

# TONBRIDGE & MALLING BOROUGH COUNCIL

## COUNCIL

17 February 2015

### Report of the Director of Central Services

#### Part 1- Public

#### Matters For Decision

#### 1 CHANGES TO CONSTITUTION

**This report sets out proposals for re-alignment of responsibilities relating to corporate governance and changes to the Constitution to reflect changes in working practises relating to procurement and delivery of summonses for Council meetings.**

#### 1.1 Introduction – Corporate Governance

- 1.1.1 Committee responsibility for overseeing Corporate Governance and the underlying supporting documentation has developed piecemeal as various requirements have been introduced to comply with best practice. For example, when the Benefit Fraud Section was required to report on performance, an annual business plan was produced which has remained the responsibility of the Finance, Innovation and Property Advisory Board.
- 1.1.2 Various other supporting documents are required to be considered by Audit Committee, General Purposes Committee, Cabinet and Council before being adopted. As a result the review of strategies and codes supporting Corporate Governance can take a number of different routes and take an extended amount of time to reach final approval.
- 1.1.3 These differences in responsibilities were due to the fact that they were introduced prior to the formation of the Audit Committee and responsibility did not change when this Committee was formed.

#### 1.2 CIPFA Guidance

- 1.2.1 The most recent guidance issued by CIPFA on the role of the Audit Committee is entitled “Audit Committees – Practical Guidance for Local Authorities and Police 2013. The core principles remain the same as previous guidance but there is a revised position statement: -

- “The purpose of an audit committee is to provide to those charged with governance independent assurance on the adequacy of the risk management framework, the internal control environment and the integrity

of the financial reporting and annual governance processes. By overseeing internal and external audit it makes an important contribution to ensuring that effective assurance arrangements are in place.”

1.2.2 There has also been an additional core function added:-

- “Effectiveness of the control environment, including arrangements for value for money and countering fraud”

1.2.3 The guidance also identifies that an Audit Committee should seek to add value to the organisation and this is demonstrated by the following: -

- The influential audit committee supports: -
- Good governance and decision making
- Effective risk management
- Improving value for money
- Achievement of goals
- Improving public reporting and accountability
- Embedding ethical values and countering fraud
- Effective audit and assurance
- Effective internal controls

### **1.3 Proposed Way Forward**

1.3.1 In line with the guidance it is appropriate to consider changing the constitution to give the Audit Committee overall responsibility for Corporate Governance matters and supporting documents by carrying out the annual reviews and proposing endorsement by Council via Cabinet.

1.3.2 If agreed these changes would ensure compliance with the new CIPFA guidance as well as streamline the process for reviewing Corporate Governance documentation. All of these documents would require formal approval by Council via Cabinet ensuring that the democratic process is intact.

1.3.3 These changes have already been considered by Management Team and were given approval.

## **1.4 Current position on Contracts Procedure Rules (“CPR”):**

- 1.4.1 The Contract Procedure Rules are contained in part 4 of the Constitution and govern the procedures and working practises which must be followed by officers when letting Council contracts.
- 1.4.2 Contract Procedure Rule 7 sets out the financial thresholds applying to different procurement procedures for the purchase of supplies, service or carrying out works. The Council’s current thresholds are set at £5,000 for competitive quotes and £75,000 for tenders. These thresholds have remained in place now for some years and it is recommended that the tendering threshold is increased.

## **1.5 The Proposed Changes to CPR:**

- 1.5.1 It is proposed that there be a single quote for purchases up to but not including £5,000 for service, supply and works contracts, at least 3 written quotes for such purchases between £5,000 and up to but not including £100,000 and at least three written tenders for such purchases between £100,000 and up to but not including the current EU threshold for supplies and service procurement. This will result in amendments to the table setting out financial thresholds for procurement procedure contained in CPR 7.4
- 1.5.2 In order to stimulate the local economy and to improve the sustainability of our contracts it is suggested that for competitive quotes and written tenders up to but not including the EU threshold for supplies/ services contracts for all types of purchase that at least one of the quotes/tenders should be from a local supplier where this is practicable. For these purposes a supplier will be deemed to be local where they have their principal place of business or an office in Kent. This will result in an amendment to CPR 7.4.
- 1.5.3 A minor change is proposed to the threshold in rule 8.3 for execution of Deeds from £75k to £100k to mirror the tendering threshold.
- 1.5.4 If the above changes are agreed consequential amendments will be required to the following rules:
- 1.5.5 CPR 11.1 to refer to the receipt of tenders at £100k or over instead of £75K:
- 1.5.6 CPR 13.7 to refer to waivers for contracts valued at £100k or over being reported to the next meeting of the Executive or Council instead of £75k
- 1.5.7 For consistency and ease of use of the CPR it is also suggested that the threshold for contract extensions in rule 14.2 and 14.3 be increased from £75k to £100k and also that the monitoring and reporting requirements for let contracts in rule 14.7 are also increased from £75k to £100k and that the threshold for the inclusion of standard contract clauses in rule 3.2 be amended from £75k to £100,000.
- 1.5.8 The changes proposed in this report make these rules more workable in practise.

