

REVIEW OF THE BUDGET AND POLICY FRAMEWORK PROCEDURE RULES, FINANCIAL PROCEDURE RULES AND CONTRACT PROCEDURE RULES

PORTFOLIO RESPONSIBILITY: CORPORATE STRATEGY AND FINANCE

CABINET
AUDIT AND CORPORATE GOVERNANCE COMMITTEE
STRATEGIC MONITORING COMMITTEE

28TH FEBRUARY 2008
29TH FEBRUARY 2008
6TH MARCH 2008

Wards Affected

County-wide.

Purpose

1. To seek the views of Cabinet/Audit & Corporate Governance Committee/Strategic Monitoring Committee on proposed revisions to the Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules attached as Appendices 3, 4 and 5 respectively to this report. This numbering convention reflects that in the Council's Constitution for these documents.
2. To seek views of Cabinet and Strategic Monitoring Committee to changes to the time by which Councillors must submit written Questions for Council.

Key Decision

3. This not a Key Decision.

Recommendation(s)

- THAT (a) Cabinet/Audit & Corporate Governance Committee/Strategic Monitoring Committee consider the Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules attached to this report and determine whether they have any further comment they wish to make on them to Council on 7th March 2008 when they will be formally considered for adoption;**
- (b) the Head of Legal & Democratic Services ensures a thorough revision of the Scheme of Delegation for approval by Council in May 2008;**
- (c) the Head of Legal & Democratic Services carries out a thorough review of the remainder of the Constitution for approval by Council in July 2008; and**
- (d) the amendment to paragraph 4.25.1 of the Constitution is endorsed.**

Further information on the subject of this report is available from
Mrs Sonia Rees, Director of Resources, tel: (01432) 383518 or
Mr Alan McLaughlin, Head of Legal and Democratic Services, tel: (01432 260200)

Reasons

4. The Director of Resources' Section 151 Officer report on financial governance issues in ICT Services of September 2007 contained recommendations for review of the financial elements of the Council's Constitution. The recommendations from the Section 151 Officer's report were endorsed by the Crookall Review as an appropriate response given the circumstances to strengthening the Council's financial governance framework.
5. The Audit Commission has commented on the serious flaws in the operation of the Council's financial policies and procedures identified by the Section 151 Officer's report and the Crookall Review in their Annual Governance Letter for 2007, their Use of Resources report for 2008 and their Annual Audit & Inspection Letter for 2008.
6. The Council is now judged to be operating at below minimum requirements as far as the Internal Control element of the Use of Resources assessment for 2008 is concerned. The main reason for this is the financial governance issues identified last year. The Council is one of only four upper tier authorities with a below standard assessment for this element of the Use of Resources assessment.
7. Adoption by Council of the revised Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules attached to this report by the end of March 2008 is key to an improved assessment for Internal Control in the next Use of Resources assessment.

Considerations

REVIEW OF BUDGET AND POLICY FRAMEWORK PROCEDURE RULES, FINANCIAL PROCEDURE RULES AND CONTRACT PROCEDURE RULES

The story so far

8. The Section 151 Officer's report was considered by Cabinet and the Audit & Corporate Governance Committee in September 2007. The action plan contained in that report was approved for implementation by Cabinet and endorsed by the Audit & Corporate Governance Committee.
9. A key feature of the action plan in the Section 151 Officer report was the requirement to review the financial elements of the Council's Constitution to ensure accountabilities were clearly defined. It was agreed that these revisions should be ready for Council to consider at their meeting on 2nd November 2007. Given the extremely tight timescale, arrangements were made for the proposed revisions to be presented direct to Council provided the three Statutory Officers (Head of Paid Service, Chief Financial Officer and Monitoring Officer) were in agreement on the proposed revisions.
10. The Director of Resources and her team led on the revision of the documents. Four authorities were chosen as a benchmark against which to compare the financial elements of the Council's existing Constitution. The authorities chosen were Shropshire County Council, Kent County Council, East Riding of Yorkshire Council and St Helens Council. These were the four upper tier authorities with the very best Use of Resources assessments in 2007.

