

AGENDA ITEM 7(i)

EXTRACT FROM RESOURCES COMMITTEE - 24 JUNE 2004

RE9 AMENDMENTS TO FINANCIAL REGULATIONS

The Executive Manager (Finance and Asset Strategy) informed the Committee that due to the officer restructuring that was implemented on 1 June 2004 amendments to the Council's Financial Regulations were required to reflect the new titles of Executive Managers and the Executive Management Team. It was proposed that these new terms replaced the previous terms of Chief Officer and Chief Officer's Management Team where these appeared in the Financial Regulations. The Executive Manager (Finance and Asset Strategy) would now be the Council's Chief Financial Officer.

RECOMMENDED that the Council meeting on 20 July be requested to approve the changes to Financial Regulations contained in this report.

AGENDA ITEM 7(ii)

Committee: STANDARDS COMMITTEE

Date: 12 July 2004

Agenda Item No: 4

Title: GUIDANCE ON MEMBER OFFICER RELATIONSHIPS

Author: Michael Perry (01799) 510416

Summary

- 1 Members will recall being informed of the objective in the Quality of Life Plan to review the Member/Officer protocol. The protocol had in fact been reviewed (with external assistance) before the May 2003 elections. The revised protocol was recommended by this Committee to Full Council, which gave the protocol its unanimous approval.
- 2 Discussion with Members indicated that what was required was not a review of the existing protocol but supplementary guidance on Members and Officers working together on designated projects. This report is to inform Members of the nature of Member/Officer working groups and to seek its guidance on Member/Officer relationships.

Background

- 3 The Quality of Life Plan contains a large number of projects. Lead Officers have been designated to assume responsibility for these projects. It is the wish of Members that they should be more closely involved in the delivery of projects than has previously been the case. With this object in mind, the Administration have nominated Members to be assigned to the individual projects. Opposition groups have also been invited to nominate Members to these projects.
- 4 Both as a matter of law and pursuant to the current Member/Officer protocol, Officers must be politically neutral. It is suggested, therefore, that political groups which do not form part of the administration should be actively encouraged by Members and Officers to nominate members of their groups to the specific projects.
- 5 There has been a lack of clarity as to with whom the responsibility for making initial contact lays. Officers acknowledge the requirement to deliver the Quality of Life Plan. However, Members recognise that day to day service provision remains a high priority. Lead Officers, therefore, need to prioritise the various areas of work for which they are responsible balancing the needs of service delivery against the requirement to deliver the Quality of Life Plan. It is therefore, suggested that the responsibility for making initial contact

should rest with the Lead Officer. Where there are competing demands upon resources, the Lead Officer will report back to the Members assigned to the project. Members who are concerned at the rate of progress will contact the Lead Officer in the first instance. If they are not satisfied with the explanation they should refer the matter to the Executive Manager with overall responsibility for the project or (if the Lead Officer is an Executive Manager) to the Chief Executive.

- 6 It is suggested that Members and Officers designated to a project should meet at agreed intervals to discuss and monitor progress. Officers should supply designated Members with background papers relevant to the project or alternatively (if such material is bulky) inform Members where that material may be accessed. Officers should keep Members advised of any progress between meetings.
- 7 One of the prime objectives of closer Member/Officer working is that Officers should be able to gauge the views of Members in advance of preparing a report. Members assigned to projects should, therefore, act as a liaison between the Lead Officer and their political groups and in particular should report back to their groups on progress to minimise the number of enquiries Lead Officers receive from other Members and to enable Lead Officers to have an understanding of the view of the individual groups with regard to particular projects.
- 8 Under the Local Government Act 1972, a District Council operating (as Uttlesford District Council does) under alternative arrangements can only act by Full Council, through Committees or Sub Committees, through another local authority by way of a joint working arrangement or through Officers under delegated powers. Individual Members do not have any decision making powers. Further, Officers duty is to the Council as a whole and not to individual Members. Officers must report facts impartially and give the Council their personal professional advice and opinions. It is suggested that any guidance should make it clear that where there is a difference of opinion between Members assigned to a project and the Lead Officers that the recommendations (if any) in the report will be that of the Officer although the Member's views will be fairly reported.

