Agenda Item No: **6**

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee/ Panel	**STANDARDS COMMITTEE** Date: 22.07.2010
Originating Service Group(s)	**CUSTOMER AND SHARED SERVICES**
Contact Officer(s)/	**S KEMBREY/F DAVIS**
Telephone Number(s)	**4910/4932**
Title/Subject Matter	**REVISION OF THE CONSTITUTION 2010/2011**

Recommendations

a) That the report of external consultant Stewart Dobson set out in the Appendix to this report together with the work to be undertaken during 2010/11 to complete a fundamental review of the Council's Constitution be noted.

b) That the proposal to appoint an external consultant to provide support in the drafting of the revised Constitution be noted.

REVISION OF THE CONSTITUTION 2010/2011

1.0 Purpose of Report

1.1 To present to the Standards Committee the report of external consultant Stewart Dobson who has been requested to review the Council's Constitution. The report details work to be undertaken during 2010/2011 to implement a fundamental review of the Council's Constitution.

2.0 Background

2.1 Section 37 of the Local Government Act 2000 requires a Local Authority operating executive arrangements to prepare and keep up to date a Constitution containing:-

(a) Information directed by the Secretary of State,

(b) A copy of the Authority's Standing Orders for the time being,

(c) A copy of the Authority's Members Code of Conduct for the time being, and

(d) Such other information as the Authority considers appropriate.

2.2 The Authority must ensure that copies of the Constitution are available at its principal office for inspection by Members of the Public at all reasonable hours. The Authority must also supply a copy of the Constitution to anyone who requests a copy and who pays a reasonable fee, as determined by the authority. To comply with this provision, a copy of the Constitution is available on the Council's website at http://cmis/CMISWebPublic/PublicDocuments.aspx?folderID=13

2.3 Although, the Constitution has been reviewed annually to ensure it is up-to-date, it has not been subject to a fundamental review since executive arrangements under the Local Government Act 2000 were implemented. To facilitate a fundamental review during 2010/11, Stewart Dobson an external consultant with particular expertise in Council Constitutions and a former Local Authority Chief Executive was appointed through SOLACE in 2009/10 to review and report the Authority's current Constitution.

2.4 A copy of Stewart Dobson's Report is attached to this report as Appendix 1.

3.0 Fundamental Review of the Constitution 2010/2011

3.1 The report attached at Appendix 1 will form the basis of the work to be undertaken to review the Constitution during 2010/2011.

3.2 The detailed work to implement the review will be led by the Constitution Review Group of officers who will report to Members throughout the project as necessary.

3.3 To assist in the detailed drafting of the new document the Chief Legal Officer considers external support is required. Any person appointed will have extensive experience of local government Constitution and governance matters and will be appointed from the Council's approved list of contractor's.

3.4 The Financial Procedure Rules which are contained in part 4 of the Constitution were reviewed and updated during 2009/2010. The Contracts Procedure Rules are currently being reviewed by officers, overseen by the Constitution Review Group. The outcome will be reported during 2010/11 to a future meeting of this committee and Special Advisory Group.

3.5 In addition to work needed to implement Stewart Dobson's recommendations and a review of the Contracts Procedure Rules the Constitution Review Group also has the following work scheduled in its work programme for the year:-

a) Review of Council Procedure Rules – length of speeches on motions and principal speeches.

b) Revisions to the Member Allowances Scheme following on the recommendation of the Independent Remuneration Panel

c) Revision to the Terms of Reference to the Petitions Committee/Petitions Protocol to implement Statutory Guidance under the Local Democracy, Economic Development and Construction Act 2009

4.0 Legal Implications

The Legal Implications are stated in Paragraph 2 of this report.

5.0 Financial Implications

The cost of Stewart Dobson's report is £5,200 which has been met from the Legal services budget. The costs of external support in the drafting of the revised Constitution are expected to be approximately £300 per day. It is anticipated this work be completed in 50 days at a maximum overall cost of £15,000. These costs will also be met from the Legal services budget.

[GE/15072010/Q]

6.0 Equalities Implications

The Constitution is an essential part of the Council's Corporate Governance Framework, and in so being plays a crucial role in ensuring that the Council fulfils its equal responsibilities.

