

Council

Tuesday 3 November 2009

Item 5.2.2

Report of the Special Committee (Constitution Review)

12 October 2009

Report of Special Committee (Constitution Review)

12 October 2009

* Chairman: Councillor Melvin Cohen

* Vice-Chairman: Councillor Jean Scannell

Councillors

Jack Cohen

Richard Cornelius Mike Freer

Lynne Hillan

Alison Moore * Barry Rawlings

Alan Schneiderman

* Daniel Webb

* denotes Member present

Councillor Monroe Palmer substituted for Councillor Jack Cohen

Councillor Jim Tierney substituted for Councillor Alison Moore

Councillor Robert Rams substituted for Councillor Mike Freer

CONSTITUTION REVIEW: 2009/2010 (Report of the Director of Corporate Governance – Agenda item 5)

The Committee considered a proposed amendment to Article 14 of the Council's Constitution and Sections 10.4 – 10.7 of the Contract Procedure Rules that the Mayor, Leader and Deputy Mayor should no longer be required to counter-sign documents executed under seal.

RESOLVED TO RECOMMEND – That the Council approves the amendments to Article 14 of the Constitution and Sections 10.4 – 10.7 of the Contract Procedure Rules as set out the attached Appendix 1 (and instructs the Acting Democratic Services Manager to make the necessary changes to the Constitution).

COUNCILLOR CALL FOR ACTION (Report of the Overview & Scrutiny Office – Agenda item 6)

The Committee considered the attached report of the Overview & Scrutiny Office, proposing an amendment to the Overview & Scrutiny Procedure Rules in the Council's Constitution to ensure compliance with the provisions of Section 119 of the Local Government and Public Involvement in Health Act 2007 relating to Councillor Calls for Action.

RESOLVED TO RECOMMEND – That Council approves the amendments to the Overview & Scrutiny Procedure Rules as set out in the attached report at Appendix 2 (and instructs the Acting Democratic Services Manager to make the necessary changes to the Constitution).

APPENDIX 1

REPORT OF THE SPECIAL COMMITTEE (CONSTITUTION REVIEW) 12 October 2009

Sealing of documents

“Common Seal

The Common Seal of the Corporation shall be kept in a safe place and be secured by two different locks. The ~~Mayor~~ Democratic Services Manager shall have the custody of the key of one lock and the Head of Legal shall have the custody of the key of the other.

“Sealing and Execution of Documents

The ~~Mayor or Deputy Mayor, Leader of the Council, Chief Executive, or Deputy Chief Executive, the~~ Director of Corporate Governance, ~~the~~ Head of ~~Legal or the~~ and Democratic Services Manager shall have authority:-

- 1. to jointly affix the Common Seal ~~to and execute under Seal~~ any deed or document, subject to at least ~~one signatory being one two~~ of the above-named Officers of the Council being present and being signatories. ~~in the presence of the:-~~*

- a. ~~Mayor or the Deputy Mayor; or~~*
- b. ~~The Leader of the Council; and~~*

- 2. The Officers of the Council referred to above shall have authority to execute any deed or document not required by law to be under seal which is necessary to effect the decisions of the Council.*

~~“Members and Officers to Sign Documents Executed under Seal~~

All deeds, instruments and writings which may require the Common Seal to be affixed shall also be signed after the sealing by the:-

- 1. ~~Mayor or the Deputy Mayor; or~~*

~~Leader of the Council; and the~~

~~Chief Executive; or~~

~~Director of Corporate Governance; or~~

~~Head of Legal; or~~

~~Democratic Services Manager~~

“Interests: Where it becomes apparent to ~~an Member or Officer~~, involved in the sealing or execution of documents, that a personal and prejudicial interest exists in a matter, a declaration of the nature and existence of that interest should be made as soon as possible. The ~~Member or Officer~~ shall

not be involved in the sealing and execution of any documents where such an interest exists.

