

Meeting: Standards Committee

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RESPONSES TO THE ETHICAL GOVERNANCE AUDIT

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1 PURPOSE

The purpose of the report is to consider various aspects of the Ethical Governance Audit, and some proposed changes to the Constitution.

2 BACKGROUND

2.1 At its last meeting, the Committee received the Ethical Governance Audit ('the Report') on the Council, produced by CIPFA. As the Audit had only recently been received, there was little opportunity for the officers or members to provide any detailed comments.

2.2 This report does not address all the issues raised by the report. Some of these are specific issues such as the Whistleblowing Policy. More generally, there is some overall criticism of the style of the drafting of the Constitution referred to in 2.4.1 below. These omissions will be addressed in a future report.

2.3 For clarity this Report is split under four headings:

2.3.1 General Comments

2.3.2 Issues that relate directly to ethics and probity

2.3.3 Delegations to officers

2.3.4 Responses to comments on the Articles and Standing Orders

2.4 The officers intend to submit proposals for the provision of the Constitution for the Council meeting in September. Some of the issues raised by the Audit can be determined by this Committee. It can recommend other changes directly to the Full Council and the Executive or other committees may wish to examine the proposals before they are submitted to the Full Council.

2.5 Some general comments on the Ethical Governance Audit

2.5.1 The Audit made some criticism of the structure and style of the Constitution, for instance, suggesting that in places it is repetitive (see Overall Summary and Conditions). Whether or not these criticisms are justified and it may be that they are, it should be noted that large parts of the Council's Constitution are based on a model constitution which were issued by the Government in guidance at the time of the introduction of new political arrangements and executive structures

under Part 2 of the Local Government Act 2000. In addition, the Constitution of every local authority had to be submitted to the Ministers' Department for approval. As a result, this Council, in line with the majority of others, adopted the model form, some elements of which are criticised in the Audit.

2.5.2 The Audit was essentially a paper exercise, a large part of which was based on the examination of the Constitution. Most of the detailed criticisms are accepted by the officers, though it is felt that some are based on a misunderstanding or at least do not take into account the local arrangements and particularly circumstances which exist in Stevenage.

2.5.3 One of the biggest areas of criticism relates to the delegations to officers. Whereas the form and detail of these delegations in the Constitution is very common practice in local authorities, the overall comments and many of the detailed criticisms are considered to be well founded and this report proposes a radical overhaul of those arrangements. These have been discussed with the Chief Officers, and Heads of Service most affected and have met with general approval.

2.6 **Ethical Standards Issues**

2.6.1 Generally, the Committee has already indicated that it accepts the recommendations of the Audit. (The references are to the page numbers etc in the Audit). In particular:

2.6.1.1 A revised draft Handbook on Members' Conduct is attached at Appendix 1 (page 3 of the Audit).

2.6.1.2 A draft protocol on Member/Officer conduct is attached at Appendix 2 (para 2.13.2 page 14). This is a mandatory component of the Constitution. The long awaited statutory code of officer conduct might well affect this protocol, but it seems that the code is now not likely to appear even in draft form before the end of 2003.

2.6.2 The criticisms of the anti fraud and corruption policy (2.6.2 and 2.6.3 page 10) are accepted and the necessary amendments/corrections will be made to this policy. A reference to the Standards Board for England and complaints about members will be incorporated into the complaints procedure (2.7.2 page 10).

2.6.3 A reference to Section 117 of the Local Government Act 1972 which deals with officer involvement in contracts will be added to contract standing orders (2.8.2 page 11). NB The Government is proposing new legislation dealing with corruption in both the public and private sector.

2.7 **Delegations to Officers**

2.7.1 The report is critical of some aspects of the officer delegation, which it considers could be more user friendly, briefer and less detailed (see pages 2 and 3 and paragraph 2.4 Appendix A on pages 5 and 6), which also refers to the requirement for clear guidelines on the involvement of legal advice.

2.7.2 The officers accept that these criticisms are valid and that the officer delegations are in need of general revision. In spite of the lengthy and detailed delegations to officers, there are gaps in the delegations, which cause problems from time to time, and it is, therefore, suggested that chief officers are given general powers

of competence to deal with matters in their area. This practice is adopted by a number of authorities, who have undertaken a thorough revision of their constitutional arrangement. These powers are subject to matters, which are reserved either to the Executive as a whole or individual Executive members or to the Council and its committees. In addition, the Executive, the Council or one of its committees may, at their discretion, choose to exercise a function which would usually be delegated to a chief officer.