RECOMMENDED that Members consider that guidance be given to Members and Officers regarding Member/Officer working relationships.

Background Papers: The Member/Officer Protocols of Uttlesford District Council, Bedfordshire County Council, Essex County Council, Liverpool City Council, St Helens Council, Bath and North East Somerset Council.
Discussion Paper placed before Officer/Member workshop on 17 June 2004 (copy attached)

MEMBER OFFICER PROTOCOL

An objective of the Quality of Life Plan (QLP) is to review the Member Officer Protocol. In preparing this paper regard was had to protocols approved by a number of other authorities including Bedfordshire County Council, Essex County Council, Liverpool City Council, St Helens Council and Bath and North East Somerset Council.

Uttlesford District Council reviewed its Member Officer Protocol in March 2003 with assistance from IDEA. The revised protocol was recommended by the Standards Committee and adopted by Full Council. Comparing the UDC protocol with those mentioned above the basis for the protocols is common. They all define the roles of Members and Officers in similar terms, they set out what Members and Officers can expect from each other and set out steps to be taken when Member Officer relationships break down.

The Members assigned to the task of reviewing the Member Officer Protocol (Councillors Clarke and Wilcock) are broadly supportive of the existing code but are concerned that there is an absence of clarity as to how Members and Officers should work together in small groups to achieve the objectives of the QLP. It was the view of those Members and the Executive Manager Corporate Governance that rather than amend the Protocol, guidance should be issued as to how these groups should operate. Issues of probity are clearly involved and the Standards Committee of the Council should be consulted and its advice sought. However it is suggested that Members may wish to consider the following issues:-

1. Members and Officers have been designated certain projects within the QLP. The Member Officer Protocol makes it clear that Officers are and must be politically neutral. Political groups which are not part of the administration should therefore be encouraged to nominate Members of their groups to be assigned to these projects.
2. Members have already determined that where resources create conflict between the provision of services and the QLP the provision of services will prevail. Officers will have full regard to the requirement to deliver the QLP but will be responsible for prioritising the various areas of work for which they are responsible. For this reason the initial contact for any project will usually be made by the Officer to the Members concerned. Where the requirement to deliver

services will involve delays in delivering the QLP the designated officer will report back to the Members assigned to that project. If Members are concerned at the rate of progress they will contact the lead Officer in the first instance. If they are not satisfied with the explanation they shall refer the matter to the Executive Manager with overall responsibility for the project or (if the lead Officer is an Executive Manager) to the Chief Executive.

3. Members and Officers designated to a project should meet at agreed intervals to discuss and monitor progress. Officers are responsible for keeping assigned Members informed as to any progress between meetings.
4. Members should act as a liaison between the lead Officer and their political groups, in particular to report back to the groups on progress to minimize the number of enquiries lead Officers receive from other Members and to enable the lead Officer to have an understanding of the view of their groups with regard to the project.
5. Members should recognise that any decisions which need to be taken relating to any projects are to be taken by the Council, its Committees or Officers under delegated powers and that individual Members or groups assigned to work with Officers on specific projects (unless formed as a Committee appointed by the Council or a Sub-Committee appointed by a Committee of the Council) have no decision making powers. Officers have a duty to report facts impartially and to put their own professional opinions and advice to the Council and its Committees. Where there is a difference of opinion between Members assigned to a project and the lead Officer, whilst the lead Officer will report the views of the assigned Members fairly and impartially (and members may of course speak at meetings where such reports are considered) the recommendation will, in the case of disagreement, be that of the Officer.

Members are invited to comment upon the above to enable a report to be prepared for consideration by the Standards Committee with a view to that Committee issuing guidance to the Council

Michael Perry
Executive Manager Corporate Governance

Committee: Council
Date: 20 July 2004
Agenda Item No: 8
Title: DELEGATION SCHEME AND PROCEDURES FOR FINANCE,
CONTRACTS AND LEGAL MATTERS
Author: Mick Purkiss (01799) 510430

Summary

- 1 This report recommends some minor changes to the Council's Delegation Scheme and Procedures for Finance Contracts and Legal Matters which are required as a consequence of the management restructuring.