“Facsimiles of Common Seal

The following categories of documents may be authorised by a facsimile of the Common Seal of the Council and the printed names or facsimiles of ~~the two~~ signatures of ~~either the Mayor or the~~ Chief Executive or Deputy Chief Executive or Director of Corporate Governance or Democratic Services Manager or Head of Legal ~~or Director of Corporate Governance~~. The facsimiles or printed names must be authenticated by entries in the book referred to below and initialled by the Chief Executive, Deputy Chief Executive ~~the~~ Director of Corporate Governance, ~~the~~ Head of Legal or ~~the~~ Democratic Services Manager:-

1. Stock certificates and transfers;
2. grants of rights of burials;
3. superannuation fund documents.

“Record of Sealing of Documents

An entry of the sealing of every deed or document to which the Common Seal has been affixed shall be made by the Chief Executive, Deputy Chief Executive, Director of Corporate Governance, Head of Legal or ~~the~~ Democratic Services Manager in a book to be provided for the purpose”.

“Record of Signing of Documents

An entry of the signing of every deed or document not required by law to be under seal, shall be made by the Chief Executive, Deputy Chief Executive, Director of Corporate Governance, Head of Legal or Democratic Services Manager in a book to be provided for the purpose”.

AGENDA ITEM: 5.2.2 Page nos: 5 – 19**APPENDIX 2**

| | |
|----------------|---|
| Meeting | Council |
| Date | 3 November 2009 |
| Subject | Councillor Call for Action |
| Report of | Overview & Scrutiny Office |
| Summary | This report proposes an amendment to the Overview & Scrutiny Procedures Rules in the Council's Constitution to ensure compliance with the provisions of Section 119 of the Local Government and Public Involvement in Health Act 2007 relating to Councillor Calls for Action |

| | |
|--|---|
| Officer Contributors | Director of Corporate Governance, Jeff Lustig Acting Democratic Services Manager, Aysen Giritli Overview and Scrutiny Officer, Andrew Charlwood |
| Status (public or exempt) | Public |
| Wards affected | All |
| Enclosures | Appendix A – proposed amendment to Overview and Scrutiny Procedure Rules Appendix B – proposed Councillor Call for Action procedure |
| Reason for urgency / exemption from call-in (if appropriate) | N/A |

| | |
|----------------------------------|--|
| Contact for further information: | Andrew Charlwood Overview and Scrutiny Officer ☎ 020-8359-2014 andrew.charlwood@barnet.gov.uk |
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1. RECOMMENDATIONS

- 1.1 That the Council approve the amendments to the Overview and Scrutiny Procedure Rules contained within the Council's Constitution, as set out in Appendix A to this report.**

2 CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 2.1 To ensure that the Council has robust Corporate Governance arrangements, the Constitution is required to be kept under review and amended/updated periodically to be compliant with relevant legislation.**
- 2.2 The six priority outcomes set out in the 2009/10 Corporate Plan are: –**
- **A Successful City Suburb**
 - **Strong and Healthy**
 - **Promoting Independence**
 - **A Bright Future for Children and Young People**
 - **Clean, Green and Safe**
 - **More Choice, Better Value**
- 2.3 The following are also priority improvement objectives that relate to the overview and scrutiny function: –**
- **Converse with local people to increase their participation in democratic engagement**
 - **Improve Member satisfaction with the scrutiny process**

3. RELEVANT PREVIOUS DECISIONS

- 3.1 None.**

4. RISK MANAGEMENT ISSUES

- 4.1 Changes must be implemented in accordance with statutory requirements otherwise the Secretary of State has residual powers to intervene. There is, therefore, a legal, governance and reputational risk if the matter is not progressed in accordance with the statutory requirements.**
- 4.2 The Councillor Call for Action (CCfA) process could lead to the work programmes of the Overview & Scrutiny Committees and Sub-Committees being affected, increasing work pressures for Members and Officers. CCfA could also lead to inappropriate requests being submitted which will have implications for officer workloads. A CCfA procedure has been developed to manage this risk.**