- 2.7.3 The Chief Executive will have overall control of the officer delegations and adjust these, as appropriate, or determine who should deal with areas of uncertain or overlapping control.
- 2.7.4 The exercise of functions by officers will be subject to the internal control, eg contract standing orders and, where appropriate, Council policy.
- 2.7.5 Local Government legislation occasionally requires certain functions, often procedural ones, to be exercised by a nominated officer described as the "proper officer". (These are in addition to the statutory officer provision referred to in Article 12 of the Constitution). These appointments may be made by the Council, its committees or the Executive, the Chief Executive or chief officers for areas falling within their departmental control.
- 2.7.6 An exception has been made in this general scheme for the Head of Development and Planning. His delegations, for the most part, derive from the Planning and Development Committee and there is a requirement that his line Manager the Director of Environmental Services, who is also Deputy Chief Executive, is not compromised by conflicts of interest, for instance, where the Council has land interests as well as a planning role.
- 2.7.7 The proposed changes to the Constitution will involve the deletion of the contents of Appendix A, some 74 pages, which will be replaced by the new delegations to be found in Appendix 3 to this report.

2.8 **Decision-making, the Council's standing orders and other procedural detail (pages 6-8 of the Report)**

2.8.1 There follows a point-by-point response beginning with 2.2 on page 4 immediately followed by the penultimate paragraph page 6. The comments follow the page references in the Report.

2.8.2 Article 13 – 13.03(b) – definition of key decisions

Key decisions should be distinguished from delegations. The definition of a key decision determines roughly whether a meeting relating to a key decision should be held in public (that is if it is not a Part II Report). The level fixed for a key decision was considered at some length when the concept was introduced in 2000 and the practices of other authorities was taken into account when arriving at the current limits. A reduction in these limits would increase the administrative burden of the Authority. It is probably important to note that the concept of key decisions was emerged from the new power of Executive Members to take decisions individually and in private. At Stevenage few decisions and no key decisions (except for urgent matters dealt with by the Leader) are taken in this way. The Executive meets in public and, as a result, the officers feel that there is no immediate issue of concern with the key decision limits. The Government has

decided also not to be prescriptive about these, but to leave the limits to local discretion.

As a result, officers believe that the current limits are appropriate but that they should be reviewed by this Committee from time to time or if the Constitution is, in future, amended to delegate powers to individual members to deal with key decisions.

2.8.3 Page 155 – the Members and co-opted Members

The voting rights of co-opted members are covered by statutory provisions and are not a matter for the discretion of the Council. The voting rights of co-opted members are referred to in Standing Order 43. Any further expansion of the definitions would needlessly add to the complication of the document.

2.8.4 Page 157.2(iv)

The Clause provides that, the time of any extraordinary meeting held must be reasonable and that as a matter of construction this probably means objectively reasonable.

2.8.5 Page 158

It is not immediately apparent that there is any inconsistency with the provisions of Standing Orders 4 and 6b(vii). Generally, the Council gives the opposition parties a greater formal role than is required by the law. Notably, there is an opposition member of the Executive, although the Council could choose to have a single party Executive. There are other instances where the opposition parties have greater representation than is strictly necessary under the political balance requirements for committees.

2.8.6 Page 162

The Leader's, or the Executive Members' update, are made at their discretion and are not the subject of any resolutions of the Council. The conduct of council meetings and debate is left to the Mayor or Deputy Mayor. In practice, they seek to encourage debate on items emerging at the Council meetings.

2.8.7 Page 165

Petitions and depositions are uncommon and, so far, the number of questions raised has not approached the limit of eight. The subject matter of a petition or deputation would, in practice, appear on the agenda for the meeting, but it is felt that the requirement to submit accompanying statements might discourage this form of public involvement, which is already limited.

2.8.8 As a general policy, the Council should keep the procedural aspects of meetings under review, in the light of practice and changing circumstances.

2.8.9 Page 166

This has not proved to be a problem in practice.

2.8.10 Page 167(b)

Members can also raise an issue under Standing Order 14.

2.8.11 Page 167(j)

There is an overall limit of six minutes on speeches at Council meeting see (iii).

2.8.12 Pages 179 and 180

These pages are a repetition and it is, therefore, proposed that pages 141 and 142 are deleted. This Committee may wish to consider the suggestion that the use of this procedure is monitored occasionally.

2.8.13 Page 182.40(a)

This is a statutory requirement and, in practice, is normally stated on the Report itself.

2.8.14 Page 184 and –44

The comments in the report are accepted and the reference to voting by ballot should be deleted.

2.8.15 Page 2.11 Para 3

This paragraph in the Constitution is misleading. There are complex rules which generally fall under the heading of Access to Information. These are mostly statutory but some arrive from common law. The rules vary according to the following factors:-

- 2.8.15.1 Whether the rights relate to attendance of meetings, the right to speak or the right to inspect background papers.
- 2.8.15.2 Whether the business is "part 1" or exempt or confidential.
- 2.8.15.3 Whether the business is executive or non-executive business.
- 2.8.15.4 Whether the executive business relates to a key or non-key decision.
- 2.8.15.5 Whether access is required by a member of the public, a member of the Council, or a member of an overseeing scrutiny committee.
- 2.8.15.6 Whether the information is (or will be) covered by the Freedom of Information Act.

