

Report from the Constitution, Ethics and Probity Committee

14 January 2014

*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. AMENDMENTS TO HEALTH OVERVIEW AND SCRUTINY COMMITTEE TERMS OF REFERENCE

The Head of Governance introduced the report.

RESOLVED – That the proposed amendment of the Overview and Scrutiny Procedure Rules as set out in the report be recommended to Full Council for adoption.

2. CHANGE OF GOVERNANCE SYSTEM PROJECT

The Assurance Director (Monitoring Officer) introduced the report. The Committee noted that the provisions of the Localism Act allow for change from Executive arrangements to a Committee system form of governance for a minimum of five years.

RESOLVED

- (1) 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:
- (2) The Committee recommends to Full Council that they resolve under the provisions of the Localism Act 2011:
 - (a) To change its governance arrangements and start to operate a committee system form of governance;
 - (b) That the relevant change time for the London Borough of Barnet to cease operating the existing form of governance and start operating the new committee form of governance shall be at its Annual Meeting in June 2014;
 - (c) To request the Constitution, Ethics and Probity Committee to continue to work up the detailed proposals for the operation of the committee system, to be considered at a future Council meeting, in advance of the June 2014 implementation date.

No.	Section	Reference	Changes contained within documents	Recommendation to Full Council
0	Introduction	Appendix A	An introduction to Constitution has been drafted including the following sections:	Agreed as per report with the following amendment:

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			<p><u>Part 1</u> Summary and explanation</p> <p><u>Part 2</u> Articles of the Constitution</p> <p><u>Part 3</u> Responsibilities for Functions</p> <p><u>Part 4</u> Procedure rules, public participation and engagement rules, contract procedure rules and financial regulations</p> <p><u>Part 5</u> Codes, protocols and handbooks</p> <p><u>Part 6</u> Members allowance scheme</p> <p>A structure chart has been added to visually include the Committees that will come into effect from June 2014.</p> <p>Redrafted to be named "Introduction to the Constitution" rather than Decision Making. A definition of the Committee System has been added and the Executive System removed.</p> <p>Removed reference to overview and scrutiny Committees and renumbered some of the articles that have been changed or removed. A number of the references have also changed due to the change in the Committee System that will not exist under this model.</p>	<p>Amend Structure Chart to have Theme Committees reporting direct to Council and dotted lines to Policy and Resources Committee.</p>
1	Article 1 – Constitution	Appendix B	There is nothing specific regarding the Executive Model therefore reviewed for consistency purposes	Agreed as per report.

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			and renumbered sections where appropriate.	
2	Article 2 – Members of the Council	Appendix C	There is nothing specific regarding the Executive Model therefore reviewed for consistency purposes.	Agreed as per report with the following amendment: 2.02 - For date that elections will be held, add footnote to state “unless amended by statutory instruments”.
3	Article 3 – Citizens of the Council	Appendix D	The first paragraph has been amended to include the wording of the Model Constitution. B (ii) and (iii) have been removed as they refer to Executive functions and Overview and Scrutiny Committees. These now refer to the Public Participation Rules to ensure readability of the Constitution.	Agreed as per report with the following amendments: 1 st paragraph - Delete “responsibilities”. 3.01 (e) - Add footnote on rights to raise matters with local Councillors.
4	Article 4 – The Full Council	Appendix E	The section now has an introduction to explain what the purpose is of Full Council. To avoid duplication and future proofing the document it is suggested that the role of Full Council and that statutory aspects thereof should only sit in one place, namely Responsibility for Functions, to ensure readability and understandability. These sections have now been cross referenced into the Responsibility for Functions as a result of the recommendation from the Constitution, Ethics and Probity Committee on 19 th December 2013. Article 4 is to retain definitions relevant for reading across the Constitution, such as	Agreed as per report.