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Equalities and diversity issues underpin all the Council's policies, plans and strategies. The overview and scrutiny process supports the proper assessment of equalities issues in policy development and service delivery.
- 5.2 Introducing CCfA will enhance the role of frontline councillors and provide an additional way in which local communities can utilise their elected representatives to raise their concerns with the Council.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Additional officer resources might be required when: determining whether a CCfA will be accepted or rejected; coordinating responses to CCfAs; and attending meetings where CCfAs are considered.
- 6.2 The number of CCfAs that might be submitted by Members is unknown at this stage making the resource implications unquantifiable. Officers expect that the proposed CCfA procedure (Appendix B) will ensure that only issues of genuine local concern are progressed as valid CCfAs. It is anticipated that the process will be managed within existing resources in the Democratic Services team. However, this situation should be reviewed once the CCfA process has been in operation for six months.

7. LEGAL ISSUES

- 7.1 It is a statutory requirement under Section 119 of the Local Government and Public Involvement in Health Act 2007 (which came into force on 1 April 2009) to implement these amendments to the Council's Constitution.

8. CONSTITUTIONAL POWERS

- 8.1 Part 3, Section 2 of the Constitution details the functions of the Special Committee (Constitution Review), which are "proactively to review and keep under review all aspects of the Council's Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to the Council".
- 8.2 Section 4.02, Article 4 (The Full Council) of the Constitution states that only the Council will exercise the following functions: "adopting and changing the Constitution".
- 8.3 Article 6 of the Constitution sets out the terms of reference and scope of overview and scrutiny work.
- 8.4 Specific roles and responsibilities of the overview and scrutiny committees and sub-committees are set out in the Overview and Scrutiny Procedure Rules. This report proposes that an additional section be added to those rules establishing the requirements for a Member to submit a CCfA. The proposed amendment is set out in Appendix A to this report.

- 8.5 Business Management Overview and Scrutiny Sub-Committee has within its terms of reference responsibility “to receive, consider and allocate for action if required, requests, reports and submissions from Council, the Executive, residents’ forums, community and volunteer groups, partnerships and outside bodies and other locally constituted groups and to respond to “Councillor Calls for Action” under the Local Government and Public Involvement in Health Act 2007.”
- 8.6 A more detailed CCfA process has also been devised to provide Members with detailed guidance on how CCfAs will be managed once submitted. The proposed process, set out in Appendix B, is for information only.

9. BACKGROUND INFORMATION

- 9.1 CCfA was introduced under Section 119 of the Local Government and Public Involvement in Health Act 2007 and came into force on 1 April 2009. The statutory requirement to implement CCfA applies to all Councils in England (with the exception of Town / Parish Councils) regardless of their Executive arrangements.
- 9.2 The aim of the CCfA is to help empower local representatives to resolve issues of local concern. The Act enables any Member of the Council to refer to an overview & scrutiny committee any local government matter which affects their Ward.
- 9.3 Power to refer a matter is only available where the matter is of direct concern to the ward which the councillor represents. A councillor can refer a matter even if no resident has asked them to consider it, and there is no requirement for Councillors in multi-member wards to agree that a CCfA should be submitted – any of them can refer a matter.
- 9.4 The Overview & Scrutiny Order 2008 excludes the following matters from referral as a CCfA:
- Individual complaints concerning personal grievances or commercial issues;
 - Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the Overview & Scrutiny Committees or any of its Sub-Committees;
 - Any matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman), for example:
 - planning and licensing applications and appeals
 - council tax / housing benefits complaints and queries
 - Issues currently under dispute in a court of law
- 9.5 A referral, provided it is not an excluded matter (see above), will ensure that the matter is included on the agenda of a Business Management Overview & Scrutiny Sub-Committee meeting. It will then be up to the Members of the Sub-Committee to determine how to progress the call for action.

