

Subject: Annual Review of the Constitution

Status: For Publication

Report to: The Council

Date: 16th May 2008

Report of: The Executive Director of Regulatory Services

Portfolio

Holder: Leader of the Council

Key Decision: No

Forward Plan

General Exception

Special Urgency

1. PURPOSE OF REPORT

1.1 To request Members to adopt the Constitution, as amended.

2. CORPORATE PRIORITIES

2.1 The matters discussed in this Report impact directly on all the corporate priorities and associated corporate objective, particularly in relation to delivering quality services to our customers:

- Delivering Quality Services to Customers (Customers, Improvement)
- Delivering Regeneration across the Borough (Economy, Housing)
- Keeping Our Borough Clean and Green (Environment)
- Promoting Rossendale as a cracking place to live and visit (Economy)
- Improving health and well being across the Borough (Health, Housing)
- Well Managed Council (Improvement, Community Network)

2.2. The purpose of the Constitution is to:

1. Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organizations;
2. Support the active involvement of citizens in the process of local authority decision-making;
3. Help Councillors represent their constituents more effectively;
4. Enable decisions to be taken efficiently, effectively and transparently, with due regard to probity and equity;
5. Create a powerful and effective means of holding decision makers to account;

6. To ensure that no-one will review or scrutinise a decision in which they were directly involved;
7. Ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. Provide a means of improving the delivery of services to the community.

3. RISK ASSESSMENT IMPLICATIONS

3.1 All the issues raised and the recommendations in this Report involve risk considerations as set out below:

- Failure to follow the Constitution risks legal proceedings being taken against the Council, and members of the community being dissatisfied with the actions of the Council.

4. BACKGROUND AND OPTIONS

4.1 At its meeting on 19th December 2001, Rossendale Borough Council agreed its first Constitution; this is the latest Report in a series of Annual Reports reviewing the Constitution and makes recommendations for amendment of the Constitution. The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that the decision-making process is efficient, transparent and accountable to local people. Some of these processes are required by law, whilst others are a matter for the Council to choose. A copy of the Constitution appears on the Council's website, and is available for inspection; if the Constitution, as amended, is adopted a hard copy will be available to Members.

4.2 The Constitution is divided into various Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in the document.

4.3 A list of the proposed amendments is attached. (Appendix 1)

4.4 An option would be not to approve the amendments, but this would not update the Constitution.

COMMENTS FROM STATUTORY OFFICERS:

5. SECTION 151 OFFICER

5.1 The Constitution deals directly with a number of financial matters, inter alia:

- Chief Finance Officer functions and protocols
- Committee terms of reference (e.g. Accounts Committee and Audit Committee)
- Financial Procedure Rules
- Contract Procedure Rules
- Budget and Policy Framework Procedure Rules, etc.

5.2 The report specifically recommends changes in part to each of the above. The proposed revisions to the constitution, amongst other things, are intended to strengthen the governance arrangements of the Council. In doing so this can only help improve the Councils current score in its annual Use of Resources assessment, by the Audit Commission and other similar future assessments.

6. MONITORING OFFICER

6.1 As in this Report.

7. HEAD OF PEOPLE AND ORGANISATIONAL DEVELOPMENT (ON BEHALF OF THE HEAD OF PAID SERVICE)

7.1 No Human Resources implications in this Report.

8. CONCLUSION

8.1 It is in the interests of the Borough formally to adopt the Constitution, as amended.

9. RECOMMENDATION

9.1 It is recommended that the Council adopts the Constitution, as amended.

10. CONSULTATION CARRIED OUT

10.1 Statutory Officers, Constitutional Working Group.

11. EQUALITY IMPACT ASSESSMENT

Is an Equality Impact Assessment required No

Is an Equality Impact Assessment attached No

12. BIODIVERSITY IMPACT ASSESSMENT

Is a Biodiversity Impact Assessment required No

Is a Biodiversity Impact Assessment attached No

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Background Papers	
Document	Place of Inspection
The Constitution	Futures Park, Bacup
The revised Constitution of Lancashire Local – Rossendale	Futures Park, Bacup
Monitoring Officer Protocol	Futures Park, Bacup
Chief Finance Officer Protocol	Futures Park, Bacup
A Guide to Being a Councillor in Rossendale	Futures Park, Bacup
Procedure for the Assessment, Referral, Investigation and Complaints of Breach of the Code of Conduct.	Futures Park, Bacup
The amended Financial Procedure Rules	Futures Park, Bacup

Appendix 1

Proposed Amendments to the Constitution

1. Audit Committee

The Council approved, at its meeting on 26th March 2008, the renaming of the Audit Scrutiny Committee as the Audit Committee with a reporting line directly to the Council. It is, therefore, necessary to approve Terms of Reference for the Audit Committee.