11. There was a wide degree of variation in style and approach in the four benchmark constitution documents. The best elements of the Council's existing financial governance framework were retained and the best elements from the other council's Constitutions used to strengthen the existing arrangements.
12. Council received proposed revisions to the Scheme of Delegation, Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules as planned on 2nd November 2007. The three Statutory Officers were in agreement on the proposed revisions. However, Members' attention was drawn to the fact that the arrangements within the proposed revisions to the Scheme of Delegation regarding consultation with local members warranted further consideration following adoption of the revised document.
13. Whilst noting the importance of improving the Council's financial governance arrangements as a matter of urgency given the recommendations in the Section 151 Officer's report, Council decided to await the outcome of the Crookall Review before adopting the proposed revised documents. This approach would allow the Section 151 Officer's recommendations and any Crookall Review recommendations relevant to the Council's Constitution to be considered along side each other.
14. Council also decided to ask the Audit & Corporate Governance Committee, Standards Committee and Constitutional Review Working Group to review the proposed revised documents before they were presented to Strategic Monitoring Committee, Cabinet and then Council for final adoption.
15. The Audit & Corporate Governance Committee received the proposed revised documents on 16th November 2007 and decided to establish a small working party to review them. The Audit & Corporate Governance Committee's working party reviewed the Scheme of Delegation, the Budget and Policy Framework Procedure Rules, the Financial Procedure Rules and the Contract Procedure Rules as presented to Council on 2nd November 2007. An updated set of documents was presented to the Audit & Corporate Governance Committee on 21st December 2007. The amended documents were approved by the Committee subject to a small number of typographical corrections.
16. The Standards Committee received the proposed revised documents for the Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules on 18th January 2008. The Standards Committee had no comment to make on the proposed revised documents.
17. The Constitutional Review Working Group received the Budget and Policy Framework Rules, Financial Procedure Rules and Contract Procedure Rules as approved by the Audit & Corporate Governance Committee on 21st December 2007 at their meeting on 7th January 2008. At this meeting, the Constitutional Review Working Group asked that officers ensure the documents as approved by the Audit & Corporate Governance Committee provided absolute clarity on accountabilities as it was felt that this was not clear in some places. Officers were also asked to draft procedure guides for the new documents. The Constitutional Review Working Group arranged to meet again on 23rd January 2008.

18. The Constitutional Review Working Group duly met again on 23rd January 2008 and received a further version of the Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules, this time containing comments and questions from the Legal Services team that had not been available previously. Officers were asked to review the documents again in the light of these comments and to ensure clarity regarding accountabilities was retained. The Constitutional Review Working Group also requested that flowcharts be developed for asset management, financial management and procurement processes and arranged to meet again on 11th February 2008.
19. The Director of Resources and Head of Legal & Democratic Services met with their teams to review the documents in the light of the detailed comments received from the Legal Services team. All the issues were resolved to the satisfaction of both the Director of Resources and the Head of Legal & Democratic Services. The documents were thoroughly reviewed again to ensure accountabilities remained clear. The Director of Resources and her team drafted 'mini guides' including diagrams depicting the asset management, financial management and procurement processes outlined in the documents. These are attached as appendices to this report.
20. The Constitutional Review Working Group met again on 11th February 2008 and received the latest draft of the three key documents and first drafts of the 'mini guides'. Some minor concerns remained that references to Directors taking action 'in consultation with' the relevant Cabinet Member blurred accountabilities. Officers reviewed the documents a further time and were asked to circulate the amended documents to members of the Strategic Monitoring Committee for its meeting on 18th February 2008.
21. The Constitutional Review Working Group has yet to consider the proposed revised Scheme of Delegation as approved by the Audit & Corporate Governance Committee on 21st December 2007. The new Chief Executive needs to have the opportunity to influence the way in which these are framed so that they both support the organisational development and Member development that will be taking place over the next 12 months and take into account the key messages from the Crookall Review. This will also provide the opportunity to take on board the issue of consultation with local members (paragraph 11 refers).
22. A complete review of the remainder of the Constitution, including the Scheme of Delegation, is necessary at the earliest possible opportunity to ensure that it reflects changes to the Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Rules that Council will be asked to approve in March 2008. A review of the Scheme of Delegation is being programmed for the May 2008 Council meeting.
23. The Strategic Monitoring Committee considered the latest Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules on 18th February 2008. There were a number of detailed questions about the process for amending the financial governance elements of the Council's Constitution, officer accountabilities for the Constitution and elements thereof, plus concern that the latest version of the Financial Procedure Rules reduced the role and involvement of Cabinet Members and hence their scope to be informed, exercise oversight, guide and direct. A number of other anomalies, omissions and errors were also referred to. The Strategic Monitoring Committee decided to defer further consideration of the revised documents until a later meeting to allow these matters to be addressed. These issues are dealt with in a later section of this report.

