

# Report from the Constitution, Ethics and Probity Committee

21 October 2013

\*Councillor Melvin Cohen (Chairman)  
\*Councillor Joan Scannell (Vice-Chairman)

Councillor Jack Cohen	*Councillor Alan Schneiderman
*Councillor Richard Cornelius	*Councillor Mark Shooter
*Councillor Anthony Finn	*Councillor Andrew Strongolou
*Councillor Alison Moore	
*Councillor Barry Rawlings	

\*denotes Member present

## 1. CONSTITUTION REVIEW

The Head of Governance introduced the report.

The Committee considered the proposed change to public participation arrangements as detailed in paragraph 9.9 of the report and agreed that this be deferred and considered as part of the review of the Council's Constitution following the return to a committee system.

The Committee discussed the proposed change to paragraph 14.4 of Contract Procedure Rules (CPRs) as detailed in paragraph 9.8 of the report and was assured by officers that where a procurement results in a contract which includes a provision for an extension, any acceptance of that extension needs to be in accordance with Appendix 1 Table A of CPRs.

RESOLVED - The Committee having considered the proposed changes to the Constitution as set out in the report, agreed that the below changes be recommended to full Council for adoption:

### 1. Group Leaders Panel 23 July 2013 meeting - Recommended changes to Members Code of Conduct

The Members Code of Conduct be amended to include an obligation on Members to treat others with respect.

### 2. Process for complaints about the conduct of a councillor or co-opted member – Protocols for Member Officer Relations (Appendix A)

Amend paragraph (a) of the current process as follows:

- (a) Complaints would initially be investigated by the Monitoring Officer or a representative designated by him/her:
  - (i) The Monitoring Officer after consulting with the Independent Person will decide whether any complaint should go to a formal process. If the Monitoring Officer believes that the complaint is frivolous or vexatious or does not fall within the scope of the Code or Conduct, the complaint can be rejected following consultation with an appointed Independent Person. Any such rejected complaint will be formally reported to the next appropriate meeting of the Group Leaders Panel.

- (ii) If the Monitoring Officer decides that a complaint should go to a formal process, the Monitoring Officer will provide a written report to the Group Leaders Panel within twenty eight days of receiving the complaint. The report would comprise purely factual findings without any conclusion drawn as to whether or not a breach of the code is believed to have taken place.

This procedure is moved from the Member Officer Relations part of the Constitution to the Member Code of Conduct as an appendix.

### 3. **Members Code of Conduct – New Department of Communities and Local Government (DCLG) Guidance** (Appendix B)

Amend Barnet’s Members’ Code of Conduct as follows:

Include the extra detail regarding Trade Union Membership by including an additional paragraph 10.3 to the Code;

Amend the Registration of Members’ Interest section (Section 12 of the current Code) in order to bring it in line with DCLG guidance

Add an addition to Appendix 1 of the Code to clarify that for disclosable pecuniary interests, this includes a Members spouse and civil partner

### 4. **Article 13 – Finance, Contracts, Land Disposals and Legal Matters** (Appendix C)

A change to include delegates and those officers instructed in writing by the Chief Officer / Proper Officer to ensure sealing is not delayed in the future - The sealing of council documents is carried out by any two of the following: Chief Executive, Monitoring Officer, or the Head of Governance. Practically the sealing can be delayed if any two of those officers are not on site or are on leave during the sealing day.

Clarity made for Officers where they may have interests that require disclosing in the process of sealing documents.

### 5. **Contract Procedure Rules (CPRs)** (Appendix D)

<b>Section of the CPRs</b>	<b>Change</b>	<b>Reason</b>
Section 2 - Application	2.6 Commercial Lead title changed to Commercial and Customer Services Director	This change provides greater clarity of responsibility that matches the current job titles within the Council
Section 3 – Scope	3.1 Change in wording regarding external funding and deleting references to the definitions	This clarity is to ensure that it is recognised that a robust procurement process is required when spending external funding such as grants.
	3.2 Wording changed to remove an exception list.	In practice an exception list proved to be impractical as a standard list was not applicable to all types of non-procurement. Therefore