The proposed Terms of Reference of the Audit Committee are:

TERMS OF REFERENCE OF THE AUDIT COMMITTEE

- To consider the head of internal audit's annual report and opinion, and a summary of internal audit activity (actual and proposed) and the level of assurance it gives over the Council's governance, risk management arrangements, internal control arrangements and environment and anti-corruption arrangements.
- To consider and approve any Council strategy relevant to the functions of the Audit Committee.
- To consider reports dealing with the management and performance of the providers of internal audit services.
- To comment on the scope and depth of both internal and external audit work, to ensure that there are effective working relationships and to ensure they give value for money.
- To consider the external auditors annual letter, relevant reports and the report of those charged with governance and to ensure the implementation of any appropriate action plan and seek assurance that action is being taken on risk related issues identified by the auditor (or any other inspection).
- To consider specific reports as agreed with the external auditor.
- To consider regular Internal Audit performance reports relating to Council services and the effectiveness of the Authority's governance arrangements.
- To consider summaries of specific internal audit reports, as requested.
- To consider a report from internal audit on agreed recommendations not implemented within a reasonable timescale.
- To liaise with the Audit Commission over the appointment of the Council's external auditor.
- To commission work from internal and external audit and approve the Annual Internal Audit Plan and undertake monitoring of performance against this plan.
- To oversee the production of the authority's annual governance statement and to recommend its adoption and be satisfied that that the authority's assurance statements properly reflect the risk environment and any actions to improve it.

- To consider the Council's compliance with its own and other published standards and controls.
- To make recommendations to the Cabinet, Council and other organisations where appropriate.
- Ensure the value of the audit process is actively promoted.

2. Lancashire Local

To approve and adopt the revised Constitution of Lancashire Local – Rossendale, to replace the Constitution of Lancashire Local – Rossendale currently in the Constitution. .

The revised Constitution relates to additional delegated powers to approve grants and to consider and determine objections/representations to proposed road humps.

A copy of the Constitution of Lancashire Local – Rossendale is available for inspection.

3. Protocols

To include the following Protocols in Article 11 – Officers.

- 1) Monitoring Officer Protocol
- 2) Chief Finance Officer Protocol

A copy of each Protocol is available for inspection.

4. Members' Training and Development

To include the following in Article 2 – Members of the Council

2.04 (further paragraph)

All Members are required to make a commitment to undertake training and development as part of undertaking the role of a Councillor.

2.07 (new paragraph)

The Council shall appoint the following Champions from amongst its Members: Tourism Champion, Equalities Champion, Younger People's Champion, and Older People's Champion.

2.08 (new paragraph)

A Guide to Being a Councillor in Rossendale is attached.

A copy of the Guide is available for inspection.

5. Overview and Scrutiny Procedure Rules

Following a Significant Event Review, it is recommended that the Overview and Scrutiny Rules are amended as follows:

- 1) The current Constitution provides (OSR 9.4) that the Chief Executive decides on the validity or otherwise of a call-in; in doing so, the Chief Executive takes the advice of the Monitoring Officer who maintains the Constitution.

It is proposed, therefore, that the Monitoring Officer has responsibility to decide on call-in.

- 2) The current Constitution provides (OSR 9.9) that "Any three Members of the Council may request in writing for a decision to be called in".

It is proposed to include a definition of '*in writing*' to mean hand-written (as opposed to 'by email'), and for the request to be signed by three Councillors, and all call-ins to be delivered to the Monitoring Officer.

- 3) The current Constitution (OSR 9.4.4) provides for a period of 10 days from the call-in to have a hearing.

It is proposed to extend the period to '20 days'.

- 4) It is recommended that a new procedure be introduced in relation to call-in, whereby there is an early assessment by the Monitoring Officer of those Members in-eligible to sit on the Overview and Scrutiny Committee by virtue of a conflict of interest or possible conflict of interest, including any Members who have already been part of the decision-making process in relation to the decision called in.

6. Budget and Policy Framework Procedure Rule

BPR 7(a) provides that where an Overview and Scrutiny Committee is of the opinion that a Cabinet decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring and / or Chief Finance Officer and shall follow the procedures set out in the Overview and Scrutiny Rules.

It is recommended that the words 'not wholly' are replaced by 'not materially' as being more meaningful.

A similar amendment is required in BPRs 3b) (Decision Outside the Budget or Policy Framework) and 4a) (Urgent Decisions Outside the Budget or Policy Framework).