24. Cabinet was due to consider the revised Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Rules (as amended for Strategic Monitoring Committee on 18th February 2008) at its meeting on 21st February 2008. Cabinet deferred consideration until its meeting on 28th February 2008 in order to allow time for the issues raised by the Strategic Monitoring Committee to be considered.

The Constitution – which officer is responsible for what?

25. The Council's Monitoring Officer (Head of Legal & Democratic Services) is delegated with overall responsibility for the Council's Constitution. He is responsible for ensuring that it is kept up to date, that it accords with legislative requirements, and that amendments are brought forward and agreed in line with the Constitution. In fulfilling this responsibility, the Monitoring Officer works closely with a number of officers who have specific responsibilities for certain elements of the Constitution.
26. The Director of Resources has specific responsibilities for the Financial Procedure Rules and Contract Procedure Rules as set out in those elements of the Constitution and the Scheme of Delegation.

The Constitution – what is the process for change?

27. Section 9.8.2.13 of the Council's current Constitution gives the Audit & Corporate Governance Committee the overview in respect of the contract and financial procedure rules and also codes of conduct. The Audit & Corporate Governance Committee does not have final say on any element of the Council's Constitution. The report to the Audit & Corporate Governance Committee on 21st December 2007 was clear on this point: the Committee was being asked to approve the amended Constitution for further consideration as part of the Constitution review process which would involve the Constitutional Review Working Group, Cabinet and ultimately full Council. Decisions on the Constitution are reserved to full Council. The Audit & Corporate Governance Committee's role is one of scrutiny on financial governance issues and it is responsible for advising the executive on existing or proposed financial governance policy and procedures.
28. However, Section 9.8.2.13 of the Constitution does need updating to reflect the division of responsibility for scrutinising the key elements of the Council's Constitution which is shared by the Audit & Corporate Governance Committee, the Standards Committee and the Strategic Monitoring Committee. This issue shall be resolved for the May 2008 Council meeting so that the remit each of these Committees has in respect of the Council's overall Constitution is clear.
29. Section 4.31 of the existing Constitution will need to be amended as a consequence of the above. This section deals with the process for making amendments to the Constitution. The current arrangements are that proposed changes are considered by the Strategic Monitoring Committee and then Cabinet prior to submission to Council. The Constitution needs to recognise the role the Audit & Corporate Governance Committee and the Standards Committee has. This issue shall be resolved for the May 2008 Council meeting.

Strategic Monitoring Committee's detailed questions

30. The issues discussed at Strategic Monitoring Committee on 18th February 2008 are outlined below in bold, italics type. Explanation is provided in the following paragraphs.

The role of the Director of Resources in land and property acquisitions as outlined in the Financial Procedure Rules: why has this changed from one of authorising land and property transactions to one of actioning them?

31. This is to reflect that fact that the Director of Resources has delegated responsibility for all land and property acquisitions which are in turn delegated in writing to the Head of Asset Management & Property Services. The reason for this set of delegations is that the professional expertise in such matters sits within the Resources Directorate. To 'authorise' implies the Director of Resources makes the final decision on whether to acquire an asset or not when this is not the case. It is for the Director of Resources to provide the professional support on all property acquisitions that have been properly approved in line with the Council's decision making policies, and managers must use this service.

The role of the Chief Executive: does paragraph 3.29 of the Financial Procedure Rules imply that the Chief Executive has the authority to assume the role of the Section 151 Officer?

32. This is not the case. This paragraph gives the Chief Executive the authority to assume the Director of Resources' delegated responsibilities with regard to section 3 only of the Financial Procedure Rules. This section deals with Asset Management, an area that does not impinge on the Director of Resources' Section 151 Officer responsibilities.

The revised Financial Procedure Rules appear to reduce the role and involvement of Cabinet Members in a number of places.

