

## **Council Meeting – 25 February 2010**

### **Agenda Item 12**

#### **RECOMMENDATIONS FROM CONSTITUTION ADVISORY GROUP**

**The Constitution Advisory Group at its meetings on 25 January and 15 February 2010 received a number of reports relating to constitutional matters, some of which proposed changes to the Council's Constitution. The Group considered those reports and made recommendations to the Council as set out in 1 to 7 below.**

#### **1. CHANGE OF PROCUREMENT THRESHOLDS**

The Constitution Advisory Group received and considered a report by the Director of Corporate Resources proposing changes to procurement thresholds which would reduce bureaucracy and speed up the recruitment process whilst obtaining best value for money in the procurement process. The report also set out new mandatory changes to European Thresholds for advertising contracts across the EU.

The Group noted that benchmarking had been carried out with other local authorities. The proposed changes were pragmatic in that they would reduce bureaucracy but would not lead to a loss of control.

In response to a question it was noted that there were provisions in place to ensure best value for money.

A discussion ensued on whether officers should be enabled to make use of better prices where they found them. It was noted that enabling this tended to lead to a loss of efficiencies and that CBC corporate contracts or framework agreements should always be used where they existed.

#### **AGREED TO RECOMMEND TO COUNCIL:-**

**That the procurement thresholds and processes in the Code of Procurement Governance be amended as listed below, whilst steering officers into using both Central Bedfordshire Council's corporate contracts and framework agreements (contracts) set up by other councils and consortia. The process to be as follows:-**

#### **Step 1:**

**Always use Central Bedfordshire Council corporate contracts or Consortium framework agreements (as listed on the internet) where they already exist. Where they do not, the following rules apply:-**

## Step 2:

- Up to £2,000 - seek best value or two quotations
- £2001 to £20,000 – 3 written quotations demonstrating best value (based on price and quality)
- £20,000 to £59,999 – 3-5 written quotations by sealed bid
- £60,000 to EU threshold – invite 5 tenders, advertised and by sealed bid
- above EU threshold (works £3,927,260, supplies and services £156,442) must be advertised in OJEU and 5 written tenders must be invited (mandatory new EU law).

The replacement Table 1, section 5.1 of Part I3 of the Constitution is attached at **Appendix A**.

## **2. MEMBERS' ACCEPTABLE USE POLICY**

The Constitution Advisory Group received and considered a report of the Assistant Director Legal and Democratic inviting Members to consider including the Members' Acceptable Use Policy (ICT) in the Constitution.

A discussion ensued as to whether it was most appropriate for this document to be included in the Constitution or whether it would be more likely to be read and referred to if maintained in some other location. Members considered that this document was for Members' guidance and would therefore be most appropriately kept in the Councillors' Guide, which was in effect a guidebook for members of the Council. However, reference should be made to it in the relevant part of the Constitution.

### **AGREED:-**

To note the Executive's approval on 13 October 2009 of the new Members' Acceptable Use Policy (ICT).

### **AGREED TO RECOMMEND TO COUNCIL**

**That the Constitution should make reference to the new Members' Acceptable Use Policy (ICT) but the document should be maintained in the Councillors' Guide and not the Constitution.**

## **3. DELEGATED AUTHORITY FOR THE APPOINTMENT OF ASSISTANT DIRECTORS**

The Constitution Advisory Group considered a report of the Chief Executive proposing an amendment to the Constitution to allow for the Head of Paid Service (or delegated Director) to appoint Assistant Directors.

A discussion ensued regarding the position of statutory posts such as the S151 Officer, the Monitoring Officer and the Scrutiny Officer. It was noted that

there was a legal requirement that an independent review take place before the post holders of the designated S151 Officer and the Monitoring Officer could be dismissed by Council.

Members were reminded that appointments to any post at a lower tier than Assistant Director were statutorily required to be made by officers, not members of the Council.

Members were of the view that if the posts of S151 Officer and Monitoring Officer were at Assistant Director level or above, the appointments should be made by Members. All other Assistant Director appointments should be delegated to the Chief Executive.

A discussion took place on the review of the Senior Management Structure which was currently in progress.

Members noted that the proposals for the Senior Management Review, including moving to a four-directorate model, had been the subject of consideration by the Executive which had authorised the Chief Executive to implement the necessary arrangements, including a review of Assistant Director and Head of Service level posts. Following questions from Members, a copy of the relevant minute of the Executive was circulated at the meeting.

A view was expressed that there should be an opportunity for the emergent managements structure to be subject to review at Member level to ensure it was fit for purpose.