7.0 Environmental Implications

There are no direct environmental implications arising from this report.

Schedule of Background Papers

The Constitution May 10
Minutes of Constitution Review Group
File Ref – GP30/21 held by Customer & Shared Service – Legal Services
Report to Standard's Committee – 26 April 2010

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WOLVERHAMPTON CITY COUNCIL

A REVIEW OF THE COUNCIL'S CONSTITUTION

A report prepared by Stewart Dobson

INTRODUCTION

1. Towards the end of 2009, I was approached by Sue Kembrey to carry out a high level review of the Council's Constitution. Following a meeting with Sue and Pat Main, it was agreed that the objectives of my review would be to identify those parts of the Constitution which appeared to be in need of some re-consideration and then to suggest various options for change. We agreed that the review would be "high level" in the sense that, whilst I might well suggest that particular parts of the Constitution should be re-drafted, I would not at this stage be expected to undertake the detailed re-drafting.

2. By way of introduction, I worked as an "in house" solicitor for a number of local authorities (Nottingham, Stockport & Birmingham) over a period of more than 32 years. I worked for Birmingham between 1989 and 2002, mainly as their Director of Legal Services but also, for a year or so prior to retirement, as their Acting Chief Executive. I was closely involved, in various ways, with the introduction of new executive arrangements under the Local Government Act 2000. For example, I was a member of the team responsible for drafting the model constitutions which accompanied the Government's guidance on the 2000 Act and upon which the great majority of local authority constitutions are based. I now work as a consultant. In this capacity, I have advised several local authorities on their constitutional arrangements.

3. It was also agreed with Sue Kembrey and Pat Main that it would be very important for me to meet, at an early stage in my review, with a number of members and officers so that I could receive, at first hand, a range of views about the operation of the Constitution in practice and, at the same time, pick up any specific areas of concern and suggestions for change.

4. Over the course of 3 days during January 2010, I had individual meetings with—

- Cllr Neville Patten, Leader of the Council
- Cllr Wendy Thompson, Portfolio Holder for Resources, Governance & Support Services
- Cllr Roger Lawrence, Labour Group Leader
- Cllr Michael Heap, Liberal Democrat Group Leader
- Steve Boyes, Interim Chief Executive
- Roy Lockwood, Director for Children & Young People
- Sarah Norman, Director for Adults & Community

- Richard Hill, Director for Customer & Shared Services
- Sue Kembrey, Chief Legal Officer
- Pat Main, Mark Taylor, Brian Burgess & David Johnston (from Finance)
- Anne Dokov, Chief Human Resources Officer
- Fiona Davis, Mike Webb & Philip Devonald (from Legal Services)
- Rodger Mann, Head of Scrutiny & Democratic Support
- Paul Tedstone, Democratic Services Manager

5. On the basis of what I was told at these meetings, together with my own study of the Constitution, I have identified a number of issues, relating to how the Constitution is currently drafted or how it currently operates in practice or how it is currently perceived, which seem to me to be worthy of comment.

6. The issues in question are dealt with, in this report, under the following 5 headings—

7. I have set out, under each of the above headings, my understanding and analysis of the issue in question (informed by the comments which were made to me at the meetings) and I have then put forward various suggestions as to actions which might be considered in order to address each issue.

AWARENESS OF THE CONSTITUTION

8. Many of the people with whom I met expressed concern to me about what they saw as a seriously low level of awareness, amongst both members and officers, of the provisions of the Constitution. This was the case, or so I was told, because the current Constitution was *"difficult to follow"*, *"far too large"* and generally *"not user friendly".* It was suggested to me that it needed to be *"completely re-written in clearer and plainer language"* if it was to stand any chance of being seen as *"a useful reference work".*

9. Some people also told me that, even in situations where everyone was well aware of what the Constitution provided, there was a tendency to regard compliance with the provisions of the Constitution as being *"merely optional"*. In other words, the problem did not just involve a lack of awareness of the Constitution. It could also, or so I was told, involve a lack of respect for it.

