

FOCUS GROUP ON THE CONSTITUTION

MINUTES of the FOCUS GROUP ON THE CONSTITUTION held at COUNTY HALL,
TROWBRIDGE on WEDNESDAY 16 JANUARY 2009.

PRESENT:

Mr S Wheeler	-	Kennet District Council representative
Mr B Mudge	-	West Wiltshire District Council representative
Mrs C Soden	-	Wiltshire County Council representative
Mrs I McCord	-	Standards Committee representative of Wiltshire County Council
Mr I Gibbons	-	Head of Legal and Democratic Services
Mrs Y Rhouati	-	Principal Democratic Services Officer

7. **Apologies**

No apologies for absence were received.

8. **Minutes**

The minutes of the last meeting held on 10 December 2008 were presented. The Chairman noted the actions agreed at the last meeting including the requests for further information included on the agenda for this meeting.

Agreed:

That the minutes of the last meeting held on 10 December 2008 be approved as a correct record and signed by the Chairman.

9. **Members' Interests**

No interests were declared.

10. **Draft Constitution for Wiltshire Council**

The Group considered the draft constitution for Wiltshire Council in order to make recommendations to the Implementation Executive on 28 January 2009 which would in turn make recommendations to Council on 24 February 2009 on adoption of a revised constitution for Wiltshire Council.

A web link giving access to the proposed revisions to the constitution had been provided to Members of the County and District Councils, the Standards Committee of Wiltshire County Council, corporate and service directors and other relevant officers of the five councils. Members and officers had been asked to provide any comments on the draft by 16 January 2009 in order for them to be considered by this Group and by the Implementation Executive. Comments from Members are detailed below.

At the Group's request at the last meeting, an Index to the Constitution was presented which identified officers responsible for the various Parts of the constitution together with the timescales involved.

Focus Group Comments

Handbook

Members considered that a handbook for Members should be prepared to include the key elements of the constitution most relevant to Members. Similarly, Members considered that a handbook should be prepared for members of the public to provide a more user friendly version of the sections most relevant to the public including their rights, the decision making structure and the process for asking questions, making statements and submitting petitions.

Mandatory Training

A member questioned the inclusion of a clause in the draft constitution which insisted that Members underwent appropriate training before participating as members of planning and licensing committees. The Head of Legal and Democratic Services explained that the purpose was to ensure that Members were fully aware of their responsibilities in exercising quasi-judicial functions and it was prudent to include such a requirement to reduce the risk of legal challenge.

Regulatory Functions – Portfolio Holder Responsibilities

A member enquired if a Cabinet member would be appointed with specific responsibilities for regulatory functions. The Head of Legal and Democratic Services advised that the exercise of regulatory functions was not a matter for the executive although it was noted that Cabinet would have a role in formulating the policy framework within which regulatory decisions are made eg the Local Development Framework. The appointment of a Cabinet member for such policy issues was a matter for the Leader of Wiltshire Council to determine.

Consistency of Regulatory Decisions

Members expressed concern that an area based decision making structure for regulatory decisions could bring about inconsistencies and that this point

should be drawn to the attention of the Implementation Executive and relevant officers to keep under review.

Scheme of Delegation – Planning

Members expressed concern at the 21 day notice period which a member would be required to give to request determination by a planning committee rather than under officer delegation. With some town and parish councils meeting so infrequently, those councils could be too late to make such a request through their local Member. Furthermore, Members considered that this period would be insufficient for a Member to set out the material planning considerations which warrant the application going before committee. Having to set out these material considerations, could lead to criticisms of predetermination by Members. Members accepted however that the material considerations were required in relation to the reasons for requesting determination by the relevant planning committee and not on the merits or otherwise of the planning application.

It was noted that these areas had been considered at length by the Implementation Executive when considering and approving the arrangements and scheme of delegation for planning.

Access to Information

In response to a query from a member, the Head of Legal and Democratic Services gave advice on Members' rights of access to documents as laid down in the Access to Information Procedure Rules and under case law. Members referred to a recent example of such a situation arising.

Continuation of the Focus Group

The Focus Group considered that it had achieved its objectives in providing a forum for Member engagement in the preparation of a constitution for the new Council, providing a Member perspective and considering the draft constitution and any comments on it from Members. Members considered that the work of the Focus Group should be allowed to continue to assist with any further developments in the constitution before June 2009. However, it was noted that on 31 March 2009, the Wiltshire district councils would cease to exist and as the Group included district council representatives, the Group would lose 4 of its members. Subject to the approval of the Implementation Executive, the district council members present at the meeting were happy to continue to serve on the Focus Group.