10. LIST OF BACKGROUND PAPERS

- 10.1 Section 199, Local Government and Public Involvement in Health Act 2007
http://www.opsi.gov.uk/acts/acts2007/ukpga_20070028_en_11#pt5-ch2-l1g119
- 10.2 Statutory Instrument Number 3261 (2008), Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008
http://www.opsi.gov.uk/si/si2008/uksi_20083261_en_1
- 10.3 CfPS / IDeA Councillor Call for Action (Best Practice Guidance)
<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=92>
- 10.4 CfPS / IDeA Councillor Call for Action (Background Evidence Document)
<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=94>

Councillor Call for Action

Additional section to be added to Overview and Scrutiny Procedure Rules

New section 22. Existing section 22. (Part 2 – Other arrangements) to be renumbered.

22. Councillor Call for Action

Explanatory Note:

Councillor Call for Action is a statutory process under section 119 of the Local Government and Public Involvement in Health Act 2007

- 22.1 Any Member may, by giving notice to the Democratic Services Manager using the form provided, initiate a Councillor Call for Action relating to a local government matter that is not an excluded matter and where other routes to resolve the issue have not succeeded.
- 22.2 A Councillor Call for Action can only be initiated where:
- a) it relates to the discharge of any of the Council's functions;
 - b) it relates to a matter which affects the ward of the Member initiating it;
 - c) it does not relate to individual planning decisions, licensing decisions or matters where the affected person or body has a statutory right of appeal;
 - d) it does not relate to any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for a scrutiny committee meeting.
- 22.3 The Democratic Services Manager will determine whether the request meets the criteria for a Councillor Call for Action. Where the Democratic Services Manager determines that the request does not meet the criteria for a Councillor Call for Action, he/she will, within 10 working days, give written notice of the decision to the Member making the request. In those circumstances, the Member may submit a written request for a review of that decision by the Director of Corporate Governance who will, within 10 working days, determine and give notice of the outcome of that review to the Member. Where the Democratic Services Manager determines that the request does meet the criteria for a Councillor Call for Action, he/she will arrange for the

matter to be included on the agenda for the **next available meeting** of the Business Management Overview and Scrutiny Sub-Committee.

- 22.4 Where a Councillor Call for Action is included on the agenda for a meeting of the Business Management Overview and Scrutiny Sub-Committee, the Sub-Committee will consider the evidence submitted and determine whether the Call for Action should be progressed through its own work programme, or be referred to a Committee or Sub-Committee that has responsibility for the issue within its terms of reference. The Member making the request may address the committee before it is considered. Members of the public are able to speak in support of a Councillor Call for Action. Procedures for speaking as set out in Section 4, Public Participation, are applicable.

Councillor Call for Action

1. Introduction

- 1.1 Councillor Call for Action (CCfA) provides Ward Members with a means of escalating matters of ward concern to an Overview and Scrutiny Committee for possible onward referral to the Council's Cabinet and/or other agencies. It is very important to note that a CCfA is intended to be a measure of "last resort"¹ and should not be used until all other avenues available to resolve an issue have been exhausted. The CCfA process may not be used in relation to individual planning and licensing decisions, or where other avenues of appeal exist.
- 1.2 This protocol has been devised to enable the Council to have a procedure for dealing with CCfAs. Section 119 of the Local Government and Public Involvement in Health Act 2007 introduced the CCfA provision and best practice guidance has been produced by the Centre for Public Scrutiny and Improvement and Development Agency.
- 1.3 The Council's Constitution must provide procedures that will: -
- (a) enable any member of an Overview and Scrutiny Committee to refer to the Committee any matter which is relevant to the functions of that Committee;
 - (b) enable any member of an Overview and Scrutiny Sub-Committee to refer to the Sub-Committee any matter which is relevant to the functions of that Sub-Committee; and
 - (c) enable any member of the authority to refer to an overview and scrutiny committee of the authority of which he is not a member any local government matter² which is relevant to the functions of the committee.
- 1.4 The Business Management Overview and Scrutiny Sub-Committee has, within its [terms of reference](#), responsibility for receiving, considering and allocating for action (if required) any response to CCfAs.