10. I suspect that the main underlying issue here is how the Constitution is generally perceived across the Council and more particularly, how much value and importance is attached to it. In other words, whether it is seen as serving an important and relevant purpose on behalf of the whole Council or (at the other extreme) whether it is seen simply as something which every local

authority has to have, but which is only of any real interest to the Council's lawyers and Democratic Services staff.

11. The objective here, as I see it, is that the Constitution should be seen as a document--

- which is a "living" document—i.e. not something which is set in stone for all time, but something which is kept under regular review and which the Council is willing to adjust or clarify in the light of new or changing circumstances;

- which is "owned" by the whole Council—i.e. not something which is under the control of the Executive or any other particular part of the Council, but rather something in which the whole Council has a genuine interest; and

- which serves a valuable and relevant purpose by striking a fair balance between the interests of the various groups within the Council—e.g. between the Executive and the rest of the Council, between the largest political group and the smaller groups, between frontbenchers and backbenchers and between members and officers.

12. It probably goes without saying that the task of changing perceptions of the Constitution, and of raising the general level of awareness of what the Constitution provides, is not something which can be achieved overnight. On the other hand, it seems to me this year, during which the Constitution will in any event have to be amended (in order to comply with the requirements of the 2007 Act regarding the new forms of Executive), provides an important opportunity to, as it were, "re-launch" the Constitution. This could perhaps involve putting together a special programme of training sessions for groups of members and senior officers, which would provide the opportunity not only to draw attention to and explain the "new" features of the Constitution, but also to raise the general level of awareness and to influence perceptions.

13, As regards the comments made to me about the current Constitution being *"difficult to follow"* and *"far too large"* etc, I have to make the point that, given the amount of detail which has to be included in any local authority's Constitution, it is inevitable that the Constitution will always be a large and complex document. However, this is not to deny that there are steps which could be taken to improve its general intelligibility. For example, although the current version follows for the main part the standard form adopted by virtually all local authorities, I have noted that, perhaps because of how it has been amended over the years, there are now inconsistencies within the document as to how various matters are expressed. I am sure therefore that there is a case for undertaking a general "editing" task—i.e. going through the document from start to finish with a view to ensuring that matters are expressed in a clear and consistent form.

14. Another step which the Council might wish to take would be to prepare a short and simple guide to the Constitution. I know that a number of other local

authorities have produced such guides, with some success. They normally run to no more than 6 or so pages, but they can serve a useful purpose in explaining, in plain language, the main features of the Constitution and how it is structured. By so doing, they can help the reader to identify those parts of the Constitution which need to be consulted if more detail is required (and thereby save the time and effort involved in searching through the whole of the main document in order to find the relevant parts). They can also contain useful information about, for example, who to approach if advice on the interpretation of specific parts of the Constitution is required and about the arrangements for review.

15. **My suggestions under this heading are therefore that consideration should be given to—**

- **arranging a "re-launch" of the Constitution later this year, as soon as it has been amended to comply with the 2007 Act, by way of a special programme of training sessions for members and senior officers;**

- **arranging for the whole of the Constitution to be "edited" so as to improve the clarity and consistency of the document; and**

- **producing a short and simple guide to the Constitution.**

SCRUTINY AND CALL IN

16. So far as my meetings in January were concerned, this proved without doubt to be the most commonly raised issue. Indeed, I would estimate that discussion of this issue took up at least 75% of all the time at these meetings.

17. Some of the main concerns which were raised with me were—

- that the call in power was used to excess and that in many cases, the stated reasons for call in were simply to obtain more information about the matter in question;

- that duplication of consideration within the Scrutiny structure was quite common, in the sense that the same matter would often be considered not only by the relevant Scrutiny Panel, but also by the Scrutiny Board;

- that there was no incentive for the Executive to opt for "pre decision scrutiny", because there was no guarantee that the matter in question (despite having gone though a pre decision scrutiny process) would not then be called in for post decision scrutiny;

- that the scrutiny process tended in practice to be open ended (or even never ending), in the sense that the Scrutiny body concerned would be reluctant to arrive at any conclusion and would often just call for more and more reports; and

- that there was some overlap between the remits of the 6 Scrutiny Panels, with the result that there was uncertainty about which Panel should consider a particular matter or (more likely) that the matter in question finished up being considered by more than one Panel.

