

## **CONSTITUTION COMMITTEE**

**26 MARCH 2014**

Minutes of the meeting of the Constitution Committee of Flintshire County Council held at Delyn Committee Room, County Hall, Mold CH7 6NA on Wednesday, 26 March 2014

**PRESENT: Councillor Robin Guest (Chairman)**

Councillors Chris Bithell, Clive Carver, David Cox, Ian Dunbar, David Evans, Veronica Gay, Ron Hampson, George Hardcastle, Dave Mackie, Tim Newhouse, Neville Phillips, Owen Thomas and Arnold Woolley

**SUBSTITUTES:** Councillors Glyn Banks (for Joe Johnson)

**APOLOGIES:** Councillors Glenys Diskin, Paul Shotton and Nigel Steele-Mortimer.

**ALSO PRESENT:** Councillors

**IN ATTENDANCE:** Head of Legal and Democratic Services, Head of Finance, Clwyd Pension Fund Manager, Democracy and Governance Manager, Member Engagement Manager, and Committee Officer

### **26. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**

Councillor Chris Bithell declared a personal interest in the following item due to the close family associations of an individual who is in receipt of a Clwyd Pension, and an individual who is a member of the Fund and an employee of Wrexham County Borough Council:-

Agenda Item 4 – Clwyd Pension Fund Governance

Councillors David Evans and Dave Mackie declared a personal interest in the following item as they were members of the Clwyd Pension Fund:-

Agenda Item 4 – Clwyd Pension Fund Governance

Councillor George Hardcastle declared a personal interest in the following item due to the close family association of an individual who is in receipt of a Clwyd Pension:-

Agenda Item 4 – Clwyd Pension Fund Governance

### **27. MINUTES**

The minutes of the meeting of the Committee held on 8 January 2014, were submitted.

## Matters arising

### Planning Committee Quorum

The Democracy and Governance Manager advised that the Constitution had been amended so that the quorum for meetings of the Planning and Development Control Committee would be 50% of its membership.

### Family Absence for Members

The Democracy and Governance Manager advised that representations had been made to the Welsh Government (WG) in relation to the views expressed by the Committee on the regulations on Family Absence for Members. Councillor Chris Bithell asked if a response had been received from the Welsh Government. The Democracy and Governance Manager advised that he had received an acknowledgement to his email. Councillor Bithell suggested that a substantive response be sought and this was agreed by Members.

The Democracy and Governance Manager advised that he was in the process of updating the constitution to reflect the other decisions made by the Committee during the meeting and had consulted with Group Leaders who had no objections to the Constitution being amended.

## **RESOLVED:**

- (a) That the minutes be received, approved and signed by the Chairman as a correct record; and
- (b) That the Democracy and Governance Manager seek a substantive response from the Welsh Government on Family Absence for Members.

## **28. CLWYD PENSION FUND GOVERNANCE**

The Head of Finance introduced Mr Philip Latham, Clwyd Pension Fund Manager. She introduced a report to provide Members with a proposal to change the governance arrangements for the Clwyd Pension Fund, and hence, the Council's Constitution, and also to seek agreement for a recommendation to Council for the creation of a newly constituted Clwyd Pension Fund Committee.

The Head of Finance provided background information and context and referred to the key considerations in the report. She expressed her thanks to the Democracy and Governance Manager for his assistance in developing the proposals. She advised that the proposed new structure, which was in line with the Chartered Institute of Public Finance and Accountancy (CIPFA) recommendations, was appended to the report. Under the new arrangements the County Council would delegate, in its constitution, all decisions relating to its statutory duty to administer the Clwyd Pension Fund to the Clwyd Pension Fund Committee, instead of the Head of Finance as at present. The recommended role and function of the Committee was detailed in Appendix 2 to the report.

The Head of Finance advised that Legal and Democratic Services had provided advice and support and would continue to assist with the Terms of Reference and Scheme of Delegation for the proposed new structure and representation.

Subject to approval by the Committee the new governance structure and representation could be recommended for approval to the Council with the new structure becoming effective at the Annual Meeting of the Council in May 2014.

The Chairman thanked the Head of Finance for her presentation and invited Members to raise questions.

The Chairman asked how the scheme member representative would be selected. The Pensions Fund Manager explained that the representative would be appointed through the joint Trade Unions.

During discussion Officers responded to the concerns and queries raised by Members in relation to the composition of the Clwyd Pension Fund Committee.

Councillor Chris Bithell asked how the representative for the 'other scheduled body', such as from a Town and Community Council would be selected. He also referred to admitted bodies. In his response, the Pensions Fund Manager explained that admitted bodies would not have a representative as they made up a very small proportion of the liabilities of the Clwyd Pension Fund. In terms of Town and Community Councils they would be asked whether they would like to put forward an elected member. There is only one position on the Committee, hence a selection process may be required. As stated in the constitution, paragraph 1.2 (a iv) the appointment procedure would be done in consultation with the members of the Pension Fund Advisory Panel.