7. Constitutional Working Group

To approve the renaming of the 'Constitutional Working Group' to the 'Governance Working Group' which it is felt better describes the work of the Group.

8. Contract Procedure Rules

That the following amendments are made to the Contract Procedure Rules:

- 1) Officers must aggregate over 4 years to arrive at an estimated value for services/products but because the threshold for a low-value contract is only £6,000 most of the Council's aggregated spend has to be put out to competitive quote. It is, therefore, recommended to change the Levels of Contract Values as follows:

Levels of Contract Values

Present	Proposed
Low Value up to £6,000	Up to £10,000
Medium Value over £6,000 and up to £50,000	Over £10,000 and up to £60,000
High Value over £50,000	Over £60,000

- 2) To work towards addressing issues of climate change, the evaluation of contracts should take into account any added value to environmental issues through contract management.

It is proposed, therefore:

- i) The Head of Service consider environmental issues as part of the pre-procurement procedure:
CPR 4.1(iii), add 'including environmental issues'
- ii) The Invitation to Tender shall refer to any environmental management systems:
CPR 11.1, add 'including any environmental management systems'

- iii) In relation to Evaluation of Tenders:
CPR 13.3 add 'environmental management systems' after 'local economic benefits'.

9. Committee Procedure Rules

Substitutes on Committees

In the case of the Appointment and Appeals Committee, Development Control Committee and the Licensing Committee, if a Member wishes a substitute to attend a meeting in his or her place, the Member shall give written notice which includes by e-mail transmission to the Monitoring Officer at least 48 hours before the start of the meeting that he or she is unable to attend and that the substitute named in the Notice will attend in his or her place. A Substitution Notice once given in respect of a meeting of the Appointment and Appeals Committee, Development Control Committee or Licensing Committee can be revoked in respect of such meeting or any adjournment of it.

10. Standards Committee

- 1) Restrictions on political activities by certain local government staff were introduced under the Local Government and Housing Act 1989 which provided for the appointment of an Independent Adjudicator to grant dispensations for staff to engage in certain political activities. Under the Local Government and Public Involvement in Health Act 2007, the role of Independent Adjudicator has been abolished and the duties transferred to local authority Standards Committees.

It is, therefore, recommended that the following are added to the Terms of Reference of the Standards Committee:

- To consider applications from local authority employees for exemption from political restriction in respect of their posts.
 - Where appropriate, to issue directions requiring the inclusion of a post in the list of politically restricted posts.
 - To give general advice on the application of criteria for designation of a politically restricted post.
- 2) The Standards Board for England has issued Guidance about the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct.

It is, therefore, recommended that the Council approve and adopt the Procedure for the Assessment, Referral and Investigation of Complaints of Breach of the Code of Conduct.

A copy of the Procedure for the Assessment, Referral and Investigation of Complaints of Breach of the Code of Conduct is available for inspection.

11. Traffic Management Act 2004

The Council is an enforcement authority for the purposes of Part 6 of the 2004 Act in relation to road traffic contraventions. Regulations made under Part 6 of the Act provide that the functions relating to adjudication and adjudicators shall be discharged through a Joint Committee set up under Sections 101 (5) and 102 (1) (b) of the Local Government Act 1972.

The agreed primary objectives of the Joint Committee are the provision of:

- a) a fair adjudication service for Appellants including the visible independence of adjudicators from the authorities in whose areas they are working;
- b) consistency of adjudication across the service;
- c) a cost effective and equitable adjudication service for all Local Authorities party to these arrangements;
- d) flexibility to deal with a wide range of Local Authorities with varying levels of demand for adjudication.

It will be necessary add this Joint Committee (the Parking and Traffic Regulations Outside London Adjudication Joint Committee ("PATROLAJC")) to the list of Joint Committees in the Constitution, and to appoint one Member as the Council's representative on the Joint Committee.

The Council of the City of Manchester has been appointed to act as Lead Authority.

12. Christmas Lights

It is recommended that the following be added to the Terms of Reference of the Neighbourhood Forums:

Deal with issues relating to Christmas Lights.

Allocate any monies granted by the Council for the provision of Christmas Lights.

It will be necessary, therefore, to disestablish and delete from the Constitution any references to the Christmas Lights Working Group.

13. Report back to the Council from Member Representatives on Joint Committees and Outside Bodies.

There are a number of Members who sit on Joint Committees and Outside Bodies, such as the various Local Strategic Partnership Theme Groups, Rossendale Transport Limited, Children's Trust Arrangements, Capita Strategic Governance Board, etc, and there is no current provision for these Members to report back to the Council.