18. I should also record that, during my own study of the Scrutiny provisions within the Constitution, I took particular note of—

- the provision, at Part 4/45 of the Constitution, which allows the call in powers of the (5 member) Call In Group to be exercised by any one member of that Group. My understanding, from the meetings, is that call ins are in practice normally decided upon in this way—i.e. by an individual member of the Group. In my experience, it is unusual for this type of power to be exercisable by a single member;

- the provision, at Part 4/46, which states in effect that, in order to call in a decision of the Executive (i.e. the Cabinet), notice of the call in has to be given either <u>before</u> the Cabinet has actually taken the decision in question or, at the latest, immediately afterwards. This is certainly a very unusual provision. In my experience, it is unprecedented; and

- the absence of any "criteria for call in" or equivalent. In other words, there is no guidance from the Council within the Constitution as to the circumstances in which the Council would expect, or would not expect, the call in power to be exercised.

<u>The high volume of call ins</u>

19. Average numbers of 5 or 6 call ins every month were quoted to me at the meetings. If these numbers are correct, then this certainly represents a high volume. Arising from my discussions with members and officers about why this is so, I have gained the impression that a major contributing factor is the problem with which the majority of local authorities have struggled since the introduction of Leader & Cabinet government, namely the problem of how to keep members who are outside the Cabinet (and in particular, opposition group members) properly informed and involved. The fact that, according to the stated reasons, so many of these call ins appear to have been prompted simply by a wish to obtain more information about the matter in question has obviously served to reinforce this impression.

20. Although, as I have said above, the problem of how to keep non Cabinet members informed and involved is certainly not unique to Wolverhampton, it is perhaps significant that the City Council has not so far adopted some of the measures (to address this problem) which have been adopted by many other authorities.

21. Two particular measures which I have in mind, and which I know have been adopted with some success by other authorities, are—

- allowing a small number of opposition group members (e.g. the opposition group leaders) to participate in Cabinet meetings, in the sense of receiving all the papers and being able to speak, but not of course to vote, at the meetings; and

- creating support or advisory teams for each Cabinet member, made up of a small number of members (say, 5 or 6), including the appropriate spokespersons of the opposition groups. The expectation with this type of arrangement is that the Cabinet member will hold regular, but informal, meetings with the members of the team so as to brief them on issues and also (possibly) to use them as a form of "sounding board".

22. Although I would certainly not suggest that the above measures should be seen as a panacea, I know from experience elsewhere that they have been reasonably effective in helping to keep non Cabinet members more involved and better informed and that this has been to the general benefit of the governance of the local authority. I would certainly suggest that the City Council should give some thought to adopting one or other (or both) of these measures.

The Scrutiny structure

23. The current structure, as set out at Part 2/9 and comprising a Scrutiny Board and 6 "specialist" Scrutiny Panels, appeared to me on first sight to be a fairly normal structure. My assumption at this time was that matters falling within the remit of one of the Panels would be considered (exclusively) by that Panel and that the Scrutiny Board would focus its attention on co-ordinating the work of the Panels and on dealing with a limited number of genuinely cross Council issues, such as the Council's Budget. However, I was told at the meetings that this is not how the structure currently operates in practice.

24. Rather, as I understand it, the prevailing practice is that all Executive decisions which are called in are then considered by the Scrutiny Board and that this happens irrespective of whether the matter in question falls within the remit of one of the Panels or indeed irrespective of whether the matter has already been considered by one of the Panels. This is apparently what can lead to the problem of "duplication of consideration" which was raised with me.

25. Another issue here concerns the fact that, contrary to what I had initially assumed, the membership of the Scrutiny Board is not made up of the Chairs and leading members of the 6 Panels. Indeed, as I understand it, there are currently some Panel Chairs who are not members of the Board. The effect of this arrangement is of course that there is no guarantee of any "continuity" of consideration (of the same matter) between the Panel and the Board—i.e. because different sets of members will be involved.

