

## **DUDLEY MBC**

**EXECUTIVE - 5<sup>TH</sup> JULY 2004**

### **REVIEW OF CONSTITUTION**

#### **REPORT OF THE DIRECTOR OF LAW AND PROPERTY**

##### **1.0 PURPOSE**

1.1. To review the Constitution and consider a number of amendments.

##### **2.0 BACKGROUND**

2.1. The Council introduced its new written Constitution in May 2002.

2.2. Article 15 of the Constitution requires me, in my capacity as Monitoring Officer, to monitor and review the operation of the Constitution in order to ensure that the aims and principles of the Constitution are given full effect. Any changes to the Constitution must be approved by the full Council, after consultation with the Executive.

2.3. Within this report I will provide a general overview of the operation of the Constitution since May 2002 and also cover specifically: -

- Area Committees
- Scheme of Delegation
- Council Procedure Rules
- Access to Information Procedure Rules
- Contract Standing Orders
- Members Allowances Scheme
- Licensing Act 2003

A number of the proposals in this report have been discussed with the Group Leaders

##### **3.0 GENERAL OVERVIEW**

3.1. Before the introduction of its formal Constitution the Council had had the benefit of three years of transitional arrangements, when we gradually moved from the traditional committee structure to Executive-style arrangements with the overview and scrutiny functions being undertaken by a number of Select Committees. During this period, we also introduced the five Area Committees.

3.2. The modernisation process has thrown up a number of issues and criticisms, particularly with regard to the role of those members who are not on the

Executive which, of course, is a national issue, and the level of resource provided by the Council for the scrutiny function of the Select Committees.

3.3. Clearly some changes to the Constitution are necessary and these are dealt with below. However, it would also be true to say that a number of the aspects of the Constitution have bedded down very well and on the whole the Constitution is working reasonably efficiently.

3.4. In particular, I would highlight the following arrangements as proving to be successful:-

- **Area Committees**

The basic principle of Area Committees has been well received by the public, who have attended them in reasonably large numbers. The public have clearly taken the opportunity to raise matters of local concern and to engage with members and officers at a direct level, in a way which simply was not possible under the old committee system.

- **The Executive**

The decision not to have “closed” meetings of the Executive has been proved to be correct. The opposition groups play a full part in the discussions at the Executive and, in effect, are able to scrutinise and challenge proposals before any final decision is taken.

- **Decision Making**

The ability to speed up the decision-making process is one of the underlying principles of the Constitution. There is no doubt that the delegations given to Lead Members have streamlined the decision making and have made the system appear to be less bureaucratic. However, at the same time we have ensured that there is prior consultation with the Area Committees in appropriate cases; there is advance notice of the draft decision; and the final Decision Sheet is published on the Intranet, to enable a Select Committee or its Chair to decide whether or not to use their powers of call-in. Accordingly, the power to make delegated decisions has been accompanied by a proper process of accountability.

- **Select Committees**

There is still some concern over the effectiveness of Select Committees and the level of resources which are committed to supporting the work of the Select Committees. However, each Select Committee now has a clearly defined annual work programme and submits an annual report of its work to the full Council. In addition, following discussion with the Select Committee Chairs, we have recently developed a new training programme for members on their scrutiny role. The programme is designed to equip members with a range of skills to enable them to scrutinise more effectively.

The growing focus of scrutiny is on the review or development of policies where members engage with Directorates, Lead Members and external organisations before finalising recommendations.

The level of resource for the scrutiny function is still the subject of debate. The Council has allocated an additional £50,000 for the scrutiny work of the Select Committee on Good Health. However, unlike some neighbouring authorities, we have not provided a dedicated scrutiny resource for all of the Select Committees. Nonetheless, we should not underestimate the value of the existing arrangements, under which each Select Committee has a Lead Officer who is either a Director or a Senior/Assistant Director. This provides a level of expertise and experience which would not normally be available from a dedicated team of officers at a lower level. In addition, the need for research can often be met by using existing facilities within a relevant directorate.

Councillor Burt has expressed the view that there may be a role for a new Overview and Scrutiny Committee whose functions might include a weekly review of Decision Sheets to decide whether any should be called in. This is felt to be unnecessary by the other Group Leaders who are content with the current arrangements for call-in.