Reference was also made to the fact that the outcome of the review would require amendments throughout the Constitution, including the structure diagram at part H2. It was noted however that the review was not yet sufficiently progressed to enable officers to inform the Advisory Group of the consequential amendments likely to be required to the Constitution. It would be necessary to report to Council at the appropriate time regarding the designation of statutory officers where these varied from the Council's current structure.

It was suggested that the management structure diagram included in the Constitution should be at a higher level and reflect the tier of officers to be appointed by Members.

The Committee drew up a recommendation to Council delegating Assistant Director level appointments to Officers subject to the endorsement of General Purposes Committee.

The General Purposes Committee considered the matter at its meeting on 10 February, 2010 and formulated the following recommendations to Council:-

- 1. that the authority to appoint posts at Assistant Director level is delegated to the Head of Paid Service together with the relevant Director, subject to recommendation 2 below:**

- 2. that the period of delegation to the Head of Paid Service and relevant Director is for no more than 6 months, or until such time as the Head of Paid Service reports to the Committee on the outcome of the Review of the Senior Management Structure, whichever is the sooner.**
- 3. that the posts of S151 Officer and Monitoring Officer remain at Assistant Director level or above and that these appointments continue to be made by the Appointments Sub-Committee.**

The Constitution Advisory Group, at its meeting on 15 February, 2010 considered the response of General Purposes Committee. As no apparent rationale was available to the Group in support of this approach, the Constitution Advisory Group did not see any merit in pursuing this course and decided to proceed with its original recommendation to Council.

**AGREED TO RECOMMEND TO COUNCIL:-**

- 1. That, subject to 2 below, authority to appoint posts at Assistant Director level be delegated to the Head of Paid Service, together with the relevant Director and that sections E2 (8.1.1), F4 (5.1.4), H3 (3.2.1.3) and H4 of the Constitution be amended accordingly;**
- 2. that in the event of the posts of S151 Officer and Monitoring Officer being at Assistant Director level, these will nonetheless be retained as appointments made by members of the Council.**

**4. EFFICIENCIES – EXECUTIVE BUSINESS**

The Advisory Group considered a report of the Head of Democratic Services seeking comments on the suggestion that it should no longer be a requirement to report minutes of the Audit Committee or Key Decisions taken by an individual Portfolio Holder, committee of the Executive or officer, to meetings of the Executive.

Members were advised that the minutes of both the Audit Committee and notices of delegated decisions were as a matter of course published on the Council's website.

It was noted that decisions taken under the emergency provisions would still be reported to the Executive.

**AGREED TO RECOMMEND TO COUNCIL:-**

**That minutes of the Audit Committee and Key Decisions taken by an individual Portfolio Holder, committee of the Executive or officer, no longer be reported to meetings of the Executive, and that part C4**

**paragraphs 10.1.8 and 10.1.11 of the Constitution be amended accordingly.**

## **5. DELEGATIONS TO OFFICERS**

The Constitution Advisory Group noted a number of executive delegations to officers which the Leader had recently approved under her authority set out at paragraph 3 of the Executive Procedure Rules. These delegations are referred to elsewhere on the agenda in the report entitled “Decisions taken by the Leader”. These delegations include the transfer of a number of powers from the Director of Children, Families and Learning to the Director of Sustainable Communities following the transfer of responsibility for community and cultural learning to the latter directorate.

The Advisory Group has subsequently noted however that certain delegations relating to Council functions also need to transfer between directorates.

### **AGREED TO RECOMMEND TO COUNCIL**

**That the following delegations be transferred from the Director for Children, Families and Learning to the Director for Sustainable Communities and that Part H3 of the Constitution be amended accordingly:-**

4.4.15	To carry out the functions of the Council in respect of public rights of way, including the exercise of the Council’s powers and duties under the Wildlife and Countryside Act 1981, the Highways Act 1980, Sections 257 and 258 of the Town and Country Planning Act 1990 (including the maintenance, protection, enforcement, extinguishments, creation, diversion and modification of public rights of way) and the making of road traffic regulation orders in respect of public rights of way.	Subject to consultation with the relevant ward Member, and subject to the Director’s power to authorise the making of orders in respect of public rights of way applying only in so far as no significant objection has been made to the application, proposal or matter concerned.
4.4.17	To carry out the functions of the Council in respect of Commons, Town and Village Greens and the countryside.	Subject to prior consultation with the Assistant Director, Legal and Democratic in so far as functions relate to enforcement action and instituting legal proceedings.