26. The Council is of course free to structure its scrutiny arrangements as it thinks fit and there is no such thing as a "right" or "wrong" structure. I am however left with the impression that, as matters currently stand, the Council

has a structure which no longer operates in the manner which was, I imagine, originally intended and that this is resulting in some unhelpful duplication and inefficiency. In this situation, I think it would be sensible for the Council to take a fresh look at the structure. This may involve making a choice between (a) operating the current structure in the manner which was, I imagine, first intended (i.e. by allowing matters which fall within the remit of a Panel to be considered exclusively by that Panel and by arranging the membership of the Scrutiny Board to include, at least, the Chairs of all the Panels) or (b) adopting a different and simpler structure, with fewer Panels, and continuing with the practice of the Board functioning, in effect, as an "all purpose" scrutiny body. As part of the same exercise, it would be sensible to review the remits of the individual Scrutiny Panels so as to ensure that they remain relevant and that there is no overlap.

Some criteria for call in

27. I think that it is always good practice for a Constitution to contain some guidance as to how the Council expects the call in power to be exercised. This is commonly achieved by the Constitution (a) setting out some criteria for call in and (b) laying down a procedure whereby the "validity" of any call in has to be judged against those criteria. Comparing this with what the current Constitution provides, there is already a requirement, at Part 4/46, to give reasons for any call in, but aside from a sentence saying *"It is anticipated that call in will be exercised rarely as it will delay implementation of the decision"*, there are no criteria against which the reasonableness or otherwise of any call in stands to be judged.

28. The form and substance of any criteria for call in are of course matters for the Council to determine. However, looking across at what other authorities have done, a commonly adopted approach is for the Constitution to make it clear that the Council will not expect an Executive decision to be called in unless there are grounds for believing (for example)—

- that the decision has been taken on the basis of incomplete/out of date information or without proper consultation; or
- that the decision appears to be in conflict with approved policy or with recommendations previously made by a scrutiny body (and accepted by the Executive); or
- that, in making the decision, the Executive appears to have overlooked some material consideration; or
- that the decision is likely to generate particular controversy amongst those who will be affected by it (and that this has not been appreciated by the Executive).

29. As will be understood from the above examples, the objective of such criteria is essentially to try and define the circumstances in which there may be good reason to "question" a decision taken by the Executive and where it may well be that a scrutiny body can help to "improve" the decision following use of the call in power. This is of course entirely consistent with the objective of scrutiny bodies "adding value" to the Council's overall governance. In any

event, I would suggest that consideration should be given to adopting some criteria of this type.

30. Following on from the above, I think that it is also good practice for it to be made clear that where an Executive decision has been called in, the scrutiny body should then focus its attention on the particular issue which has given rise to the call in. For example, if a decision has been called in on account of a concern about the adequacy of the Executive's consultation, then that is the particular issue upon which the scrutiny body should concentrate and about which the scrutiny body should seek some explanation or assurance from the Executive. I would not normally expect the scrutiny body to spend time on examining, or calling for further information about, other (unrelated) aspects of the decision.

Pre decision scrutiny

31. In my discussions about the current scrutiny arrangements, everyone seemed to be in favour of "pre decision scrutiny"—i.e. the practice of the Executive referring a matter to the relevant scrutiny body, for consideration and comment, in advance of the Executive making any decision. I have no details of how frequently this practice is adopted, but I can readily understand why it seems to attract such widespread support. After all, if a scrutiny body is to contribute to the Executive's thinking on any matter, there is surely more likelihood of this happening before the Executive has arrived at a decision, as opposed to afterwards.

32. It would seem appropriate therefore that the Constitution should, by one means or another, encourage the Executive to adopt this particular practice. I was however told that there was currently no such encouragement because even where a matter had been through such a process, and even where the Executive had then taken the scrutiny body's comments and suggestions into account (in making its decision), there was no assurance that the decision would not then be called in and subjected to a further scrutiny process.