Comments from Members

The Group's attention was drawn to the following comments from Members received during the consultation period on the draft constitution:

Chairmanship of Scrutiny Committees

A suggestion that provision should be built into the constitution to ensure that Scrutiny Committees can only be chaired by a member of the opposition in accordance with best practice and the practice adopted by a number of authorities.

The Focus Group considered that this was largely a political decision.

Public Participation – Planning Committees

Concerning public participation at meetings particularly in relation to planning committees. The Member suggested that the rules should allow for members of the public to apply to make representations with less notice period than at present. The Member states that as an alternative, to make provision for rules on public participation specific to planning to allow greater flexibility for the public. The Member also suggests that adequate publicity is given to any change in the rules governing public participation to ensure public awareness.

The Focus Group considered that the arrangements to be put in place by Wiltshire Council should be no less than what members of the public are currently used to taking into account arrangements currently in place at the district councils. The Focus Group considered the system in operation at a number of the district councils where members of the public could register to speak on the day of the meeting or even just prior to the meeting worked quite satisfactorily and should therefore be continued. Members also commented that whatever arrangement is agreed, this should be applied to all planning committees to ensure consistency.

It was noted that the planning officers were currently looking at public participation arrangements.

Member/Officer Relations Protocol

At the last meeting, officers were requested to review the Member/Officer Relations Protocol. The Head of Legal and Democratic Services explained that the Protocol should set out clearly the underlying principles governing relationships between Members and Officers. Given that this was such an important document, he suggested that officers would develop the protocol in line with best practice and in consultation with senior officers and members to be in place for the new Council following agreement by the Implementation Executive.

Appeals

At the last meeting, officers were asked to provide details of functions which would give rise to appeals to ensure appropriate arrangements would be in place for each category of appeal. Accordingly, the Focus Group received a schedule of subject areas which could give rise to appeals as follows:

Subject area of appeal	Appeal body
School Admission	School Admission Appeals Panel
School Exclusions	School Exclusions Appeal Panel
Dismissal and disciplinary action in respect of senior officers	Senior Officers Employment Sub-Committee
Appeals against decision of Senior Officers Employment Sub-Committee or Chief Executive against dismissal or disciplinary action	Staffing Appeals Sub-Committee
Grievances (staffing)	Grievance Appeals Sub-Committee
Services provided by Community Services and the Education Department	Social Services Review Panels
Complaints against the Council	Corporate Complaints Panel
Education transport appeals	Appeals Panel (proposed) (Currently dealt with by the Regulatory Committee)
Imposition of penalty points which would result in suspension for licensed hackney carriage, taxi and private hire vehicle operators, drivers and vehicles.	Appeals Panel (proposed) (existing district council function)
Refusal of discretionary relief in cases of exceptional hardship under the Housing Benefit and Council Tax Benefit rules	Appeals Panel (proposed) (existing district council function)
Appeals against planning decisions	Planning Inspectorate
Special Educational Needs	Special Educational Needs and Disability Tribunal

The draft constitution made provision for an Appeals Committee. Three Members would be drawn from the Appeals Committee to form an Appeals Panel to deal with appeals as detailed above and any other function requiring an appeal to a member body not specifically reserved to another body in the constitution, or by the law,

Recommendations to the Implementation Executive on 28 January 2009:

- (a) The Focus Group is satisfied that the draft revised constitution reflects the changes that are necessary to meet the requirements of the new council, recognising that Wiltshire Council will wish to review the effectiveness of the constitution in the light of experience during the first 12 -18 months of operation. The Focus Group recommends the IE to recommend Council to adopt the revised constitution on this basis.
- (b) The Implementation Executive's views are sought in relation to the comments received from Members on the chairmanship of the scrutiny committees and public participation arrangements at planning committees.
- (c) That officers prepare a concise, user friendly handbook on the constitution for Members and members of the public to be in place for the new council.

- (d) That officers be asked to develop a Protocol on Member / Officer relations in line with best practice for approval by the Implementation Executive to be in place for the new Council.
- (e) That the Monitoring Officer is authorised to make such amendments as are necessary to give effect to decisions of the Implementation Executive, Council or its committees and to ensure that the constitution is clearly presented and legally fit for the purposes of the new Council,
- (f) That the Focus Group on the Constitution with its current membership is requested to continue to assist with any further developments in the constitution until June 2009.

11. Date of Next Meeting

That the next meeting be held on Wednesday 4 February 2009 at 10.30am.

(Duration of meeting: 10.30am – 12.15pm)

The Officer who has produced these minutes is Yamina Rhouati, of Democratic & Members' Services, direct line (01225) 718024, e-mail yaminarhouati@wiltshire.gov.uk

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