Background

- 2 The new management structure became effective on 1 June 2004. After that date the Corporate Management Team was superCeded by the Executive Management Team and the terms "Directors" and "Heads of Service" became redundant.
- 3 However, the Council's Delegation Scheme – Pages B1 – B26 in the Members' Handbook and the Procedures for Finance, Contracts and Legal Matters – page E48 contain references to the previous terms.
- 4 Members are, therefore, requested to agree to the deletion of these and their substitution by the term "Executive Managers" where appropriate and on Page B16 the substitution of the terms "Head of Legal Services" and "Executive Manager of Development Control" by "Executive Manager Corporate Governance" and "Executive Manage Development Services" respectively.
- 5 A further change is recommended on Page E48 relating to the Procedures for Finance, Contracts and Legal matters where there are a number of references to "The Head of Legal Services" which should now read "Executive Manager Corporate Governance".
- 6 Also in this section there is the following reference to the sealing of documents

“(d) The seal shall be attested by any two (either Member or Officer) of the following persons present at the sealing, namely the Chairman or Vice Chairman of the Council or other member of the Council, the Chief Executive of the Council, the Head of Legal Services, or any other officer temporarily designated for this purpose by the Chief Executive.”

In this instance it is suggested that it would be prudent to amend the reference to "Head of Legal Services" to "any Executive Manager".

A copy of the relevant pages, revised as suggested, has been placed in the Members' Room and copies can be obtained from the Democratic Services Manager.

RECOMMENDED that the suggested changes to the Delegation Scheme and Procedures for Finance, Contracts and Legal Matters be adopted.

Background Papers: Revised Delegation Scheme

Committee: Council
Date: 20 July 2004
Agenda Item No: 9
Title: PROCUREMENT STRATEGY
Author: Ian Orton (01799) 510402

Summary

- 1 This report recommends that Council adopt a new Procurement Strategy that will be linked to the savings, both efficiency and in cash, from membership of the Essex Marketplace and via on-line ordering of goods and services.

Background

- 2 Procurement is the process of obtaining supplies, services and construction works spanning the life cycle of the asset or life cycle of the asset or service contract. 'Life cycle' is defined as being from the initial definition of the business need through to the end of the useful life of the asset or service contract. Procurement means much more than simply buying, purchasing or commissioning. It is about securing services and products that best meet the needs of users and the local community in the broadest sense. To deliver sound procurement the Council requires a common framework within which all procurements are to be managed.
- 3 The Procurement Task Group, which consists of Cllr Pedder (Chair), Morson and Schneider met several times during 2003/04 to examine options that produce the best procurement strategy for Uttlesford. As part of this process Council agreed in July 2003 that Uttlesford DC would join the Essex Procurement Agency. This allowed the authority to draw on the expertise of other authorities to help develop a draft strategy. A cornerstone of the

strategy is to introduce electronic procurement by 31 March 2005. As part of this process it was agreed by Resources Committee on 20 November 2003 that the Council could join the Essex Marketplace online procurement agency for a three- year period. The subscriptions to Marketplace are linked to proven cash savings within the authority. The IDeA and CPA as examples of how we are an improving authority viewed membership of Essex Procurement and Essex Marketplace.

- 4 The authority introduced an interim procurement strategy in November 2003 to meet the needs of the IDeA Peer Review and the CPA checklist. But Uttlesford now needs to develop a new strategy to meet the needs of the requirements of the *Byatt Report* “ Delivering Better Services to Citizens “ and to ensure that the authority is obtaining the maximum return on all spending. The key themes of the strategy are:
 - *Adopting the life cycle approach to the assets or contracts of the Council*
 - *Applying effective and up to date procurement procedures*
 - *Ensuring procurement helps deliver the nine corporate themes from the Quality of Life Plan.*
 - *Monitoring procurement processes on a regular basis to ensure efficiencies are on going*

- 5 The Council has traditionally adopted a life cycle towards assets and in areas like the PFI the authority has been ground breaking. To ensure that effective and up to date procurement procedures are in place the authority has been using the expertise of Essex Marketplace introduce the latest thinking. To ensure that all staff are aware of the changes that electronic purchasing will bring each executive unit has appointed a Procurement Champion. These Champions form the Procurement Task Force who are assisting with the transfer of data from existing files into Marketplace Internet format. This will allow electronic ordering and the monitoring of the procurement process. This is linked into the new Financial Management System and during 2004/05 a combination of Essex Marketplace and the Financial Management System will ensure that the authority applies effective and up to date procurement procedures.