Councillor Chris Bithell proposed that the Committee support the recommendation as outlined in the report. This was seconded by Councillor Arnold Woolley

In response to a query from Councillor Owen Thomas concerning the 8 pension funds in Wales, the Head of Finance advised that the Authority was responsible for dealing with the Clwyd Pension Fund. She referred to a report submitted to a meeting of the Cabinet on 18 March 2014 which set out Flintshire's position within the Clwyd Pension Fund as per the last actuarial valuation at March 2013.

Councillor David Evans sought further information on the terms of office for membership of the Pension Fund Committee. The Democracy and Governance Manager explained that the term of office was a single period term of office for no more than 6 years initially, but a representative member could be reappointed for a further term of office. The Pension Fund Manager commented on the need to maintain continuity of membership on the Committee.

Councillor Evans asked if minutes of the meetings of the Clwyd Pension Fund Panel were available and if minutes of meetings of the Clwyd Pension Fund Committee would be provided in the future. The Clwyd Pension Fund Manager

explained that information was available in the Clwyd Pension Fund Annual Report which was in the public domain. Under the proposed arrangements for the future the Committee minutes would be available in the same way as other committee minutes.

In response to a question from Councillor Dave Mackie concerning the composition of the Clwyd Pension Fund Committee, the Pension Fund Manager advised that it still remained a legal responsibility of the Administering Authority to manage the Clwyd Pension Fund and that was why there was a balance of membership in favour of Flintshire on the Committee.

Councillor Clive Carver asked whether there would be any change in the way that the senior salary allowances were made as a result of the proposal to change the governance arrangements for the Clwyd Pension Fund. The Democracy and Governance Manager explained that the members allowance scheme was decided at the Annual Meeting of the Council and it was for Members to decide at that meeting whether the Chair of the Clwyd Pension Fund Committee would be awarded a senior salary.

Councillor Chris Bithell referred to the matter of quorum and asked whether substitutions were allowed at meetings of the Committee. He said that provision for this needed to be included in the Constitution. The Democracy and Governance Manager acknowledged the point made and said there would be a requirement for substitutes to have received training.

Councillor Ian Dunbar sought assurance from the Head of Finance that the Council's Chief Finance (S.151) Officer would remain involved with the work of the Clwyd Pension Fund Committee. The Head of Finance explained that this officer would continue to be involved and be providing advice to Members along with other officers and advisors through the work of the Advisory Panel.

**RESOLVED:**

That the Committee recommend to County Council changes to its Constitution as outlined in Appendix 2 of the report and to allow substitutions for Flintshire Members provided the substitute has received the appropriate training.

**29. POSSIBLE REDUCTION IN SIZE OF DEMOCRATIC SERVICES AND CONSTITUTION COMMITTEES**

The Democracy and Governance Manager introduced a report to consider a reduction in the size of both the Democratic Services and Constitution Committees.

The Chairman referred to discussion which had taken place on this item at the meeting of the Democratic Services Committee which was held prior to the meeting of the Constitution Committee. He advised that Members had decided at that meeting not to reduce the size of the Democratic Services Committee.

Councillor Arnold Woolley proposed that there should be no reduction in the size of the Constitution Committee and Councillor Dave Mackie seconded the proposal.

Councillor Tim Newhouse requested that a recorded vote was taken on the proposal and the requisite number of Members supported this. On being put to the vote the proposal was carried.

**For the proposal:-**

Councillors: Clive Carver, David Cox, David Evans, Veronica Gay, Dave Mackie, Neville Phillips, Owen Thomas and Arnold Woolley.

**Against the proposal:-**

Councillors: Glyn Banks, Chris Bithell, Ian Dunbar, Robin Guest, George Hardcastle, and Tim Newhouse.

**RESOLVED:**

That there be no change in the size of the Constitution Committee

**30. SIZE OF THE AUDIT COMMITTEE**

The Head of Legal and Democratic Services introduced a report to consider increasing the number of seats for Members on the Audit Committee. He provided background information and advised that the Audit Committee had suggested that its size be increased by one or two places to facilitate a broader political spread and reduce the impact of the occasional absence of Committee members. He referred to the consultation which had taken place with Group Leaders to establish their views on the proposal.

The Head of Legal and Democratic Services commented on the current effective functioning of the Audit Committee, its sufficiency of size, and the high level of Member attendance. He was aware that Members may wish to take into account the political balance of the Committee and advised that by increasing its size the Committee would enable all political groups to be represented. In response to a request from Councillor Clive Carver the Head of Legal and Democratic Services provided clarification around the political balance of the Committee.

Councillor David Evans proposed that the Committee support the recommendation as outlined in 4.02 of the report and this was seconded. When put to the vote this became the resolution of the Committee.

**RESOLVED:**

That in light of its current effective functioning, sufficiency of size and loyal member attendance, the Committee does not recommend any change in the size of the Audit Committee to the Annual General Meeting.