Section of the CPRs	Change	Reason
		the definition on non-procurement has been strengthened, see 16.16.
Section 5 – Roles and Responsibilities	5.9 As a result of the NSCSO and DRS contracts, the provider may on certain occasions require the use of an external legal advisor of their choosing.	This has been limited by addition of an approval from the Monitoring Officer to ensure that the terms and conditions are acceptable to the Council.
	5.10 There is a requirement that all contracts held by the Council have a version approved by the Supplier for publication purposes.	In accordance with the transparency agenda contracts available for publication are required; however we need to observe commercial interests of the supplier.
Section 6 – Contract Value Calculation	6.2 Added in regulation 8 of the EU regulations.	To clarify the exact section of the Constitution.
Section 8- Procurement Method	8.1 This has been included to clarify the use of framework agreements in addition to contracts.	Added for further clarity to Appendix 1 Table A so that the table is used in accordance with frameworks agreements and contracts.
	Combined 8.2 and 8.3 into one clause. Also adding in qualification as to who the requirement applies to.	To clarify that all procurements over £10,000 must go to Central Procurement Team (CPT) and advertised on the central ePortal. This gives access to larger supplier base including local suppliers.  Social Care Placements and Special Educational Needs are considered non-procurement activity for the purpose of the CPRs as there is no choice available to the council to enter the “contracts”.
	8.3 Has been added to state call-offs from frameworks must be completed in accordance with the terms and conditions of the	Ensures clarity for the application of the CPRs.

Section of the CPRs	Change	Reason
	Framework Agreement.	
	8.5 Added a paragraph to note that contractual agreements arising from non-procurement activity such as social care placements and Special Education Needs (SEN), then the responsibility for functions part of the Constitution applies for the recording of the decision.	In a number of cases decisions about social care placements are made by external bodies and the Authority has no control or option but to implement the decision. This is in essence a non-procurement which has resulted in a contract. This paragraph refers officers to the correct decision making framework for recording these decisions.
Section 9 – Single Tender Action	9.2 Further clarity on single tender action was required.	The portal allows access to a larger supplier base so if only one tender is received a decision should be taken by a Director to determine value for money before the contract is awarded. The overview of the Commercial Director is important to ensure the market has been fully tested.
Section 10 Information Governance	10.1 Insert regarding assessing whether the contract involves processing significant amounts of personal information	This has been added so that these procedures are only applied on those contracts where personal data is going to be processed on the Council's behalf.
Section 11 – Acceptance	11.1 Insert to include reference to the Appendix 1 Table A.	Clarification to direct the reader to the table in Appendix 1.
Section 12 - Contract signing and Sealing	12.3 Further clarification on call-off within Social Care Framework Agreement do not need to be sealed as the Contract or Framework Agreement has already been sealed, except where they are over OJEU levels. Previous 12.4 has been deleted as it is now	The change is required to make it clear that due to the framework being sealed there is no need for each call-off to that contract to be sealed, except over OJEU levels. The wording has been simplified to avoid uncertainty.

Section of the CPRs	Change	Reason
	covered in this section.	
14 - Extensions and Variations	14.1 Change in wording for consistency.	Correct reference title has been added.
	14.2 Addition to add clarity to the value of the extension which is the value of all extension and the value of the original contract.	The change is necessary to avoid ambiguity.
	14.4 Added "Where the procurement results in a contract which includes a provision for an extension, any acceptance of that extension needs to be in accordance with Appendix 1 Table A".	This has been added to ensure that further acceptance is not sought unnecessarily where the original authority is clear.
	14.5 Added in where the conditions for extensions and variations have not been met "and the total value of the contract plus extension(s) and variations) is over £100,000" then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced. Also added the requirement to record the decision for those values extended below £100,000 through a Summary DPR.	This is to ensure that low value extensions to a maximum of £100,000 do not go to Cabinet Resources Committee unnecessarily at the request of the Chairman.
	14.6 Where a variation or extension moves the total value of the Contract into a higher threshold, then acceptance must be sought in accordance with Appendix 1, Table A.	This will avoid waivers being used and the record of decision following the Appendix 1 Table A.
	14.8 Adding in reference to Appendix 1 Table A in a consistent way.	Change required for consistency purposes.

Section 16 – Definitions	Removal of exemption list definition and rearrange into alphabetical order.	Exemption list has been removed and rules clarified through-out document to exclude social care and SEN placements.
	16.16 Strengthened the definition of non-procurement, making it specific to limited circumstances.	This is required due to the exemption list being deleted.
Appendix 1 – Table A	<p>Row A under Acceptance Documentation – Include that for procurement value over £10,000, a Summary Delegated Powers Report (DPR) is required</p> <p>Row B under Variation or extension Acceptance - delete 14.3 and replace with Section 14</p> <p>Delete the line between rows C and D i.e. the table will now have 3 rows (A, B and C).</p>	<p>Change required for consistency purposes i.e. to be in line with the Responsibility for Functions section of the Constitution.</p> <p>The whole of section 14 should be referred to.</p> <p>The two rows should be read together</p>

## 6. Responsibility for Functions (Appendix E)

That under the Responsibility for Functions section of the Constitution, the limit for the recording of decisions in summary form to be completed for anything above £1,000 is revised to £10,000 to be in line with other rules contained within the Constitution.