- 6 The remaining strand of the strategy is to ensure that new procurement produces efficiency and cash savings to help deliver the key corporate objectives of the authority. This is the most challenging part of the exercise because it requires a re-think about the way the authority procures goods and services. The authority is transferring details of the 500 or so firms, organisations and individual with which we trade onto the Essex Marketplace database and on a day-to-day basis about 100 of these firms are still being used on a regular basis. But Essex Marketplace (which is really the IDeA Marketplace) contains thousands of firms, all of which the authority can use and many of them are cheaper than our existing suppliers. The final strand of the strategy is to compare costs between firms we use at present and potential savings by changing some of our suppliers. That exercise is now under way and savings are now being identified. The Council is looking for cash savings but this needs to be balanced against speed of delivery

(particularly when we do not hold stock like we once did), quality, range of products, local suppliers etc. Comparing firms has a strong element of traditional cost benefit analysis but cost being only one element.

7 The Council is introducing a range of performance measures to ensure that new procurement strategy is delivering. These measure include:

- Utilities price comparison of gas, electricity, oil and water
- Price comparison of shopping basket of ten commonly used items
- Average minimum cost of raising an order
- Average invoice value
- Accuracy of deliveries
- Average spend per supplier
- Percentage % of invoices paid electronically

8 As Members noted at the Procurement Workshop on 17 May the Council will spend during 2004/05 in excess of £9m on staffing, £4m on supplies and services and £2.2m on premises it is essential that our new procurement strategy confirms we are obtaining value for money for all our services.

RECOMMENDED that

1 The Council agree the Procurement Strategy which is based on:

- *Adopting the life cycle approach to the assets or contracts of the Council*
- *Applying effective and up to date procurement procedures*
- *Ensuring procurement helps deliver the nine corporate themes from the Quality of Life Plan.*
- *Monitoring procurement processes on a regular basis to ensure efficiencies are on-going*

Background Papers: Procurement Task Group Files 2003/04 & 2004/05

Committee: COUNCIL

Date: 20 JULY 2004

Agenda Item No: 11

Title: LEGAL CHALLENGE TO THE GOVERNMENT WHITE PAPER ON THE FUTURE OF AVIATION

Author: MICHAEL PERRY (01799) 510416

Summary

- 1 This report is to up-date Members of progress of the application for judicial review of the Government White Paper.

Background

- 2 In April, 2004 an application for permission to seek judicial review of the Government White Paper was lodged on behalf of East Hertfordshire District Council, Essex County Council, Hertfordshire County Council, North Hertfordshire District Council and this authority. Prior to this application being lodged an application was filed by a consortium comprising the London Borough of Wandsworth, the London Borough of Hillingdon and three pressure groups including SSE. Subsequent to these applications being filed an application was lodged by Persimmon Homes dealing with the proposals at Gatwick.
- 3 As Members have previously been informed, the procedure in such cases is for papers to be placed before a Judge who determines either to grant permission, refuse permission or direct a permission hearing. It is open to the Judge to grant permission to seek judicial review on some aspects of the application but not on others. In this case the Judge has granted all claimants permission to proceed with a full application for judicial review on all of the grounds advanced by the parties.
- 4 At the time of writing this report it is known that the Court have set a directions hearing for 16 July. Members will be given a verbal update with regard to the directions at the Council Meeting. However, the court has already directed that all three applications for judicial review will be heard together and not separately. It is also known that the Government intend to seek permission at the directions hearing to delay serving its evidence until September, 2004. If that application is agreed or granted then the hearing of the judicial reviews will not take place until December.
- 5 Without seeing the Government's evidence it is difficult to predict how long the hearing will last. The original estimate was based on our application for judicial review being held alone on the basis that this would take two to three

days.