33. On the basis of what I have been told, this would appear to be somewhat perverse. If the Council wanted to "correct" this situation, then the simplest way would probably be to include, within the criteria for call in, a provision to the effect that the Council would not expect a decision which has been subject to "pre decision scrutiny" (and where the Executive has then taken the views of the scrutiny body into account) to be called in unless, in the meantime, new or additional information relating to the matter in question has come to light.

The call in process

34. Referring back to the points about the current Constitution which are noted in Para. 18 above, I would suggest that further thought should be given to the provision which currently allows a single member to determine that a particular Executive decision will be called in. This seems to me to be wrong in principle. I would suggest that this power should only be exercisable either

by a properly constituted body (such as the Call In Group) or failing that, by a number of members (say, 3 or 4) acting together.

35. Equally, I would suggest that further thought should be given to the very unusual provision which requires "notice of a call in" to be given at such an early stage in the process—i.e. before the decision has been taken or, at the latest, immediately after it has been taken. Aside from the issue of whether this provision is actually consistent with the terms of the 2000 Act (which refers to call in applying to decisions "made but not implemented"), I struggle to see how such an early deadline can be justified. I also wonder whether this early deadline and the very limited window of opportunity which it offers may actually work in practice, somewhat perversely, to increase the number of call ins. In any event, I would suggest that, in line with the practice of most local authorities, a new deadline of a few working days after the Cabinet decision has been officially recorded should be adopted.

36. **In summary, my suggestions, under this heading of "Scrutiny and Call In", are that consideration should be given to—**

- **adopting one or other (or both) of the measures described in Para. 21 above, relating to attendance at Cabinet meetings and advisory teams for Cabinet members;**

- **reviewing the Scrutiny structure, taking account of the comments made in Paras. 23 to 26 above;**

- **adopting some appropriate "criteria for call in", including one dealing with the situation where a decision has been through a pre decision scrutiny process (see Paras. 27 to 33 above); and**

- **amending the two aspects of the current call in process which are mentioned in Paras. 34 & 35 above.**

THE TRAFFIC LIGHT SYSTEM

37. I have to report that opinions were divided on this issue. A (narrow) majority of the members and officers with whom I met expressed the view that the system was a helpful, and well embedded, feature of the Constitution and that it should be retained. However, others were of the view that it served no useful purpose and that it should be done away with.

38. For my own part, my initial reaction was (a) that it was another unusual feature and (b) that it appeared, at first sight, to offer a very clear and easily recognisable means of distinguishing between different types of decisions. I must however say that, on closer examination, I began to have some doubts. This was, almost entirely, because the Constitution did not appear to provide a clear definition of GREEN decisions. The only definition which I have been able to find (or to which my attention has been drawn) is the one at Part 4/35. This states that a GREEN decision is one which is made by *"a Designated Officer in consultation with a member of the Executive"*. Whilst this explains

the process by which such a decision is taken, it does not appear to throw any light on the types of decisions (e.g. by reference to their value or importance) which can properly be taken by this process.

39. This apparent uncertainty about the nature of GREEN decisions was very much confirmed by my discussions with members and officers. Indeed, it was suggested to me by several people that it was no more than "custom and practice" which determined which types of Executive decisions were in fact taken via the GREEN process.

40. Relating the traffic light system to my own analysis of the different types of Executive decision, my analysis is as below—

- there are a few Executive decisions which, because they conflict in some way with the approved Budget or Policy Framework, cannot be taken by the Executive without first obtaining clearance from the full Council. This category appears to equate to RED decisions under the traffic light system. Such decisions, because they can only be made with the "blessing" of the full Council, are clearly not susceptible to call in;

- there is then the (larger) category of Executive decisions which, under the approved delegation scheme, fall to be taken by the Cabinet or a Cabinet Panel. This category appears to equate to AMBER decisions under the traffic light system. All such decisions must be susceptible to call in; and

- this leaves the (even larger) category of Executive decisions which, under the approved delegation scheme, fall to be taken by named officers. Such decisions are often referred to as "operational decisions" and most local authority constitutions provide, in some way, that such decisions should not be susceptible to call in. However, it goes without saying that this category is very much broader than GREEN decisions under the traffic light system--the vast majority of such decisions will in practice be taken by officers without any consultation with a member of the Executive.

