response to a question from Members that currently exemptions from Contract Procedure Rules were reported annually to a Full Council meeting.

Councillor K Gregory proposed and Councillor Watkins seconded and Members agreed that:

The recommendation as set out at 6.1 of the report be forwarded to the Standards Committee after being amended to read:

The Constitutional Review Working Party approve and recommend to the Standards Committee and Full Council the amendments to the Contract Standing Orders and Purchasing Guide listed below and the associated amendment to the Constitution as required.

- i). Amendments made to bring the documents in line with the new Council structure.
- ii). Addition to wording of Clause 11.5 and Appendix 1 of the CSOs of 'the appropriate Shadow Portfolio Holder or another Shadow cabinet member' and to Clause 11.5 of 'In circumstances where both Portfolio/Cabinet member and/or, both Shadow Portfolio/Cabinet members are unable to attend, opening of tenders can and should be undertaken in presence of officers and at least one substitute Member to ensure procurement programme is maintained'
- iii). Addition to wording of Clause 7.4 of the CSOs of 'Consideration to be given to suitably qualified Thanet Supplier/s, if available'
- iv). Addition of Clause 2.3.6 'When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods, services or works may be provided only by a particular service provider' to the CSOs.

20. MOTIONS ON NOTICE

Harvey Patterson, Corporate and Regulatory Services Manager outlined his report, explaining that before the May 2011 election motions on notice were rarely used and achieved relatively little as they were defeated by the large majority of the ruling party, however since the election and the hung nature of the Council they had been used far more often. They were now being used as a way of fast tracking manifesto commitments into policy. Council had a due process to follow when creating policy and there shouldn't be any shortcuts.

Council also had a commitment when making policy to consider the potential financial and legal implications of any decision and motions on notice circumvented this stage and opened the Council up to possible Judicial Review. Trying to use Motions on Notice in order to create or amend policy framework items also side stepped the due process and opened up the Council to the possibility of Judicial Review as well.

He added that the he was often in an impossible position as Motions on Notice were an overtly political tool, yet he was the Monitoring Officer and was obliged to stay independent. He had been criticised by some for assisting Councillors by saying why a Motion on Notice was invalid, but was also not in a position to tell Councillors to go and get their own legal advice.

Members made the point that the report looked like it was an attempt to remove the privilege of making Motions on Notice. Members also made the point that attempting to amend procedure rule 16.3 to exclude the proposer from making a speech when

presenting a Motion on Notice was unfair. A Member from the largest other political group to the one proposing the Motion should be allowed to make a response when it is moved and before it is either debated or referred to Cabinet or other appropriate Committee.

Members also made the point that Council should be allowed to discuss Motions on Notice that may amend policy or be about policy framework items, even if they could only recommend them to Cabinet.

It was proposed by Councillor Nicholson and seconded by Councillor Gregory that:

i) Council Procedure Rule 16.3 be amended to read:

“The Member whose name appears first on the Notice will move the motion during his or her speech and call for a seconder. If seconded, a member from the other main political group will be entitled to a reply, the motion shall then stand referred without further discussion to the Cabinet or appropriate Committee for determination or report unless the Council decides to debate the motion in accordance with Rule 19.”

ii) Council Procedure Rule 16.4(a) - to include the following paragraphs

“(iii) Where a motion on notice would, if adopted, constitute the exercise of an executive function, that motion must be referred to the Cabinet (or relevant Cabinet portfolio holder as appropriate) for decision.

(iv) The Chairman shall rule out of order any motion on notice that relates to the adoption of, or amendment to, a policy falling within the Council’s adopted Policy Framework if that policy or amendment (as the case may be) has not first been proposed by the Cabinet and considered by the Overview and Scrutiny Panel.

(v) The Chairman shall rule out of order any motion on notice that proposes the adoption of, or amendment to, any policy outside the adopted Policy Framework which by law or this Constitution is the sole responsibility of the Cabinet.

(vi) Any motion on notice that proposes the adoption of a policy or the taking of a decision where Council has not received a report from the officers setting out the technical legal and financial implications of adopting the policy or taking the decision in question *shall only be debated. The only action that may be taken is to refer the motion to Cabinet for consideration.*

iii) Rejecting Motions on notice – to include the following paragraph:

“The Chairman of Council may rule out of order Motions on Notice that in his opinion:

- i) are defamatory in nature,
- ii) are frivolous in nature, or
- iii) contain offensive language.”

iv) That Council Procedure Rule 20.2 should not be amended.

v) That the Corporate and Regulatory Services Manager be given delegated authority to amend the Council’s constitution to reflect the changes made in the resolution.

21. **IMPLICATIONS OF THE LOCALISM ACT 2011 ON THE COUNCIL'S PETITIONS SCHEME**

Glenn Back Democratic Services and Scrutiny Manager outlined the report. He explained that the report covered each of the elements of previous legislation that the Localism Act proposed to repeal.

Members explained that the proposed appeals process, whereby the corporate complaints process would be used instead of the Overview and Scrutiny Panel was not supported and that the function should remain with the Overview and Scrutiny Panel.

Members also added that the right to call an officer to account should be retained, however the wording should be amended so that the public have a right to call an "appropriate officer" to account instead of a named officer

In addition Members indicated that if petitions were rejected then currently there was no way that Councillors would know about those reasons for rejections. Members suggested that when a petition was rejected, the reasons for rejecting the petition should be reported to the Overview and Scrutiny Panel.

Proposed by Councillor Gregory and seconded by Councillor Nicholson and agreed that:

- a) Recommendation 3 be removed from the report.
- b) Recommendation 7a) be amended to read: "a) the existing scheme of thresholds that automatically determine whether a petition is sent to Council to be sent to Cabinet, the Overview and Scrutiny Panel or to Council for debate and the ability to create a petition to ask an appropriate officer to give evidence be retained.
- c) Recommendation 9 be amended to add a paragraph that reads: "c) That when a petition is rejected, the grounds for rejecting that petition are reported to the next available Overview and Scrutiny Panel meeting."
- d) The recommendations as outlined at 8.1 of the report as amended above are forwarded for consideration by the Standards Committee.

Meeting concluded : 10.45 am