#### **4. AREA COMMITTEES**

- 4.1. Concern has been expressed about the level, appropriateness and frequency of consultation with Area Committees. Some members have stated that the Council and our partners sometimes use Area Committees to consult with the public and ward members when separate consultative events may be more appropriate. This can be particularly problematic when the subject of the consultation is controversial and the debate at the Area Committee may dominate proceedings at the expense of other important items of business.
- 4.2. Consultation is an important part of the terms of reference of Area Committees but a balance needs to be struck to ensure that meetings are not overwhelmed by one or two items that generate strong local interest. Rather than change the terms of reference, however, I believe that this situation can be handled in two ways. First, as has been shown, for example, in Stourbridge & North Dudley, controversial items could be the subject of special meetings though we must bear in mind the additional officer support and financial implications that this would generate. Secondly, the Chair of each Area Committee, in consultation with the Area Liaison Officer, can exercise executive control over the agenda in order to make sure that there is a manageable number of consultative reports or presentations.

4.3 It has also been suggested that we should consider reducing the number of property reports submitted to the Area Committees for consultation. A number of applications relate to small areas of land, or uncontroversial easements or rights of access. Instead of reporting such applications to the Area

Committee, it is proposed that we consult with the ward members in the following categories.:-

1. To **approve** applications for –
  - Disposal of Housing Revenue Account land of less than 200 sq.m
  - Permission to create a domestic vehicular access
  - Temporary licence to occupy for periods of less than 6 months
  - Drainage easement
  - Gas/electricity easement
  - Licence for the former utilities companies which have powers to serve a statutory notice
2. To **refuse** applications to: -
  - Dispose of corner plots within housing estates
  - Dispose of public open space
  - Dispose of other park land/playing fields and allotments
  - Dispose of land adjacent to the highway or footway where the result would be contrary to Planning and Urban Design guidelines

4.4. If we were to adopt the above proposals, ward members would still be involved in the decision and, when appropriate, matters would be referred to the Area Committee.

## 5. **SCHEME OF DELEGATION**

5.1. Article 4.0.1 of the Constitution defines the “Policy Framework” i.e. the range of statutory plans and strategies which by law must be approved by the full Council. Included in this definition is the Annual Library Plan, but because of a change in Government policy there is no longer a requirement to submit an Annual Library Plan to the Government. Therefore, this plan can be deleted from Article 4.0.1.

5.2. Under Section 99 of the Local Government Act 2003, the Council now has a general power to charge for discretionary services and it is suggested that this be included in the delegations to the Development Control Committee, the Executive and Lead Members.

5.3. The delegations to the Executive currently include all matters relating to funding through European Grant Systems and the National Lottery. There is no onward delegation of these functions to any Director e.g. to submit a bid, nor is there any reference to other external sources of funding, such as charities. In order to illustrate the problem that this causes, the Directorate of Education and Lifelong Learning alone has made hundreds of grant applications to a wide range of public and private agencies over the last twelve months and in some cases the grant applied for could be as little as £200.

5.4. In view of this, it is proposed that the functions of the Executive be extended to include all matters relating to external funding opportunities and that the

appropriate Director be authorised, in consultation with their Lead Member, to submit bids for grants not exceeding £250,000. In cases of urgency, where there is a limited timescale to submit a bid in excess of £250,000, the delegation would include consultation with the Leader and the Director of Finance. All non-urgent bids in excess of £250,000 will continue to be reported to the Executive as part of the Capital Monitoring report for a decision. Successful capital allocations will be subsequently reported to the Executive and successful revenue grants would be approved by the appropriate Lead Member, through a Decision Sheet.

5.5. The authority to make certain decisions under Contract Standing Orders requires clarification. Contract Standing Orders envisage that a number of decisions relating to contracts will be taken by the appropriate Director but this is not made explicit in the Scheme of Delegation. It is suggested, therefore, that the Scheme be amended to include specific delegations for the appropriate Director in respect of decisions for the following parts of Contract Standing Orders: -

- Contract Standing Order 5.2 – power to deal with the nomination of a sub-contractor to a main contractor by way of Negotiation
- Contract Standing Order 15.3 – power to waive the recovery of liquidated and ascertained damages
- Contract Standing Order 22.4 – power to approve the letting of a contract by Negotiation
- Contract Standing Order 22.5 – power to approve the letting of all individual contracts (apart from capital schemes) prior to the commencement of the procurement process.

5.6. In order to avoid any ambiguity, the terms of reference of the Tree Preservation Orders Committee need to be clarified by giving the Committee the power to vary Tree Preservation Orders. In addition, there should be an onward delegation to the Director of Law and Property to vary a TPO if no new trees or woodlands are added to the Order, and to vary an Order where new trees or woodlands are added to the Order, provided there are no objections from any person affected by the Variation Order.