It is, therefore, recommended that Council Procedure Rule 2 be amended to add a provision for Members on Outside Bodies to report back to the Council at Ordinary Meetings of the Council.

14. Legislation

1) The Gambling Act 2005 (Exempt Gaming I Alcohol-Licensed Premises) Regulations 2007

These Regulations prescribe the maximum amounts that may be staked out and won in equal chance games provided in accordance with section 279 of the Gambling Act 2005.

The Gambling Act 2005 (Gaming in Clubs) Regulations 2007

These Regulations prescribe the kinds of gaming for which a club may be established or conducted to provide facilities, in order to be a members' club or a commercial club despite sections 266(1)(a) and 267(1)(a) of the Gambling Act 2005.

The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

These Regulations prescribe the maximum amounts that may be staked and won and the maximum fee that may be charged in games of equal chance provided in accordance with section 269 of the Gambling Act 2005.

The Gambling Act 2005 (Club Gaming Permits) (Authorised Gaming) Regulations 2007

These Regulations prescribe the games of chance that may be played under a club gaming permit ("a permit") and the maximum amount that may be charged by way of a participation fee in respect of those games.

It is, therefore, recommended that the Regulations are added to the Terms of Reference of the Licensing Committee.

2) It is also necessary to update the list of legislation in the Constitution.

15. Delegations to Specific Officers

There are four proposed delegations which are not specifically dealt with in the Constitution.

It is recommended that:

- 1) The Chief Executive be authorised to make any amendments to the Committee meetings schedule approved at the Annual Meeting of the Council;
- 2) All functions relating to footpaths, bridleways, byways and rights of way be delegated to the Executive Director of Regulatory Services;
- 3) In consultation with the Portfolio for a Well-Managed Council and the Chief Executive, to develop and implement all appropriate policies in relation to Equalities, Employment, and Children and Young People, be delegated to the Head of People and Organisational Development;
- 4) The Executive Director of Regulatory Services or agent appointed by the Council be given delegated authority to submit all planning applications on

Council-owned land made by or on behalf of the Council, its partner organisations and companies, or other agents, and all planning applications for development by any of the said bodies or persons.

15 Financial Procedure Rules

A review has been undertaken of the Financial Procedure Rules. A copy of the proposed amended Financial Procedure Rules is available for inspection, indicating the amendments in red including:

1. References to 'Chief Officers' to be replaced by 'Directors and Heads of Service'.
2. References to 'Finance Director' to be replaced by the 'Head of Financial Services'.
3. 1.12 presently reads 'To preparea report to council where virements in excess of £25k are proposed'; that the sum of £30k be substituted for £25k, with consequent amendments to the responsibilities of Directors and Heads of Services.
4. To replace 1.26 'Net underspendings on service estimates under the control of the Chief Officer may be carried forward, subject to the agreement of the Finance Director and: a) reporting to the Council the source of underspending or additional income and the proposed application of those resources b) the approval of the full council where the underspending exceeds 5% of the individual budget heading or £10,000, whichever is less,' by a new 1.26 - '50% of Net underspendings on service estimates under the control of the Directors and Heads of Service may be carried forward, subject to the agreement of the Head of Financial Services and reporting to the Council the source of underspending or additional income and the proposed application of those resources.'
5. The reference to the 'Full Council' in 1.46 'responsibility for approving the statutory annual statement of accounts', be replaced by the 'Accounts Committee'.
6. Deletion of references to a Best Value Performance Plan in 2.01, as this Plan is no longer required.
7. To replace 2.25: 'To prepare and submit to Council Committees, reports on the service's projected expenditure compare with its budget, in consultation with the Finance Director.' by a new 2.25 '....in consultation with the Head of Financial Services, should Members request such a report.'
8. To replace 2.53 'To prepare capital estimates jointly with Chief Officers and the Head of Paid Service and to report them to the Council for approval.' by a new 2.53 'To prepare capital estimates jointly with Directors and Head of Service and the Senior Management Team and to report them to the Council for approval.'

9. To require (3.57) the Head of Financial Services to ensure that an asset register is maintained in accordance with good practice for all fixed assets with a value in excess of £10,000, the previous figure being £6,000.
10. To require the Head of Financial Services to report (3.98) regularly throughout the year (delete the reference to 'from year to year') on treasury management activities to the Council.
11. To require the Head of Financial Services to act (3.116) as an adviser, add 'alongside the Head of People and Organisational Development', on areas such as National Insurance and pensions contributions, as appropriate.
12. In relation to the 'Ordering and Paying For Work, Goods and Services' (4.41) reference should also be made to the 'Council's Contract Procedure Rules and Procurement Policies'.