### **31. WHISTLEBLOWING POLICY**

The Democracy and Governance Manager introduced a report to consider amending the Constitution to reflect updating changes to the Council's Whistleblowing Policy. He advised that at the meeting of the Audit Committee which was held earlier in the day, Members had considered a report which recommended updating changes to the current Policy. As a result of the comments made during the meeting the draft Policy needed to be redrafted.

The Democracy and Governance Manager invited Members of the Committee to send him any comments they wished to be included in the redrafting of the Policy. He advised that a further report would then be submitted to the Audit Committee and Constitution Committee for consideration.

The Chairman asked Members to therefore defer the item until a future meeting of the Committee.

#### **RESOLVED**

That the item be deferred to a future meeting of the Committee.

### **32. UPDATING THE CONSTITUTION**

The Democracy and Governance Manager introduced a report to consider updating changes to the Council's Constitution pursuant to the 3 year programme agreed at the Committee's meeting on 24 July 2012. He provided background information and referred to those areas identified for review which had been dealt with and those pending review. He advised that one of the areas identified for the current Council year was part 3 of the Constitution concerning the responsibility for functions and whilst some work had been done it had been put on hold until the new senior management structure of the Council was agreed. The section of Part 3 that could be reviewed was Section B concerning the Leader's Scheme of Delegation of Executive Functions which was appended to the report for Members consideration with recommended changes shown and comments on the proposed changes. The Democracy and Governance Manager advised that the proposed changes followed consultation with the Leader and his agreement to them.

Councillor Chris Bithell referred to the Leader's Scheme of Delegation of Executive Functions which was appended to the report and said there was a typographical error in paragraph 5.12 concerning the spelling of Ysgol Penarlag. He also referred to section 6, Joint Committees, and advised that a report had been submitted to the meeting of Cabinet held on 18 March 2014, on the setting up of a Joint Committee for the Clwydian Area of Outstanding Natural Beauty and reported on a change in membership of the Joint Committee. Councillor Chris Bithell proposed that subject to these points the Committee support the recommendation as outlined in the report.

**RESOLVED:**

That subject to the two points made by Councillor Bithell the proposed changes to the Leader's Scheme of Delegation of Executive Functions as shown in Appendix 1 be approved.

**33. LOCAL CHOICE FUNCTION FOR SCHOOLS**

The Head of Legal and Democratic Services introduced a report to update the Constitution to include a new local choice function relating to schools.

The Head of Legal and Democratic Services gave background information and advised that the Welsh Government had recently passed subordinate legislation creating a new local choice function in relation to approvals under Section 51, or a determination under Section 53, of the School Standards Organisation (Wales) Act 2013 (the Act). This related to the new power County Councils had to make decisions about the future of individual schools following public consultation. The Head of Legal and Democratic Services explained until the passing of the Act making a proposal to reorganise a school had been an Executive function, however, if objection was received to the proposal the final decision rested with Ministers. The Act now gave that power to the authority.

In response to a query the Head of Legal and Democratic Services explained that whilst it was proposed that the new power for determination of individual school change proposals should be an Executive function, it was intended to maintain the previous beneficial arrangement of consultation with the Overview and Scrutiny Committee and County Council when similar circumstances arose.

Councillor Chris Bithell proposed that the Committee support the recommendation as outlined in the report and this was seconded by Councillor Arnold Woolley.

**RESOLVED:**

That the Committee recommends to County Council that the local choice function relating to Sections 51 and 53 of the School Standards and Organisation (Wales) Act 2013 be an Executive function.

**34. COUNCIL PROCEDURE RULE 25 – USE OF SUBSTITUTES**

The Democracy and Governance Manager introduced a report to consider amendments to Council Procedure Rule 25 relating to Member substitutions. He provided background information and gave an overview of the main considerations as detailed in the report.

The Democracy and Governance Manager advised that representations had been received from a number of Group Leaders that, as currently worded, Rule 25 prevented notification being given by email and they would like to give notification of substitutions by email. He advised that the legislation did not require notification in writing. He explained that appended to the report was a suggested rewording of Procedure Rule 25 for consideration by the Committee. He advised that any change agreed at the meeting to the existing wording would be subject to consultation with all Group Leaders and any of them could require the change to be considered by County Council before coming into effect.

Councillor Chris Bithell commented on the need for political balance to be maintained and asked if it could be stipulated that a substitution should be from the same political Group. In his response the Democracy and Governance Manager referred to the legislation around political balance and explained that it was for the individual Group Leader or Deputy to decide who the substitution should be. The legislation allowed a Group Leader to appoint a substitute Member from another political group if they wished.

**RESOLVED:**

That the amendments to Council Procedure Rule 25 as contained in Appendix 2 to the report be approved.

**35. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE**

There were no members of the public or press in attendance.

(The meeting started at 3.20 pm and ended at 4.30 pm)

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**Chairman**