

# CONSTITUTION WORKING PARTY

Minutes of a remote meeting of the Constitution Working Party held on Monday 28<sup>th</sup> June at 10.00 am

|                         |                     |                                 |
|-------------------------|---------------------|---------------------------------|
| <b>Committee</b>        | Ms V Gay (Chairman) | Mr T FitzPatrick                |
| <b>Members Present:</b> | Mr A Varley         | Mrs P Grove-Jones<br>Mr E Vardy |

**Officers in Attendance:** The Monitoring Officer (Assistant Director for Finance, Assets & Legal, the Chief Technical Accountant and the Democratic Services Manager

## 1 APOLOGIES FOR ABSENCE

None received.

## 2 MINUTES

The minutes of the meeting held on 13<sup>th</sup> April 2021 were approved as a correct record and signed by the Chairman. The Chairman referred to page 7 of the minutes and the reference to attendance by members at exempt meetings. This would be addressed at the next meeting.

## 3 ITEMS OF URGENT BUSINESS

None.

## 4 DECLARATIONS OF INTEREST

None received.

## 5 REVIEW OF PORTFOLIO HOLDER REPORTS TO COUNCIL

The Chairman referred Members to the written report and asked for comments. Cllr T FitzPatrick said that taking the current approach of taking the reports and questions in alphabetical sequence, disadvantaged the smaller political groups as it was limited to one question per member. He felt that it would be more equitable if the reports were presented en bloc and then opened up to questions. He said that under the current process, an opportunity would be lost to ask a further question if an issue arose during a later portfolio report. He added that some authorities took the approach of opening questions up to the main opposition group first, followed by the smaller groups and then the Administration last. This gave an opportunity for the opposition to ask questions and challenge the Administration and ensure that the small groups in particular were able to speak. He added that at Norfolk County Council, there was no equivalent of portfolio reports but there was a session for open questions to Cabinet members at Full Council meetings and portfolio holders were expected to answer questions put to them.

Cllr P Grove-Jones said that portfolio reports must be time limited as it could run on for a long time otherwise. She said that she found written reports to be helpful as they provided an insight into what was happening at the Council. The Chairman agreed, saying that written reports, prepared with input from officers, could provide a useful update on the work of service areas. She sought members' views on whether portfolio holders should write their own reports. As a portfolio holder herself, she said that although she could update Council on specific areas of interest, if officers had input into reports then it ensured that portfolio holders did not miss any key areas of work. Cllr Grove-Jones agreed. She said that there would not be a consistent standard to the reports if Members wrote them themselves.

Cllr FitzPatrick said that he agreed that Members did not have to write the reports themselves, however, they should be familiar with the content of the written reports and be able to respond to questions at Council relating to them. If questions were asked on a matter that was not included in the written report, then it was reasonable to offer to provide a written response after the meeting.

Cllr Grove-Jones asked whether the time limit on portfolio reports was still 30 minutes. The Democratic Services Manager replied that this was the time set out in the Constitution, however, a previous review of portfolio holder reports had led to a recommendation of an hour time limit so this may be something that Members may wish to consider. The Chairman said that she felt this was during a time when members read out reports to the meeting. This was no longer the case and she felt that an hour was too long.

Cllr E Vardy asked whether there was a time limit for members wanting to ask a question. The Democratic Services Manager confirmed that it was 5 minutes with a further 1 minute for a supplementary question. She added that if each member used the full 5 minutes then the 30 minutes' time limit would be quickly used up. Cllr Vardy said that he felt it was important that the time for each member was equitable and that some members weren't taking up more time than others.

Cllr Grove-Jones asked whether consideration should be given to written questions being submitted in advance of the meeting for inclusion in the published agenda. Cllr A Varley said that he felt written questions would be beneficial. The current format meant that it regularly over-ran due to so many questions being asked on the night. Having questions in advance would enable the Cabinet member to respond fully and assist with complying with the 30 minute time limit.

Cllr T FitzPatrick said that he didn't support written questions. He said that the long lead-in required to include them in the agenda meant that there was limited opportunity to ask impromptu questions on the night. He added that by ensuring the portfolio reports were included in the agenda, members could read them and ask pertinent questions at the meeting. Cllr Grove-Jones said that there would still be the possibility of asking a supplementary question on the night. Cllr FitzPatrick acknowledged this but said submitting questions in advance would remove the opportunity to challenge at the meeting.

Cllr E Vardy sought clarification on whether members could ask questions at Cabinet meetings. The Chairman confirmed that they could and there was no requirement to submit them in advance. The Democratic Services Manager added that questions asked at Cabinet had to relate to items on the published agenda, whereas questions to Cabinet members at Full Council could be on any item or issue within their portfolio.

The Chairman asked if there was any support for extending the 30 minute time limit on portfolio reports. It was agreed that there was not.