2. Pre-CCfA Stages

- 2.1 A CCfA provides Ward Members with an opportunity to use Overview and Scrutiny as a forum for discussion on issues where other methods of resolution have been exhausted. For clarity, some of the other avenues available to Members to resolve an issue are as follows:

¹ ([CfPS / I&DeA Councillor Call for Action Best Practice Guidance](#))

² *CCfA Best Practice Guidance proposes that a 'local government matter' should include issues relating to the Council's partners, including those within and outside of the Local Strategic Partnership*

- contact with the relevant department or other organisation (if appropriate);
- contact with the relevant Cabinet Member;
- Member ward work (including [surgeries](#));
- using the [corporate complaints procedure](#);
- [petitions procedure](#).

Note: This list is not exhaustive.

3. Submitting a CCfA

3.1 The Ward Member is required to complete the pro forma attached (Appendix 1) and submit it to the Democratic Services Manager. The pro forma must state the following:

- Which Ward Member is submitting the call for action
- Issue for consideration
- Background to the issue
- Evidence to support the CCfA
- Details of other attempts made to resolve the matter
- Areas or community groups affected by the issue
- Desired outcome

4. Accepted or Rejected

4.1 Upon receipt of a CCfA, the **Democratic Services Manager** will determine whether the matter is accepted to be progressed by Overview and Scrutiny, or rejected and referred back to the Ward Member.

4.2 The Democratic Services Manager will inform the Ward Member submitting the CCfA in writing whether the Call for Action has been accepted or rejected within 10 working days (see section 5 for procedure).

4.3 CCfAs will be **rejected** if any of the following apply:

- Insufficient evidence has been provided;

- Further action could have been taken through other available means, including:
 - submitting a relevant service request
 - raising the issue with officers
 - raising the issue with a Cabinet Member
 - raising the issue at an area committee or residents forum
 - raising the issue with a senior representative of partner agency
- It is not a matter for which the local authority or its partners (Appendix 2) have a responsibility, or which affects the borough;
- Is substantially the same as a CCfA which has been put to any meeting of the Council in the past six months;
- Is a matter in which the Member has declared a personal and prejudicial interest, as set out in the [Members Code of Conduct](#)
- It is an excluded matter (as set out in Section 21A of the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007)
 - any matter relating to a planning decision;
 - any matter relating to a licensing decision;
 - any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
 - any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

If the CCfA is rejected, the Democratic Services Manager may give advice and or signposts on other appropriate ways forward to help the Member resolve the issue.

If the Member submitting the CCfA wishes to challenge the decision of the Democratic Services Manager to reject a CCfA, they should lodge an appeal in writing with the Director of Corporate Governance who will, within 10 working days, carry out a review of the matter and give written notice of his decision within 10 working days of receipt of the appeal.

Appeals against the decision of the Director of Corporate Governance should be made in writing to the Chief Executive.

- 4.4 If the CCfA is **accepted**, the issue will be considered at the next available meeting of the Business Management Overview and Scrutiny Sub-Committee. The Democratic Services Manager will notify the Member of the date of the meeting where the CCfA will be considered and will determine the detailed arrangements for consideration of the item at the meeting.
- 4.5 If the CCfA is accepted by the Democratic Services Manager, the information submitted by the Member in the pro forma will be used by the Business Management Overview and Scrutiny Sub-Committee when considering the issue.