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			budget and policy framework and listing plans and strategies requiring approval.	
5	Article 5 – Chairing the Council	Appendix F	Minor change to delete reference to the Executive.	Agreed as per report.
6	Article 6 – Overview and Scrutiny Committee	Deleted	This article has been deleted and the Terms of Reference for the Health Overview and Scrutiny Committee has been included within the Responsibility for Functions, and it will be covered by the overall Meeting Procedure Rules.	Agreed as per report.
7	Article 7 – Executive	Appendix G	This Article has been renamed “The Leader” and becomes Article 6. The majority of the current article deals with the Executive model of governance which will not be applicable. The aspect retained is in relation to the Leader and also where no Leader is elected.	Agreed as per report with the following amendment: 6.01- add (e) “removed by resolution of the Council”.
8	Article 8 – Regulatory and Other Committees	Deleted and Merged	These have been merged into a new Article 7 titled “Committees, Sub-Committees, Area Committees and Forums, and the Local Strategic Partnership”.	Agreed as per report.
9	Article 9 – Area Committees, Forums and LSP	Deleted and Merged	It is proposed that the Area Committees and Forums are included within the new Article 7 setting out committees and sub-committees, and the detail within the Responsibility for Functions.	Agreed as per report.
10	NEW Article 7 - Committees, Sub-Committees, Area Committees and Forums, and the Local Strategic	Appendix H	This new Article describes all of the previous article 8 and 9 detailing all Committees, Sub-Committees, Area Committees and Forums, and the Local Strategic Partnership. The Local Strategic	Agreed as per report with the following amendment: 7.04 – Add “Area Planning Sub-Committee members can be appointed by members of the

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	Partnership		Partnership (LSP) – the majority of responsibilities for the LSP are carried out by the Barnet Partnership Board. However this is not a formal Committee Structure. The LSP has been transferred to the Responsibility for Functions section of the Constitution and the description of the LSP retained within the Article.	Planning Committee at Full Council”.
10	Article 10 Joint Arrangements	Appendix I	Renumbered Article 8. These powers will need to be exercised by Council, not the Executive. The Article has been redrafted deleting the references to the Executive.	Agreed as per report.
11	Article 11 – Chief Officers	Appendix J	Renumbered Article 9. This section has been redrafted to remove references to the Executive.	Agreed as per report.
12	Article 12 – Decision Making	Appendix K	<p>Renumbered Article 10. As well as replacing references to the Executive, there are some changes of wording that have been amended resulting from the approval of the Constitution, Ethics and Probity Committee in December 2013 where it was approved to include additional requirements for committee reports to show:</p> <ul style="list-style-type: none"> • consideration of any alternative options • the giving of reasons for the decision and the proper recording of those reasons. <p>This was to ensure compliance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations</p>	Agreed as per report.

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			<p>2012.</p> <p>Issue for Consideration</p> <p>We are proposing to delete within this section references to Key Decisions because they are statutorily defined as Executive decisions that meet certain criteria. Under a Committee System the Executive model does not exist and therefore there is no requirement to have a key decision defined within the Constitution. As a result these have been deleted within this redrafted section. The Committee are asked to comment on this change.</p>	
13	Article 13 – Finance, Contracts, Land Disposal and Legal Matters	Appendix L	Renumbered to Article 11. Minor amendments redrafted excluding references to the Executive.	Agreed as per report.
14	Article 14 – Review and Revision of the Constitution	Appendix M	<p>Renumbered to Article 12. This Article has been amended to describe the system in governance in place and the mechanism to change this under the Localism Act once a decision has been made to move to the Committee form of governance – i.e. 5 years from the date of decision.</p> <p>Minor error noted in referring to the Article 12 as being the Chief Officers whereas it is now Article 9.</p>	<p>Agreed as per report with the following amendment:</p> <p>12.02 – Add “Constitution, Ethics and Probity Committee to continue to monitor effectiveness of constitution and decision making structure”.</p>
15	Article 15 – Suspension, interpretation and publication of the Constitution	Appendix N	Renumbered to Article 13.	Agreed as per report.