5.7. The current Scheme of Delegation does not include Section 72(1) of the Highways Act 1980 regarding the adoption of minor widening of an existing highway. It is proposed that the Director of the Urban Environment be authorised to approve such adoptions and the Director of Law and Property be authorised to enter into Deeds of Dedication.

5.8. Under the Scheme of Delegation, the Director of Law and Property is responsible for managing Dudley Open Air Market, but an additional specific delegation is required for the Director, in consultation with the Lead Member, to determine fees and charges for the Market.

- 5.9. From time to time the Scheme of Delegation needs to be updated because of new or amended legislation. Currently, these rather technical changes are reported to the Executive and then have to be approved by the full Council. As an alternative, it is proposed that any update of the Scheme of Delegation should be delegated to the Leader in consultation with the Leaders of the two opposition groups. This would be subject to a protocol that any objection by the leaders of the opposition groups would require a decision on the delegation to be taken by Executive and full Council.

## **6. COUNCIL PROCEDURE RULES**

- 6.1. The Council Procedure Rules regulate the conduct of meetings of the full Council and a number of the rules are deemed to apply to meetings of committees. This includes rule 10 with regard to the duration of the meeting of the full Council and provides that all business should be concluded by 9.30 p.m. It is felt to be inappropriate to apply this automatically to meetings of committees, particularly Area Committees, where some flexibility may be required to go beyond 9.30 p.m for items which have attracted members of the public to attend. Committees may, of course, suspend rule 10 if they so wish but it would be preferable to exclude this rule for committees and provide an alternative arrangement under which meetings would normally conclude at 9.30 p.m. but the Committee would have the discretion to continue. Any unfinished business would not be put to the vote without debate but would be carried forward to the next meeting.
- 6.2. Members have also raised some concerns about the length of time that can be taken up by the presentation of petitions at Area Committees. A practice has developed whereby a member of the public or elected member presents the petition and speaks on it, whereupon other members decide to speak on the issue before the petition is referred to the appropriate Directorate for a response or report. It is proposed that rule 4.1 be amended to make it clear that the presenter of the petition may speak upon the petition but that there will be no other speeches.

## **7. ACCESS TO INFORMATION PROCEDURE RULES**

- 7.1. Within these rules there are clearly defined procedures for the making and recording of key decisions and non-key decisions. The definition of a key decision is one which is likely to:-
- a) result in the Council incurring expenditure or the making of savings, which are £250,000 or more (revenue or capital) or;
  - b) be significant in terms of its effects on communities living or working in one or more wards in the borough.

The rules also define the procedure for making **urgent** key decisions, which are not contained in the Forward Plan and for which the normal notice period of five clear days is not appropriate.

- 7.3. However, there is no corresponding provision for **urgent non-key decisions** and it is proposed, therefore, that these should be treated in exactly the same way as key decisions i.e. the decision will only be taken with the consent of the Chair of the relevant Select Committee. Councillor Burt has requested that the latter procedure for all urgent decisions should also require the consent of the Vice-Chair. However, following consultation, this proposal did not have the support of Select Committee Chairs.

## **8. CONTRACT STANDING ORDERS**

- 8.1. Contract Standing Order 29 sets out the process for the checking and acceptance of tenders where the contract value is over £100,000.
- 8.2. Contract Standing Order 29.4 currently lays down a procedure where the lowest tender is not to be accepted. However, this fails to take account of the fact that there is a growing use of tender evaluation criteria that put as much weight on quality as on the cheapest price. Accordingly, the emphasis should be upon accepting the most appropriate tender using price/quality appraisals rather than simply awarding the contract on price alone.
- 8.3. A new Contract Standing Order 29.4 is, therefore, proposed as set out in Appendix 1 to this report.
- 8.4. In addition, a technical clarification is required for Contract Standing Order 30.1 which deals with the extension of existing contracts. The purpose of this Standing Order is to define what is meant by an extension of contract and then identify the procedure to be followed. The revised wording is set out in Appendix 1.

## **9. MEMBERS' ALLOWANCES SCHEME**

- 9.1. Paragraph 6.1 of the Members' Allowances Scheme, which was approved by the Council on 17th November 2003, provides for inflation increases (with the first change to be effective from 1st April 2005), in line with changes in the average non-manual male wage for "All Industries and Services" for the West Midlands Metropolitan County area, as published in the New Earnings Survey.
- 9.2. Unfortunately, this index has now been abolished. Following consultation with the Chair of the Independent Panel established to review Members' Allowances, the Director of Finance is recommending that the index for "Average Wage Rates for All Full Time Employees on Adult Rates for All Industries and Services for the West Midlands Metropolitan County Area" should now be used and the Members' Allowances Scheme should be amended accordingly.