## **1.6 Electronic communication of summonses**

**1.7** Members will be aware that amendments have recently been made to the Local Government Act 1972 to expressly permit the use of electronic communications in the sending of summonses for meetings. Under the new provisions, Members may receive summonses electronically where they have given their consent to it being sent by this method.

**1.7.1** In order to ensure that the Constitution reflects the changes to the 1972 Act, it is proposed to amend paragraph 4 of Part 1 of the Council and Committee Procedure Rules as follows

(a) Amend paragraph 4.3 so that it now reads ‘At least five clear days before a meeting, the Chief Executive will send a summons to every member of the Council by an appropriate method in accordance with the provisions of the Local Government Act 1972’

(b) Delete paragraph 4.5 (which currently reads ‘The Chief Executive may agree with a member to send the summons and accompanying reports to him/ her in such format, to such address and by such other means as may be agreed’).

## **1.8 Legal Implications**

**1.8.1** The CIPFA Auditing Standards are recognised as best practice by the Accounts and Audit Regulations and no other legal issues have been identified.

**1.8.2** Articles 15 in part 2 of the Constitution sets out the procedure for review and revision of the Constitution. Changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council’s Monitoring Officer.

## **1.9 Financial and Value for Money Considerations**

**1.9.1** No significant financial considerations have been identified although these recommendations would streamline the Corporate Governance approval process and improve working practises in respect of procurement.

## **1.10 Risk Assessment**

**1.10.1** No risk issues have been identified.

## **1.11 Equality Impact Assessment**

**1.11.1** The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## 1.12 Recommendations

- 1.12.1 Members are asked to authorise the Monitoring Officer to make the following amendments to the constitution -
- 1.12.2 Deletion of the responsibilities of General Purposes Committee in Part 3 – Page 6 “Audit: Overview of internal and external audit”.
- 1.12.3 Revision of Part 3 - page 9 the function of the Audit Committee to be changed to reflect the position statement of CIPFA as set out in paragraph 1.2.1. of this report.
- 1.12.4 Deletion of Part 3 – Page 32 paragraph 7 relating to General Purposes Committee “To consider initially general and specific audit reports from the Audit Commission, the District Auditor and the Director of Finance, to make recommendations to Council for future action and to monitor the Council’s implementation of those recommendations.” This responsibility to be transferred to the Audit Committee.
- 1.12.5 Amend Part 3 – Page 33 paragraph 1 so as to change Director of Finance’s annual report to Chief Internal Auditor’s annual report.
- 1.12.6 Amendment of Part 3 – Page 34 paragraphs 12, 13, 14 and 15 to be removed from the Corporate Governance Framework and to be included under Audit Committee responsibilities.
- 1.12.7 Under Part 3- Page 73 the reference to the Finance and Property Advisory Board responsibility for Benefit Fraud Investigation to be deleted and the core function as set out in paragraph 1.2.2 to be added to the responsibilities of the Audit Committee.
- 1.12.8 Under part 3 – page 32 delete paragraph 9 regarding the responsibility of the General Purposes Committee “To approve the Council’s statement of accounts, income and expenditure account and balance sheet.”
- 1.12.9 To amend Part 4 of the Constitution to give effect to the changes outlined in the report by amending CPR 3.2, 7.4, 8.3, 11.1, 13.7, 14.2 and 14.3 and 14.7 to change those thresholds which are currently set at £75k to refer to £100k;and
- 1.12.10 To amend rule 7.4 by changing the procedure to be used in column three for contracts valued at £5k up to but not including £75,000 to read “at least three written quotes in advance, one to be from a local supplier where possible” and also amending the procedure for contracts valued at £75k up to but not including £172,514 to read “At least three written tenders in advance following advertisement by public notice, one to be from a local supplier where possible. In addition a new note will be added to each such place to explain the meaning of local by adding “\*\*\*For these purposes a local supplier means a supplier which has its principal place of business or an office in Kent.”

1.12.11 Amend paragraph 4.3 of Part 4 of the Constitution (Council and Committee Procedure Rules) so that it reads 'At least five clear days before a meeting, the Chief Executive will send a summons to every member of the Council by an appropriate method in accordance with the provisions of the Local Government Act 1972'

1.12.12 Delete paragraph 4.5 of Part 4 (Council and Committee Procedure Rules).

Background papers:

CIPFA Auditing Standards

contact: David Buckley  
Chief Internal Auditor  
Lynn Francis  
Principal Solicitor

Adrian Stanfield  
Director of Central Services  
Monitoring Officer