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16	Responsibility for Functions	Appendix O	<ul style="list-style-type: none"> • Inserted an introduction to ensure its readability • Major changes to take out reference to Executive and to the 'consideration of local choice' (where authorities determined which were Executive or Council functions). • Statutory Functions have been added for Full council as approved by the Constitution, Ethics and Probity Committee in December 2013. • Moving the Environment functions of the current Planning and Environment to the Environment Committee • Incorporating Terms of reference of the new Committees • Removing Cabinet portfolios, and replacing with terms of reference of the new committees, ensuring all relevant functions are re-allocated • Removing the general powers reserved to Cabinet and specific strategies and reallocating to Full Council or Committees. • A redraft has been made to reflect the changes agreed by the Constitution, Ethics and Probity Committee on the Health and Well Being Board and the 	<p>Agreed as per report with the following amendments:</p> <p>1.19 – Add “appoint Lead Member for Children’s Services”.</p> <p>Add Under Terms of Reference of Committees – “For all <u>budget spending</u> committees, the ability to award grants to voluntary sector”.</p>

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			<p data-bbox="842 210 1145 282">Health Overview and Scrutiny Committee</p> <p data-bbox="794 322 1182 719">It was agreed that the proposed new Terms of Reference (ToR) of all Committees as considered by the Constitution, Ethics and Probity Committee in December 2013 be recommended for adoption, subject to the agreed following amendments:</p> <ul data-bbox="794 741 1182 2119" style="list-style-type: none"> <li data-bbox="794 741 1182 1070">• For each proposed Committee, amend the wording of Member Composition to clarify that the entire composition of the committee will be made up in accordance with proportionality <li data-bbox="794 1115 1182 1223">• For Policy and Resources, clarify committee size is 12 <li data-bbox="794 1267 1182 1480">• For all committees amend the wording of Member Composition to read 'Chairman and Vice Chairmen to be appointed by Council' <li data-bbox="794 1525 1182 1671">• For all committees add in the ability to award grants to the voluntary sector. <li data-bbox="794 1715 1182 1962">• For Children, Education, Libraries and Safeguarding, add in that the Committee can receive reports from the Children's Trust Board <li data-bbox="794 2007 1182 2119">• For Environment, remove "Commons registration and town 	

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			<p>and village greens” which will continue to be the remit of the Planning Committees.</p> <ul style="list-style-type: none"> • For Community Leadership, amend responsibility 1 to clarify ‘ any pooling of non-health related budgets’ • Area Sub-Committees – clarify that it is proposed that Policy and Resources allocate £100,000 from the Capital programme for each Area Committee to consider proposals for capital expenditure within their respective remit, and that Policy and Resources would agree a framework for how this budget is managed and the process by which Area Committees would submit potential projects. <p>These changes have now been reflected within the Responsibility for Functions and proposed to be included as an Annex (Appendix P).</p> <p>In addition, upon cross referring all Cabinet Meeting responsibilities the forming of neighbourhood plans were not allocated to a Committee as such it has been allocated to the Planning Committee within the redraft.</p> <p>Joint Arrangements have been added into the Responsibility for Functions.</p>	

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			<p>Agreed that the urgency provisions (2 options) outlined in the meeting of the 19th December 2013 be included in the redraft of the Constitution. This has been included as a 3 Member committee forming of the Leader, Deputy Leader and the Leader of the Opposition. This Committee must consult with the Chairman of the relevant Committee in making their decision.</p> <p>All Officer Delegations have been removed and combined with the Officer Scheme of Delegation to ensure all officer delegations are included in one document. This document will become Annex B to the Responsibility for Functions (Appendix Q).</p>	
16a	Annex A to Responsibility for Functions	Appendix P (Addendum to papers)		<p>Agreed as per report with the following amendments:</p> <p>Add in Resident Forums and Local Strategic Partnerships</p> <p>Policy and Resources Committee</p> <ul style="list-style-type: none"> - Include Mayoralty budget under its functions - Include provisions of Councillor Call for Action from old Overview and Scrutiny rules as function 8 - Add responsibility for petitions with between 2000 to 7000 signatories <p>Community Leadership</p>