41. Although the definitions of RED and AMBER decisions appear therefore to match my own analysis, the definition of GREEN decisions is still unclear. I have to say that the only sense which I can make of the GREEN category is that it may originally have been created in order—

- to recognise that, in certain circumstances, it would be appropriate for an officer to consult with the relevant Cabinet member before making a particular operational decision;

- to provide that, when this happened, the decision (and the associated consultation) should be formally reported for information to a member body. This is presumably why there is the provision, at Part 4/37, for

all GREEN decisions to be reported, in the form of a schedule, to the Resources Cabinet Panel; and

- to make it clear that the mere fact that there had been consultation with a Cabinet member, before the decision was taken, did not alter the basic status of the decision—i.e. it remained an "operational" decision and as such, it should not be susceptible to call in. This is presumably why the Constitution provides, at Part 4/37, that GREEN decisions can be implemented immediately and also, at Part 4/45, that any scrutiny of GREEN decisions can only take place after implementation. In other words, GREEN decisions cannot be called in as such.

42. I would offer two further comments about the GREEN decision making route. The first is simply to make the point that it was generally envisaged, when new executive arrangements were introduced by the 2000 Act, that the practice of decisions being made by an officer "in consultation with" a member (which was widespread under the former committee system) would become far less common on account of the new opportunity under the 2000 Act for Cabinet members to be empowered to make decisions on their own. The practice had also been widely criticised on the grounds that the accountability for such decisions (between the officer and the member) was blurred. It will be remembered that one of the stated objectives of the new arrangements under the 2000 Act was to strengthen accountability.

43. My second comment also relates to accountability and arises from some of the meetings. In discussing the GREEN decision making route with some officers and members, I was concerned to note that there seemed to be some uncertainty about the respective roles of the officer and the member when a decision was taken via this route. In addition, when I was shown a copy of the standard form which is used to record GREEN decisions, it seemed to me that this did not help because it simply contained two spaces for signature and did not attempt to identify the respective roles.

44. I think that it is clear, as a matter of law, that the sole decision maker in this type of situation is the officer and that the Cabinet member is no more than a consultee. It follows that it will be the officer who will be accountable for the decision and any consequences which may flow from it. It is obviously important that this should be clearly understood by all those involved in the process.

45. **My suggestions under this heading, which assume that the traffic light system will in fact be retained, are that consideration should be given to—**

- **including within the Constitution a clear definition of GREEN decisions (if my understanding as set out in Para. 41 above is correct, the definition could perhaps be based upon the contents of this paragraph); and**

- **amending the standard form which is used to record GREEN decisions so as to clarify the respective roles of the officer and the Cabinet member.**

OTHER ISSUES

46. In this final section of the report, I have briefly noted a number of other issues which arose from my meetings with members and officers. These related to—

- **Meetings of the full Council**—a couple of people raised this subject with me and expressed concern that, in the post 2000 Act world, these meetings had lost much of their purpose. This is of course an issue with which many local authorities have struggled (and are continuing to struggle). It is a large subject on its own and one which may well merit a separate focused study. The only comment which I would offer at this stage, based on my experience of working with several authorities on this issue, is that it is in my opinion essential that authorities should be willing to consider changing the format of their Council meetings so as to reflect their changed role. A separate concern which was raised with me was about the standards of conduct at full Council meetings.

- **Financial Procedure Rules**—Pat Main and her staff have drafted a revised set of these Rules, which form part of the Constitution, and I have had the opportunity to comment upon these separately. I am in no doubt that the revised Rules are clearer than their predecessors.

- **A standard template for reports**—a number of people suggested that there would be advantage in having such a template, principally so as to ensure that all relevant considerations and implications are included within reports. Whilst care needs to be taken to ensure that the chosen template is not so inflexible that it creates its own problems, I would support this suggestion. Many other local authorities already use such templates.

- **The financial definition of "key decisions"**—a number of people were of the view that the current financial definition (of expenditure or savings in excess of £200K, as set out at Part 2/24) was now too low and therefore included too many decisions. I know that Pat Main is already looking at this issue.

2 March 2010 **Stewart Dobson**