33. There needs to be a clear distinction between political accountability and managerial accountability. The Financial Procedure Rules deal with managerial responsibilities for financial management in detail.
34. The first section of the Financial Procedure Rules provides an overview of the responsibilities of Cabinet, Cabinet Members and officers in respect of the matters the document covers. Paragraph 1.9 has been further amended to clarify Cabinet Members' and Directors' responsibilities. The former oversee the financial management arrangements for the areas within their remit whilst the latter are responsible for delivering services within the agreed framework for financial management. References throughout the document to a Director proposing or taking an action in consultation with the relevant Cabinet Member have been removed as this wording did not give the precision needed on where the responsibility for delegated executive functions rests. Responsibility for delegated executive functions rests with officers in accordance with the Scheme of Delegation.
35. However, the Financial Procedure Rules have been strengthened to ensure that Cabinet Members receive the information they need to fulfil their responsibilities for overseeing financial management within their areas of responsibility. Directors shall be required to provide their Cabinet Members with evidenced assurance reports that the Council's system of internal control is being complied with. Cabinet Members shall be provided with detailed, monthly financial management information reports. Cabinet Members shall also be provided with a confidential copy of all audit reviews with an opinion that is less than satisfactory. These measures ensure that Cabinet Members have the information they need to hold the relevant Director to account.

36. Section 3 of the Financial Procedure Rules deal with asset management. There is no need for the Director of Resources to consult with the Cabinet Member (Resources) with regard to her responsibilities for ensuring that the Council occupies property in accordance with best practice and in the interests of the Council as a whole (paragraph 3.3 (b) refers). This is an executive function delegated to the Director of Resources and it is for her, working through the Head of Asset Management & Property Services, to ensure that this happens. Disputes between Directors on property matters (paragraph 3.3 (d) refers) or any other matter should be resolved by the Head of Paid Services, as manager of the Directors and officers of the Council, and not the Leader and Cabinet Member (Resources) as originally drafted. Such disputes would be a managerial rather than a political issue.
37. The requirement to consult with Members and other officers on all property related issues is set out in paragraph 3.3 (e) of the Financial Procedure Rules. The reference to consulting with the Cabinet Member in paragraph 3.14 which deals with the management and use of land and property assets was repetitious. The former paragraph 3.22 which dealt with the treatment of capital receipts was also repetitious in this respect.
38. Section 10 of the Financial Procedure Rules deals with capital budget management. Paragraph 10.2 has been changed to reflect the fact that it is for Corporate Management Board to make recommendations to Cabinet regarding the capital programme. In compiling those proposals, members of the Corporate Management Board are required to consult with the relevant Cabinet Member. This requirement is set out in the guidance issued to officers as part of the capital planning process.
39. Section 11 of the Financial Procedure Rules deals with budgetary control. Paragraph 11.3 has been redrafted to reflect the Director of Resources' responsibility for ensuring that officers and Cabinet Members have monthly financial management information reports. Cabinet Members' responsibilities for overseeing financial management in their areas of responsibility, equipped with that information, is covered in Section 1 of the Financial Procedure Rules.

There are some errors, omissions and anomalies in the Financial Procedure Rules presented to the Strategic Monitoring Committee as supplementary papers for their meeting on 18th February 2008.

40. The ambiguity identified in paragraph 1.23 has been corrected by replacing 'their' with 'his/her'.
41. The references in Section 3 of the Financial Procedure Rules to monthly reporting of land and property transactions has been deleted as reporting arrangements on such matters are dealt with in paragraph 3.31. Paragraph 3.31 has been updated to make its meaning clear.
42. Paragraph 8.4 (b) has been amended to correct grammatical errors.
43. The < +1% budget tolerance previously referred to in paragraph 9.4 has been removed to reflect the draft financial strategy for 2008 – 2011 which removes this provision.
44. The text lost in paragraphs 9.5 and 11.11 has been reinstated.
45. The changes referred to in the preceding paragraphs that result from the comments made at Strategic Monitoring Committee on 18th February 2008 are shown as tracked changes in the Financial Procedure Rules document attached to this report.

What are the next steps?

46. The very latest version of the Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules are attached to this report, along with the 'mini guides'.
47. As outlined in paragraphs 3 to 6 of this report, it is imperative that Council is able to approve these documents at its March 2008 meeting. In order to achieve this deadline, Cabinet will consider the proposed revisions on 28th February 2008 and make its report into Council on 7th March 2008 in the usual way. The Audit & Corporate Governance Committee and the Strategic Monitoring Committee will have a further opportunity to consider the proposed revisions at their meetings on 29th February 2008 and 6th March 2008 under cover of this report. These Committees will also have the opportunity to provide feedback to Council on 7th March 2008. The final decision on the Constitution is one that is reserved to full Council.

