

**Subject:** Annual Review of the Constitution

**Status:** For Publication

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**Report to:** The Council

**Date:** 24<sup>th</sup> September 2008

The Standards Committee

9<sup>th</sup> December 2008

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**Report of:** Executive Director - Business

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**Portfolio**

**Holder:** Leader of the Council

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**Key Decision:** No

Forward Plan

General Exception

Special Urgency

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**1. PURPOSE OF REPORT**

1.1 To provide an update to the Committee on the amendments made to the Constitution by Full Council on 24<sup>th</sup> September 2008.

**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 19<sup>th</sup> 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.
- 4.5 Full Council agreed to amend the Constitution in so far as it related to Audit Committee and Standards Committee on 16<sup>th</sup> May 2008. The Governance Working Group amendments are highlighted in bold. There is additional detail on the terms of reference for Christmas lights.

## **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 That the report be noted.

### **10. CONSULTATION CARRIED OUT**

- 10.1 Statutory Officers, Constitutional Working Group – minutes.

### **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

Proposed Amendments to the Constitution

1. 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.

2. 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.

3. Members' Training and Development

(Amendments in bold came from the Governance Working Group)

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 Councillor.

2.05

**Members of the Council are required to make a commitment to undertake training and development as part of their acceptance of Office.**

2.07 (new paragraph)

The Council shall appoint the following **controlling** Member 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.

#### 4. 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.

- 5) **That the Chair of the Overview and Scrutiny Management Board be informed of all call-ins.**

- 6) **There is a need to cross reference page 248 and 242.**

#### 5. 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.

**Constitutional Working Group suggested “not in accordance with” as clearer.**

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).

6. 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.

7. 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’.

8. 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.

### **Members agreed to the following at Governance Working Group**

**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 inform the Monitoring Officer or his or her representative before the start of the meeting that he or she is unable to attend and a substitute will attend in his or her place.**

**There was discussion on the need for further information in relation to the Committee Protocols and Procedures.**

**It was agreed to include a section on the next Member's Bulletin on Committee Protocols and Procedure.**

#### 9. 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.

#### 10. 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.

To decide on the Christmas Lights displays within the Neighbourhood Forum area, specifically:

- To seek opportunities for contributions from local businesses, and other forms of sponsorship.
- Short Term Strategy and Action Plan for lighting arrangements in the Neighbourhood Forum area.
- Longer Term Strategy and Action Plan for 2008/09 beyond which seeks to provide improved Christmas lighting in the Neighbourhood Forum area.
- To deal with all matters relating to placement of lights, switch-on events, including promotion of the events, the format of the switch-ons, to agree the date of switch-ons, consultation with schools.
- To monitor and allocate spend for the allocated budget for Christmas Lights for the Neighbourhood Forum Area.
- To deal with any other matters in relation to Christmas Lights for the Neighbourhood Forum Area.

11. 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.

12. 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, it is proposed that this is delegated to the Executive Director of Business for all future updates.

### 13. 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 Business;
- 3) In consultation with the Portfolio for a Well-Managed Council **amended to Portfolio for Finance and Resources** 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 Business 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.

### 14. 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 prepare ....a 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'.