

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 15th September, 2016 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor D Marren (Vice-Chairman)

Councillors M Beanland, B Burkhill, M Deakin (for Cllr Brooks) S Edgar,
H Gaddum, S Hogben, L Jeuda (For Cllr Newton) D Mahon, N Mannion,
R Menlove, L Smetham (for Cllr Baxendale) and G Wait

Councillors in attendance

Councillors D Bailey and S Pochin

Officers

Brian Reed, Head of Governance and Democratic Services
Bill Norman, Director of Legal Services
Paul Mountford, Governance and Democratic Services

Apologies

Councillors G Baxendale, E Brooks and D Newton

10 DECLARATIONS OF INTEREST

There were no declarations of interest.

11 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

12 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 15th July 2016 be approved as a correct record.

13 OVERVIEW AND SCRUTINY COMMITTEES - REVIEW OF STRUCTURE

RESOLVED

That consideration of this matter be deferred to the next meeting.

14 SUBSTITUTE COMMITTEE MEMBERS AT PLANNING COMMITTEE MEETINGS

The Committee considered a report recommending that a pool of trained members be created to supplement existing arrangements for the provision of substitute committee members at planning committee meetings.

The current substitution arrangements provided that a substitute on a planning committee must have received appropriate training and must be a member of one of the other two planning committees. These requirements made it difficult on occasions for Group whips to find substitutes for planning meetings. It was therefore proposed that a limited pool of additional members with the required training be established and drawn from as required.

RESOLVED

That Council be recommended to approve that

1. a pool of 9 planning substitutes be established (5 Conservative: 2 Labour: 2 Independent);
2. the pool will supplement the existing Constitutional provisions which enable planning substitutes to be drawn from any of the Council's planning committees: Northern Planning, Southern Planning and Strategic Planning Board;
3. subject to the requirement that each member of the pool must have received appropriate and up-to-date planning training, the political groups may nominate their members to the pool as and when necessary; and
4. the Director of Legal Services, in consultation with the Chairman of the Constitution Committee, be given authority to make such changes to the Constitution as he considers are necessary to give effect to the wishes of Council.

15 AUDIO-RECORDING OF MEETINGS

The Committee considered a report seeking clarification and guidance on the arrangements for the audio-recording of decision-making meetings. The purpose of such recordings would be to resolve any disagreement as to the accuracy of the draft minutes.

The Committee took the view that the requirement to record should apply to the meetings of all decision-making bodies, including overview and scrutiny committees.

The Committee also considered whether the audio recordings should be published on the Council's website.

Councillor S Pochin attended the meeting and, at the invitation of the Chairman, spoke on this matter.

RESOLVED

That

1. Council be recommended to agree that, subject to the following principles, the audio recording of meetings shall take place:
 - (a) All decision-making meetings of the Council be subject to audio-recording, including overview and scrutiny committees (but not informal non-decision-making bodies such as working groups) unless the press and public have, by resolution, been excluded from the meeting;
 - (b) Any member who was a member of a decision-making body at a meeting of that body, including anyone attending as a substitute, may request that the audio recording of that meeting be reviewed in order to clarify the wording of a draft minute;
 - (c) Such a request for review of the audio recording must be made on a working day before the day of the meeting at which the draft minutes are to be submitted for approval; and
 - (d) The audio recordings be retained for a period of 6 months from the date of the meeting in question, unless a Freedom of Information request is made in respect of the recording, in which case the recording will be retained for such longer period as is required by law.
2. Council be asked to give authority to the Director of Legal Services, in consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Constitution as he considers necessary to give effect to the wishes of Council;
3. Council be asked to consider whether the audio recordings of meetings should be published on the Council's website and, if it is minded to agree, request and authorise the Constitution Committee to approve the detailed arrangements and the necessary changes to the Constitution; and
4. Council be asked to consider whether a report should be presented to the Constitution Committee which will explore the implications of the Openness and Local Government Bodies Regulations 2014.

16 URGENT DECISION PROCEDURES

The Committee considered a report on recommended changes to the procedures for taking urgent decisions. The current procedures, which were introduced in 2011, were considered deficient in certain respects as outlined in the report.

With regard to the proposed changes to the urgency provisions relating to executive decisions, the Leader of the Council had been consulted.