Conclusions

48. The process of reviewing the financial elements of the Council's Constitution following the Section 151 Officer report and Crookall Review has taken longer than anticipated. It has been important to ensure that there is absolute clarity and understanding about the respective role of Members and officers in the day to day management of the Council's financial affairs. Finding the right balance for Herefordshire has been essential; as has making sure that past difficulties that were isolated to one part of the Council do not result in a framework that is too rigid for all managers to respond quickly and effectively to changing demands.
49. The Director of Resources and Head of Legal & Democratic Services both confirm that the proposed revisions represent an appropriate response to the Section 151 Officer report and the Crookall Review. The proposed revisions are significant: anything other than a major overhaul would not have been appropriate given the background, the level of concern expressed by the Audit Commission and the continued close monitoring of progress.
50. The revised framework is clear and promotes good financial governance without reducing managers' flexibility to get on with the day job. Indeed, the new framework, once adopted, provides protection for officers as they will have certainty about the processes they must follow and when to access the professional support they will need on asset management, financial management and procurement matters. The result should be better corporate working and hence better outcomes for the community as resources are used more effectively in support of corporate priorities.
51. The revised framework also provides the clarity needed at the heart of any performance management system in terms of who is responsible for what and what that responsibility is in any given circumstance. The Crookall Review was very concerned about the effectiveness of the Council's performance management arrangements in this respect.
52. The review of the financial elements of the Constitution has identified and will create anomalies within the remainder of the Constitution that need addressing as soon as possible.
53. The new Budget and Policy Framework Procedure Rules, Financial Procedure Rules and Contract Rules will require changes to the Scheme of Delegation.

54. A clearer definition of the respective roles of the Audit & Corporate Governance Committee, Standards Committee and Strategic Monitoring Committee is needed as they each have a scrutiny role in respect of different aspects of the governance framework. Clarifying the precise remit of these Committees to minimise duplication and overlap will need to be reflected in the Constitution. The way in which changes to the Constitution are made will need to be updated as a result of any such changes.
55. This further work on reviewing the Constitution will be lead by the Head of Legal & Democratic Services in consultation with appropriate officers. He will work with the Constitutional Review Working Group and relevant officers and then report to the Audit & Corporate Governance Committee, Standards Committee or Strategic Monitoring Committee as appropriate. Cabinet will then consider its recommendations to Council on the proposed changes, taking into account the advice and comments it receives from each of these Committees. These changes need to be ready for Council to consider at its May 2008 meeting in order to be able to demonstrate sufficient progress to the Audit Commission and to the community on improving corporate governance arrangements.

QUESTIONS FOR COUNCIL FROM COUNCILLORS

56. Paragraph 4.25 of the Constitution headed “Formal Questions from Councillors” and in particular paragraph 4.25.1 bullet point 2 reference to “10.30 a.m. on the last working day before the relevant Council meeting” should be changed to “10.30 a.m. on the Tuesday before the relevant Council meeting”.

Financial Implications

57. There are no budgetary implications arising as a direct result of this report. The revised Budget & Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules promote excellence in financial management and the use of resources.

Risk Management

58. The proposed revisions to the Budget & Policy Framework Procedure Rules, Financial Procedure Rules and Contract Procedure Rules are designed to mitigate against the risk of non-compliance with the Council’s financial policies and procedures and optimise the use of resources.
59. In-house financial training courses will be updated to include the revised Financial Procedure Rules and Contract Procedure Rules from April 2008. The Resources Directorate is willing to attend team meetings on request. A financial training programme for Members is being developed by the Audit & Corporate Governance Committee. This will include awareness sessions for members on the Financial Procedure Rules and Contract Procedure Rules. The documents and mini guides will be available electronically.

Alternative Options

60. These have been considered as part of the benchmarking exercise that informed the review of the Council’s existing financial governance arrangements.

Consultees

61. The consultees for review process were the Corporate Management Board, the Leader and relevant Cabinet Members, the Head of Legal & Democratic Services, the Constitutional Review Working Group, the Audit & Corporate Governance Committee and the Strategic Monitoring Committee.

Appendices

62. The appendices to this report are as follows:
Appendix 3 – Budget & Policy Framework Procedure Rules.
Appendix 4 – Financial Procedure Rules.
Appendix 5 – Contract Procedure Rules.

Appendix A – Mini Guide to Asset Management.
Appendix B – Mini Guide to Financial Management.
Appendix C – Mini Guide to Procurement

Background Papers

None identified.