5. Process

- 5.1 When a CCfA is submitted, the Democratic Services Manager will adhere to the following procedure:
- a) record the CCfA in a register (maintained by Democratic Services) in order that a formal record is maintained;
 - b) within 5 working days of receipt of the CCfA the Democratic Services Manager will:
 - i) acknowledge receipt of the CCfA with the Ward Member; and
 - ii) advise the relevant Cabinet Member(s) and officer(s) that the CCfA has been submitted and provide them with the relevant background information
 - c) within 10 working days of receipt of the CCfA the Democratic Services Manager will:
 - i) inform the Ward Member whether the CCfA has been accepted or rejected. If the CCfA has been accepted, the Ward Member will be advised of the date of the meeting where the CCfA will be considered. If the CCfA has been rejected, the Democratic Services Manager will provide detailed reasons why and he/she may give advice and or signposts on other appropriate ways forward to help the Member resolve the issue; and
 - ii) the relevant Cabinet Member and officer(s) will be informed whether the CCfA has been accepted or rejected. If the CCfA has been accepted and attendance of the relevant Cabinet Member and officer(s) is required at the meeting of the Business Management Overview and Scrutiny Sub-Committee, they will be advised at this stage.

6. Other Considerations

- 6.1 CCfAs will be considered in public session unless the issues will result in the disclosure of exempt or confidential information as defined by the [Access to Information Procedure](#) rules.
- 6.2 The Ward Member's role in the consideration of the CCfA, as with any formal council business, is subject to compliance with the [Members Code of Conduct](#).

Appendix 1 - Councillor Call for Action Request Form

This form should be used by any Member(s) who would like the Business Management Overview and Scrutiny Sub-Committee to consider a Councillor Call for Action (CCfA). If more than one Member wishes to support the Call for Action, only one form need be completed with the names of all of the sponsoring Members. It is important to include as much detail as possible on this form.

1. Councillor(s)

2. Ward(s)

3. CCfA Issue

4. Date of Submission

5. Has the issue been considered by any of the Overview and Scrutiny Committees in the past six months?

Yes

No

6. Please give a brief synopsis of the main areas of concern

7. What evidence do you have in support of your CCfA?

8. Please provide details of other attempts made to resolve the issue

9. Which areas or community groups are affected by the issue?

10. What outcome would you like to see from the CCfA process?

11. Is the CCfA currently the subject of legal action by any party (to your knowledge) or being examined by a formal complaints process?

12. Are there any deadlines associated with the CCfA of which the Business Management Overview and Scrutiny Sub-Committee needs to be aware?

Please complete and return the form to:

Scrutiny Team
Democratic Services
London Borough of Barnet
Building 4
North London Business Park
Oakleigh Road South
London
N11 1NP

Appendix 2 – Partner Authorities³

Each of the following is a partner authority in relation to a responsible local authority—

- any district council which is not a responsible local authority;
- a fire and rescue authority;
- a National Park authority;
- the Broads Authority;
- a police authority;
- a chief officer of police;
- a joint waste authority established under section 207(1);
- a waste disposal authority established under section 10 of the Local Government Act 1985 (c. 51);
- a metropolitan county passenger transport authority established by section 28 of the Local Government Act 1985 (joint arrangements);
- Transport for London;
- a Primary Care Trust;
- a development agency established by section 1 of the Regional Development Agencies Act 1998 (c. 45);
- a local probation board established by section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
- a youth offending team established under section 39 of the Crime and Disorder Act 1998 (c. 37).
- The persons referred to in subsection (1)(b) are—
 - a National Health Service trust;
 - an NHS foundation trust.
- The persons referred to in subsection (1)(c) are—
 - the Arts Council of England;
 - the English Sports Council;
 - the Environment Agency;
 - the Health and Safety Executive;
 - the Historic Buildings and Monuments Commission;
 - the Learning and Skills Council for England;
 - the Museums, Libraries and Archives Council;
 - Natural England;
 - the Secretary of State, but only in relation to—
 - i). (his functions under section 2 of the Employment and Training Act 1973 (c. 50) (arrangements with respect to obtaining etc employment or employees);
 - ii). (functions which he has as highway authority by virtue of section 1 of the Highways Act 1980 (c. 66); and
 - iii). functions which he has as traffic authority by virtue of section 121A of the Road Traffic Regulation Act 1984 (c. 27).
- the London Fire and Emergency Planning Authority.

³ [Local Government and Public Involvement in Health Act 2007](#)