She then asked about submitting written questions in advance. Cllr Grove-Jones said that she wouldn't support having questions submitted just before the meeting as this could lead to them being circulated at short notice. The Democratic Services Manager confirmed that this would be the case if a short deadline was imposed. She added that if written questions were included in the published agenda, they would need to be submitted 10 days before the meeting and this could potentially limit questions relating to any issues that may arise between the publication of the agenda and the meeting. Cllr Varley acknowledged that this was a lengthy lead in time.

The Chairman referred to Opposition Business at Council meetings and sought clarification that this was also a thirty minute session. The Democratic Services Manager confirmed that this was the case. She said that this was an item for debate rather than questions but was an opportunity for opposition groups to bring forward items of interest or concern.

Cllr FitzPatrick said that it would be helpful if there could be clarity regarding members responding to questions rather than an officer replying on their behalf. The Democratic Services Manager replied that it was set out in the Constitution that officers should not speak at meetings unless a question was specifically directed at them. She went on to say that one of the main issues currently was the one question per member requirement. There seemed to be a misconception that it was one question per member per portfolio holder.

The Chairman said that the Council Chairman currently used his discretion to allow more questions and perhaps continuing with this would be the best way to resolve the problem. Otherwise, if every member chose to ask each portfolio holder a question, the session could become extremely lengthy.

Cllr FitzPatrick commented that the current format of portfolio holders presenting their reports in turn, meant that members felt that they needed to ask a question early in the session in case the time limit was reached and they missed the opportunity to do so. He suggested that it might be fairer if portfolio holders presented their reports en bloc first and then a separate session was opened for questions for 30 minutes on a first come, first served basis.

RESOLVED

To recommend to Council:

1. That the Council agenda be amended to include the following two separate standing agenda items:
  - a. Presentation of Portfolio reports
  - b. Questions to Portfolio Holders (limited to 30 minutes)
2. That a review be undertaken in 6 months

## **6 CONTRACT STANDING ORDERS (PROCUREMENT) EXEMPTIONS**

The Chairman outlined the background to this item. She explained that the Constitution as currently set out, was quite clear on the processes that should be followed for managing and recording contract procurement exemptions. Problems had arisen

because these processes had not been followed. She drew Members' attention to the recommendations in Internal Audit's final position statement that had been presented to Governance, Risk & Audit Committee on 15<sup>th</sup> June. Some of the recommendations required amendments to the Constitution and the Working Party was now asked to consider these changes, together with the revised procurement exemption request form.

Cllr Grove-Jones asked for clarification about the Procurement Officer post and where it was based. The report did not state this. The Monitoring Officer replied that this was currently under review. Cllr Grove-Jones went on to say that a consistent approach to procurement exemptions seemed to have been lacking in the last few years. She welcomed the proposal that three people would be required to sign off the exemption certificate.

Cllr T FitzPatrick said that transparency was also fundamental to the process. He supported the three signatories but felt that there should be an additional step in the process of reporting any contract exemptions to the next meeting of Cabinet or Council.

Cllr Varley agreed with the previous comments. Cllr Grove-Jones said that she believed that they should be reported to Council. Cllr FitzPatrick said that the exemption should not be considered to be valid until it was signed off and then it should be reported to the next meeting of Cabinet or Council – whichever was soonest.

The Chairman said that regardless of the contract and the reason for the exemption, the forms should be treated in a consistent way. Cllr Vardy concurred, saying that they should be signed off as soon as the exemption was agreed and then reported through to the relevant committee.

The Chief Technical Accountant said that on the new version of the form, the S151 officer was no longer required to sign off contract exemptions. She explained that he had previously been the Procurement Officer and it was felt that his role as signatory had stayed with him for historic reasons and that it was not something that the S151 Officer needed to do. It was felt to be more appropriate for the Procurement Officer to sign them off to indicate that the correct processes had been followed and the Monitoring Officer then signing to say the reason for the exemption was valid. Regarding consistency, she said that some of the officers instigating the exemptions were not familiar with the process. Although the Constitution set it out clearly, the previous guidance notes had not.

The Chairman referred members to the current exemption form and asked them to compare it to the revised form (Appendix 2 to the report).

Cllr Grove-Jones said that she was concerned to hear that the S151 officer would no longer be required to sign the exemption forms. She felt that they had responsibility for finance and expenditure and should be a signatory. Cllr FitzPatrick agreed. The Chairman said that she also felt that the S151 officer should be a signatory. It was a statutory role and everyone was familiar with it, whereas it was not necessarily clear what the Procurement Officer role involved or which service area they worked in.

Cllr J Rest, Chairman of the Governance, Risk & Audit Committee (GRAC) said that he wanted to clarify that the first signature on the form should be the originating officer and that they should take responsibility for initiating the exemption process. He added that there had been a discussion at the GRAC meeting about the S151 Officer and it was felt that the Procurement Officer would have to discuss the exemption with the S151 Officer to ensure that the finance was in place. He went on to say that one of the key recommendations from the Internal Audit review was that there should be a unique reference number allocated to each exemption to ensure transparency and a clear

decision trail.