## **10. LICENSING ACT 2003**

- 10.1 Under the Licensing Act 2003 responsibility for liquor licensing transfers from the Licensing Justices to local authorities. The operative date for this transfer is expected to be January 2005 and locally preparations are well in hand.
- 10.2 The legislation requires the Council to appoint a Licensing Committee with a maximum membership of 15 members with the power to appoint sub-committees. It is proposed that these new functions be added to those of the existing Licensing and Safety Committee with appropriate amendments to its terms of reference and delegations to the Director of Law and Property, and that its membership be increased by six members (three Conservative: two Labour: 1 Liberal Democrat), with effect from the 1<sup>st</sup> January 2005.

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## **11. PROPOSAL**

11.1. It is proposed that the Executive recommend to the Council that:-

1. The general overview in Section 3 above be endorsed.
2. The arrangements for dealing with property reports set out in paragraph 4.3 above be approved.
3. The Scheme of Delegation be amended as set out in paragraphs 5.1 – 5.8 above, and that paragraph 5.9 regarding future amendments to the Scheme of Delegation be approved.
4. The amendments to the Council Procedure Rules set out in Section 6 above be approved.
5. The procedure for making urgent non-key decisions be the same as for urgent key decisions.
6. Contract Standing Orders be amended as set out in Section 8 above.
7. The Members' Allowances Scheme be amended as set out in Section 9 above.
8. The terms of reference, composition and onward delegation to the Director of Law and Property of the Licensing and Safety Committee be amended as set out in Section 10 above with effect from the 1<sup>st</sup> September 2004.

## **12. FINANCE**

12.1. Any financial implications arising from this report will be met from existing budgets.

## **13. LAW**

13.1 Section 37 of the Local Government Act 2000, requires the Council to prepare and keep up-to-date its written Constitution.

## **14. EQUAL OPPORTUNITIES**

14.1 This report complies fully with the Council's policies on equal opportunities and diversity.

## **15. RECOMMENDATION**

15.1 It is recommended that the Executive recommend to the Council that:-

1. The general overview in Section 3 above be endorsed.
2. The arrangements for dealing with property reports set out in paragraph 4.3 above be approved.
3. The Scheme of Delegation be amended as set out in paragraphs 5.1 – 5.8 above, and that paragraph 5.9 regarding future amendments to the Scheme of Delegation be approved.
4. The amendments to the Council Procedure Rules set out in Section 6 above be approved.
5. The procedure for making urgent non-key decisions be the same as for urgent key decisions.
6. Contract Standing Orders be amended as set out in Section 8 above.
7. The Members' Allowances Scheme be amended as set out in Section 9 above.
8. The terms of reference, composition and onward delegation to the Director of Law and Property of the Licensing and Safety Committee be amended as set out in Section 10 above with effect from the 1<sup>st</sup> September, 2004

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Director of Law and Property

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#### **LIST OF BACKGROUND PAPERS**

1. The Constitution of Dudley M.B.C.

**REVISED CONTRACT STANDING ORDER 29.4**

A tender may be accepted by the appropriate Director. Subject to Standing Order 3.9, a tender which is other than the lowest valid tender if payment is to be made by the Council, or the highest valid tender if payment is to be made to the Council, or which is not within the amount of the Estimated Contract Value plus 10% or £20,000 whichever is the greater, may be accepted by the appropriate Director, but their decision shall be reported to the Audit Committee in accordance with the procedure laid down in Standing Order 3.2. Where the appropriate Director has determined that a Contract shall be let based upon criteria of which the tendered price is only a part of the evaluation, they shall ensure that the evaluation criteria and associated weightings are determined by an appropriate officer or group of officers, and a copy thereof shall be lodged with the Director prior to the opening of tenders received. The Director will not be required to make any report under this Standing Order provided that the Contract or Contracts in question are let in accordance with the results of an evaluation undertaken using the criteria lodged with the Director before the tenders were opened. The appropriate Director must report to the Audit Committee in accordance with Standing Order 3.2 where any amendments are made to the agreed criteria or where the contract or contracts are not awarded in accordance with the evaluation undertaken.

**CONTRACT STANDING ORDER 30.1**

This Standing Order shall apply where a Contract for the supply of goods and services or the undertaking of works is to be extended either by way of increased value (**not arising from changes in contract prices but as defined by Standing Orders 30.2, 30.3 and 30.5 below**), changes in the specification or by an increase in the contract period.