The Committee may feel that a more comprehensive and clearer exposition of the information issues may be desirable, perhaps including an algorithm.

In the meantime, the Access to Information Procedure Rules Para 3 should be corrected by the deletion of the whole paragraph except for the first sentence. The reference to the rights to Members of the Overview and Scrutiny Committee is referred to in clause 21 of this section.

2.8.16 Page 212.8.1

This provision arises as a result of The Local Authority (Executive Arrangements) Access to Information) (England) Regulations 2000 ("Access to Information Regulations") for executive business. There is a requirement for the proper officer to compile a list of the background papers and the statutory guidance states that the proper officer for these purposes should be the Monitoring Officer. In practice, the list is compiled by the report writer.

2.8.17 Page 218.17.3

The requirement for quarterly report on executive decisions, which are taken under the "special urgency" rules, is a statutory requirement ("Access to Information Regulations").

2.8.18 Page 218(18) Record of decision

The Access to Information Regulations cited above, provided that "the proper officer, or in the event that the proper officer is not present at that meeting the person presiding shall ensure that a written statement ...". The words "or his sufficient substitute" should, therefore, be replaced with the word "the person presiding".

3 **IMPLICATIONS**

None specific

4 **RECOMMENDATIONS**

- 4.1 That the Committee considers the comments and proposals in this Report and determines the response or recommendations as appropriate which it wishes to make to the Audit.

BACKGROUND DOCUMENTS

- An Ethical Governance Audit of Stevenage Borough Council
Chartered Institute of Public Finance and Accountancy March 2003
- New Council Constitutions Modular Constitutions for English Local Authorities
Department of Environment Transport and the Regions December 2000

APPENDICES

- Appendix 1: **Handbook on Members' Conduct**
- Appendix 2: **Member Officer Protocol**

- **Appendix 3: Draft Officer Delegations**

General

- Delegations to officers shall be without prejudice to the rights and powers of the Council and its committees or the Executive and its committees, as appropriate at any time to decide upon any matters which fall within their responsibility.
- In exercising powers delegated to them under the Scheme of Delegation, officers:
 - Shall comply with standard orders, contract standing orders and financial regulations and any other relevant matters set out in the Council's Constitution;
 - shall comply with the approved policy schemes and decisions of the Council, its committees or the Executive;
 - shall consult with the appropriate professional or technical officers of the Council on relevant matters, in particular, the Director of Resources and Solicitor to the Council.

Proper officer provisions

- Subject to the appointments specified elsewhere in the Constitution, the relevant chief officer will make the proper officer appointment within his or her area of control. In the event of any uncertainty, the Chief Executive may make or remake any proper officer appointment (save that the Chief Executive shall always make the proper officer appointments, which relate to the functions of the Planning and Development Committee).

Executive functions

- To exercise all of those executive functions that are not specifically reserved to executive decision-making. These functions are deemed to be delegated to the relevant chief officer as follows:
 - The Chief Executive may exercise any executive function in the absence of a relevant chief officer or nominate another chief officer to do so in the Chief Executive's absence;
 - the Chief Executive may exercise any executive power in cases of extreme urgency whether or not reserved to executive decision making and whether or not falling within the departmental or budget area of another chief officer;
 - any chief officer may exercise any executive power falling within his or her departmental or budget area;
 - such other corporate areas of responsibility to which a chief officer will be nominated from time to time;

- the Borough Solicitor shall have authority to institute, defend or settle any legal proceedings as necessary to protect the interests of the Council

Council functions

- To exercise all of those Council functions that are not specifically reserved to Full Council decision-making. These functions are deemed to be delegated to the relevant chief officer as follows: (decisions or actions delegated by the Planning and Development Committee shall be exercised by the Head of Development and Planning or his delegatee).
- The Chief Executive may exercise any Council function in the absence of a relevant chief officer or nominate another chief officer to do so in the Chief Executive's absence.
- The Chief Executive may exercise any Council power in cases of extreme urgency whether or not reserved to Full Council decision making and whether or not falling within the departmental or budget area of another chief officer.
- Any chief officer may exercise any Council power falling within his or her departmental or budget area.
- Such other corporate areas of responsibility to which a chief officer will be nominated from time to time.
- The Borough Solicitor shall have authority to institute, defend or settle any legal proceedings as necessary to protect the interests of the Council.

Exercise of Officer Delegations

Each Chief Officer will establish a scheme of delegations for his/her department or budget area which specifies the functions, names the post which may carry out that delegated decision and the limits if any on the delegation. The limits on delegation will include the obligation to consult record and/or refer back to the Chief Officer in certain circumstances.

The Monitoring Officer will specify the format for the scheme of delegation and will maintain the current version of the Council's scheme of officer delegations.