Cllr Grove-Jones said that the S151 Officer was responsible for the Council's finances and should be a signatory on the exemption forms.

It was proposed by Cllr T FitzPatrick, seconded by Cllr P Grove-Jones and

## **RESOLVED**

### **That the Section 151 Officer was a required signatory on the Contract Procurement Exemption form.**

The Chairman then asked Members to consider the proposed changes to the Constitution, as set out in Appendix 3 to the report. She queried the lettering at 11.1 which started at (n) rather than (a). The Chief Technical Accountant explained that this seemed to be an error and that it appeared to have been automatically generated to follow on from previous lettering in the report. She confirmed that it reflected the text included in the guidance notes for contract exemptions and that this was the proposed new wording for inclusion in the Constitution as there had previously been confusion about needing to refer separately to the Constitution. Nothing had been removed from the Constitution, it had just been made clearer and expanded on.

Cllr P Grove-Jones referred to the waiver for emergencies. She sought clarification on whether a form should still be completed. The Chief Technical Accountant confirmed that an emergency was one of the reasons for an exemption and this would need to be stated on a completed form. She explained that previously, waivers for emergency reasons related specifically to health and safety. The revised wording expanded on this to include serious disruption to council services.

Cllr J Rest referred to section 11.3 on page 83 of the report. He sought confirmation that the terms of reference for GRAC would need to be amended to reflect the additional reporting of contract procurement exemptions to the committee. The Democratic Services Manager confirmed this, saying that they were currently only reported annually as part of the Monitoring Officer's Annual Report. She added that there had been a previous discussion about the visibility of the contract exemptions on the website and this may be something that members may wish to consider.

## **RESOLVED**

Cllr Vardy sought clarification on how contract procurement exemptions were reported and if they were ratified by Cabinet or Council to ensure transparency throughout the process. The Chairman replied that some of the exemptions were operational and she had been advised by the Monitoring Officer that it would not be appropriate for a member to authorise them. The Chief Technical Accountant agreed, saying that it would not always be practical to wait for them to be ratified by Cabinet. For emergency exemptions in particular, a quick turnaround was needed and this would add unnecessary delay.

Cllr Vardy replied that all of the contract exemptions should be reported to members so that they were aware of all the decisions that were being taken.

The Democratic Services Manager sought clarification on how members would like to see the contract exemptions reported. The recommendation was for six monthly reporting to GRAC. Cllr J Rest, Chairman of GRAC, suggested that it could be a standing item on the GRAC agenda.

It was proposed by Cllr A Varley, seconded by Cllr P Grove-Jones and

**RESOLVED**

- 1. To recommend that a standing item for the reporting of contract procurement exemptions was added to the Governance, Risk & Audit Committee agenda**
- 2. To publish the contract procurement exemptions on the Council's website on a quarterly basis.**

The Chairman thanked the Monitoring Officer for including timescales as a reason for an exemption. She said that she welcomed this addition. She then referred to the earlier discussion about ensuring the contract could not start until the exemption certificate was completed. The Monitoring Officer confirmed that this was not explicit in the current Constitution.

It was proposed by Cllr V Gay, seconded by Cllr A Varley and

**RESOLVED**

That the contract cannot commence until the exemption form has been satisfactorily completed, with the exception of an emergency situation, when the form must be completed as soon as practical.

The Chairman said that it was important that the form should not be regarded as an unnecessary inconvenience, it should be seen as essential to process.

Cllr Vardy sought clarification regarding the form and whether the new form had a date box as this was important. The Chairman confirmed that this was the case.

It was proposed by Cllr P Grove-Jones, seconded by Cllr E Vardy and

**RESOLVED:**

**To recommend to Full Council the following;**

- a. The updates and amendments to the Exemption Form as contained within Appendix 2 of the report**
- b. That the Section 151 Officer is a required signatory on the Contract Procurement Exemption form.**
- c. The updates and amendments to the Constitution as contained within Appendix 3 of the report**
- d. That the Constitution states that the contract cannot commence until the exemption form has been satisfactorily completed, with the exception of an emergency situation, when the form must be completed as soon as practical and that this is included in the Constitution**
- e. That a standing item for the reporting of contract procurement exemptions is added to the Governance, Risk & Audit Committee agenda**
- f. To publish the contract procurement exemptions on the Council's website on a quarterly basis.**

## **9 UPDATES TO THE CONSTITUTION**

The Monitoring Officer advised Members that work was ongoing regarding the amendment to job titles following the recent senior management restructure. She was also reviewing the removal of references to remote meetings following the discontinuation of the regulations.

The meeting ended at 11.30am.

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Chairman