- 6 There is a common issue between the Wandsworth Consortium and ourselves, namely that of the viability of the second runway at Stansted. Other issues raised by that Consortium do not form part of the basis of our claim. The application by Persimmon Homes is upon entirely separate grounds.
- 7 It is not possible to give an accurate estimate of the likely length of the hearing without seeing the Government's evidence. Counsel's preliminary estimate is that the hearing of all three applications together is likely to take six days rather than the original estimate of two to three. This will not have the effect of doubling the original estimate as to costs. Firstly, the estimate originally obtained was on the basis that the Councils joined in our application would be represented by three Counsel, a Queen's Counsel and two junior Counsel. The authorities have taken a decision that it should only be represented by two Counsel, a senior junior and a junior Counsel. Queen's Counsel's fees represented plus over one half of the total estimate. Further, the hearing will be timetabled which means that it will not be necessary for the more senior of Counsel instructed on our behalf to be present throughout thereby resulting in a further saving. Members should also be aware that two other authorities have agreed to contribute up to a total of £15,000 towards the expenses of this action.
- 8 Whilst it is right to say that the Government's legal fees will also be higher by virtue of the hearing lasting six rather than two to three days, nevertheless it is not considered that this Council's exposure to the Government's legal costs is any greater as those costs would be spread over all three actions.

RECOMMENDED that Members note the contents of this report.

Background Papers: None.

Committee: COUNCIL

Date: 20 JULY 2004

Agenda Item No: 12

Title: JOINT REPORT OF THE CHIEF FINANCIAL OFFICER AND THE MONITORING OFFICER

Author: Phil O'Dell (01799) 510670 and Michael Perry (01799) 510416

Summary

- 1 Section 114 Local Government Finance Act 1988 imposes a statutory duty on the Chief Financial Officer to make a report to the Council if it appears to him that the authority has made a decision to incur unlawful expenditure. The Monitoring Officer has a similar duty under section 5(2) Local Government and Housing Act 1989 if there has been a contravention of any rule of law. Such reports include reporting on payments and activities which are ultra vires. The Council is required to meet to consider such reports within 21 days of the same being issued.
- 2 This report is made by both the Chief Financial Officer and the Monitoring Officer pursuant to their statutory duties. It deals with payments to an employee which are ultra vires. It has not been possible to prepare a full report at this stage as the employee concerned needs to be interviewed. It is proposed that a fully detailed report should be presented to Full Council at its next meeting on 19 October 2004.

Background

- 3 A query has recently arisen regarding the calculation of remuneration for an employee with effect from October 2002. The employee concerned had a revised remuneration package agreed that year which was approved on behalf of the Council by a senior officer. Having recently considered the position the Monitoring Officer was concerned that part of the employee's remuneration package may be ultra vires and therefore unlawful.
- 4 In the circumstances Counsel was instructed to advise the Executive Manager Human Resources and the Monitoring Officer in conference. Counsel advised that:-
 - a. The Council can pay its employees what it considers they are worth providing such payments are reasonable.

- b. Where the Council has a job evaluation scheme that scheme determines what is reasonable remuneration. However there may be circumstances where additional payments are justified, for example where additional responsibilities are added to the post holder's job description or where there is a need to pay a market supplement.
 - c. Payments which go beyond the Council's job evaluation scheme which cannot be justified by special reasons are ultra vires, i.e. unlawful.
- 5 In the circumstances of the current case the employee concerned was receiving a supplement which was not justified by special reasons. The payment of that supplement was therefore unlawful.
- 6 Counsel has further advised that where unlawful payments are made the Council has a duty to try and recover such payments. Case law indicates however that there may be a defence in some circumstances. Following interview with the employee concerned, unless the employee has agreed to repay the money, the Council will be advised as to the merits of any potential claim. The loss to the Council is in the region of £3000.00
- 7 Immediate steps have been taken to prevent further overpayments being made and the External Auditor has been informed.

Background Papers: None

Committee: COUNCIL

Date: 20 JULY 2004

Agenda Item No: 13

Title: REPORT ON THE LOCAL GOVERNMENT ASSOCIATION CONFERENCE

This report will follow at a later date.