RESOLVED

That Council be recommended to approve the amended procedures for taking urgent decisions as set out below and to authorise the Director of Legal Services to amend the Constitution accordingly:

1. The procedure for taking urgent regulatory decisions under Committee Procedure Rule 25 be amended as follows:

“The Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with the Chairman and/or Vice-Chairman of the relevant committee or sub-committee have delegated authority to take any non-executive decision subject to the following requirements being met:

- *The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or an urgently convened meeting;*
- *The decision is reported for information to the next available meeting of the decision-making body;*
- *The provisions of legislation are complied with;*
- *Advice has been taken from the Council’s Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.”*

2. The procedure for taking urgent Council decisions under Council Procedure Rule 18 be amended as follows:

“If a decision would normally be required to be made by full Council the decision may be made by the Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with Group Leaders and the Mayor (or in his/her absence the Deputy Mayor) subject to the following requirements being met:

- *The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting ;*

- *The decision is reported for information to the next available meeting of the Council;*
 - *The provisions of legislation are complied with;*
 - *Advice has been taken from the Chief Executive, Council's Director of Legal Services and Section 151 Officer;*
 - *All Members of the Council are notified of the decision taken by electronic means."*
3. The procedure for taking urgent executive decisions under Cabinet Procedure Rule 53 be amended as follows:

"The Leader of the Council, or in his/her absence the Deputy Leader of the Council, or in his/her absence the relevant portfolio holder has delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met:

- *The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the Cabinet, or an urgently convened Cabinet meeting;*
- *The decision is reported for information to the next available meeting of the Cabinet;*
- *The provisions of legislation are complied with;*
- *The relevant overview and scrutiny committee Chairman has been notified of the matter and has been invited to make representations;*
- *The Leaders of all Opposition Groups have been notified of the matter and have been invited to make representations;*
- *Advice has been taken from the Council's Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.*

In addition the following provisions shall apply:-

- *Rules 13, 14 and 15 of Access to Information Procedure Rules shall be adhered to, relating to the content of the Forward Plan, general exceptions to the requirement to list decisions on the Forward Plan, and circumstances of special urgency*
- *Rule 54 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions*
- *Overview and Scrutiny Procedure Rules in relation to Call-in (Rule 12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).*

- *Rule 4 of the Budget and Policy Framework Procedure Rules shall be adhered to in relation to urgent executive decisions taken under this procedure.*
- *Overview and scrutiny committees can review the reasons for the urgency of a decision and the process adopted.*

For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply.”

17 MEMBERS' USE OF THE COUNCIL'S EMAIL SYSTEM

The Committee considered a report on the existing guidance to members on using the Council's Internet and email services. The report sought to provide clarification of the phrase in the Members' Code of Conduct that 'Resources must not be used improperly for political purposes (including party political purposes)'.

Paragraph 6(b) to Part A of the Council's Member Code of Conduct placed restrictions on the use by Members of the Council's resources which included the following:

“Resources must not be used improperly for political purposes (including party political purposes)”

In the section in the Code of Practice on using Council equipment, the following guidance was provided in relation to email:

“Members should not use the ICT facilities improperly for political purposes such as the promotion of a political party, a candidate or group of candidates in an election or in connection with a party political campaign.”

The Code of Practice thus mirrored the Code of Conduct in prohibiting the use of the Council's ICT facilities 'improperly for political purposes', but it went on to provide some examples of improper use.

Neither the Code of Conduct nor the Code of Practice provided guidance as to when the use of Council resources for political purposes might not be 'improper.' However, as sending an email on the Council network had no identifiable cost to the public purse, there could be circumstances where an email about party political matters was harmless and not improper. Factors which could make it more likely that a 'political' email was acceptable included the following:

- The sender and recipient/s were both/all Councillors belonging to the same political group;
- The recipient was not a member of the public;

- The content of the email was administrative in nature;
- The email did not contain any politically controversial material;
- The email did not criticise other people, and/or another political party.

It was not possible to provide definitive guidance covering every possible set of facts. However, if a Member was unsure whether sending an email on the Council's system might be 'improper' they were urged to seek advice from the Monitoring Officer.

RESOLVED

That the clarification provided in the report be distributed to all members.

The meeting commenced at 2.00 pm and concluded at 3.44 pm

Councillor A Martin (Chairman)