## **6. REVIEW OF THE OVERVIEW AND SCRUTINY ARRANGEMENTS**

The Constitution Advisory Group at its meeting on 15 February 2010 received a report setting out proposals to revise the Overview and Scrutiny arrangements. It was noted that the Overview and Scrutiny Co-ordination Panel (consisting of the Chairmen and Vice-Chairmen of the five current Overview and Scrutiny Committees) at its meeting on 3 February 2010 had reviewed a number of options for revising the structures and working practices of the Overview and Scrutiny function and the scope for streamlining other Council arrangements generally.

A firm set of proposals had emerged from this meeting which were now before the Constitution Advisory Group for consideration.

A discussion ensued regarding the appropriate means of reflecting changes to the Constitution arising from the Senior Management Review. A view was expressed that it was not appropriate for the structure diagram to be in the Constitution and that the website should include information of this kind in an accessible place for members of the public to view easily.

Members discussed at length the proposals set out in the report for the Overview and Scrutiny structure. The conclusion was reached that the proposals in the report were appropriate and that the terms of reference for the newly-merged fourth committee would be an amalgamation of the terms of reference from the currently existing Corporate Resources and Business Transformation Overview and Scrutiny Committees. The suggestion of "Central Services Overview and Scrutiny Committee" as an appropriate name for the new committee was well-received.

The Group also considered the need to have a work programme in place to plan looking at the operational efficiency of the Council and amend the Constitution where necessary. A suggestion was made that an exercise to review the need for the non-statutory Committees of the Council could be valuable. Members welcomed this proposal.

### **AGREED**

that a Work programme be drawn up for the Constitution Advisory Group, including an item for the consideration of the role of non-statutory committees of the Council and whether they were needed, to take place in the spring/summer 2010.

### **AGREED TO RECOMMEND TO COUNCIL**

- 1. to amend the Overview and Scrutiny structure to provide for four committees which mirror the Council's organisational structure with effect from the Council's annual meeting on 18 April 2010;**

- 2. as a consequence of recommendation 1 above, to dissolve the Business Transformation and Corporate Resources Overview and Scrutiny Committees and establish a Central Services Overview and Scrutiny Committee with terms of reference which are an amalgamation of the previous two committees;**
- 3. to authorise the Monitoring Officer in consultation with the Constitution Advisory Group to make the necessary consequential arrangements to the Constitution arising from recommendations 1 and 2 above;**
- 4. that the Organisational Structure diagram should be removed from the Constitution and kept up to date on the Council's website and in the Councillors' Guide.**

## **7. SCHEME OF DELEGATION TO OFFICERS**

The Advisory Group considered points which had been raised by Members in relation to the Constitution.

Regarding delegation 4.6.31 "to settle on appropriate terms any litigation or claim made by or against the Council" the Group noted that there was currently no upper financial limit to the officer's delegation to carry this out. Members considered that this was too open and that thresholds should be put in place.

The Group noted a new delegation approved by the Leader of the Council to the Portfolio Holder for Sustainable Development.

The Group considered that there was no need for delegations made by the Leader of the Council to be reported to the Constitution Advisory Group and Council provided all Members were notified of them.

The Group was invited to consider whether it wished to conduct a review of the scheme of delegation to officers, with a view to producing a more streamlined scheme. It was proposed that officers conduct a review of the scheme of delegation of the unitary authorities within the Council's CIPFA comparator group. The need for inclusion of the detailed scheme within the Constitution should also be reviewed.

### **AGREED**

that a review of the schemes of delegation to officers of the unitary authorities within the Council's CIPFA comparator group be undertaken and reported back to the Constitution Advisory Group.

### **AGREED TO RECOMMEND TO COUNCIL:-**

- 1. that the following upper financial limit should be imposed on the delegation set out at Section H3 paragraph 4.6.31, namely,**

“to settle on appropriate terms any litigation or claim made by or against the Council”, as follows:-

<i>Financial Threshold</i>	<i>Approval by</i>
Up to £200,000 (ie Key Decision threshold)	Assistant Director Legal and Democratic
£200,000 - £500,000 (in line with the new delegations to individual Portfolio Holders)	Portfolio Holder for Corporate Resources, in consultation with the relevant Portfolio Holder and Assistant Director Legal and Democratic
£500,000 and above	Leader of the Council, in consultation with the Portfolio Holder for Corporate Resources, relevant Portfolio Holder and Assistant Director Legal and Democratic
(Note: Delegations to individual Portfolio Holders are subject to approval by the Leader of the Council.)	

2. that the Constitution be amended to provide that the delegations agreed by the Leader of the Council do not need to be reported to Executive or Council as they would be advised to all Members as and when they occurred.