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				<p>Committee – move bullet point 3 to the functions of Policy and Resources Committee.</p> <p>Area Sub-Committees - change to 1 Member per ward and one Substitute.</p> <p>General Functions Committee - delete “in practice exercised by officers” after Meets and when required.</p> <p>Add throughout - Chairman and Vice Chairman to be appointed by Council.</p>
17	Officer Scheme of Delegation	Appendix Q	<p>These will now be an Annex to the Responsibility for Functions and include those sections deleted from the Responsibility for Functions. There was duplication noted within the responsibilities delegated to officers and therefore where there was duplication only one remains within the proposed revised document.</p> <p>Reference to key decisions removed due to this only being applicable to an Executive model of governance.</p> <p>Removal of reference to the Executive.</p>	<p>Agreed as per report with the following amendments:</p> <p>1.1 (last bullet point) – add “in consultation with the Chairman of Policy and Resources Committee”.</p> <p>1.15 – Delete reference to “Cabinet”.</p> <p>Officer Delegations page 105, 1st paragraph - Article 11 should read Article 9.</p>
18	The Council	Appendix R	<p>The Constitution has been redrafted to incorporate changes agreed by the Constitution, Ethics and Probity Committee on the 19th December 2013. The following has been incorporated on request of the Committee</p> <p>Officers have been</p>	<p>Agreed as per report with the following amendments:</p> <p>Part 2 (Statutory Council Business)</p> <p>– Amend typographical error for the time for Statutory Council</p>

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			<p>requested to provide wording for Business for Debate, clarify that at least one of the motions must be from an opposition member/a member not being of the majority party.</p> <p>The following has been drafted and included within the Proposed Constitution: 'At least one motion not originating from the Administration to be debated if submitted' This wording keeps it simple, overcomes the issue about what constitutes the opposition and so gives scope for any member not part of the administration to submit a motion. It also covers the position if no motions are submitted by Members not part of the Administration. The motion debated will be determined by Council if there is more than one submitted.</p> <p>This would replace the current 'opposition item'. That there be provision for Motions for adjournment, to allow the opportunity to debate additional motions if there is time.</p> <p>The following has been drafted and included within the papers: Motions for Adjournment If time permits at the end of a meeting further motions may be debated. The selection of motions (s) to be debated will be decided following a member moving a particular motion and the Mayor putting this to a vote by members present.</p>	<p>Business to read 60 minutes.</p> <ul style="list-style-type: none"> - Delete question mark from Reports from the Leader <p>Part 4 (Business for Debate) – Change to “at least one motion originating from the official Opposition to be debated if submitted.”</p>

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			<p>Voting will be by a show of hands. If agreement is not reached in relation to the first proposed motion, further motions may be proposed until agreement on the motion to be debated is reached. The other Rules of Debate in relation to motions set out in currently within the Constitution will apply to Motions for Adjournment. The process can be repeated, but no motions shall be transacted after 10pm. At 10pm without further debate, the Mayor shall immediately put to the vote the motion under debate and end the meeting.</p> <p>For Statutory Business allow for up to 60 minutes, or as long as it takes for the Council to conclude the business.</p> <p>Explore options for provision for the opposition to inform its preferred motion for debate in advance of Council, which would be voted on in Council.</p> <p>Explore options for placing petitions at an early point in the agenda, to facilitate public participation.</p> <p>In addition, there was a discussion about the order of business, particularly in relation to having petitions dealt with earlier on the agenda and also allowing motions at the end of the meeting if there was time. It has been drafted within the proposed Constitution a change in the order of</p>	

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			<p>the Council meeting to be the following:</p> <ol style="list-style-type: none"> 1. Statutory Formalities 2. Statutory Council Business (which will include petitions) 3. Question Time 4. Business for Debate <p>As it was the preference noted at the Constitution, Ethics and Probity Committee to have 3 motions to be debated, this ordering of business would allow for additional motions where the time left was known. In addition, this would ensure that all motions would be dealt with together. Under the current suggested timetable there would be 2 motions discussed in Part 3 of the meeting followed by Statutory Council Business and then back to motions again if time permitted. This is a little disjointed. This ordering suggestion will also address the petitions being dealt with sooner on the agenda.</p> <p>Reference to Standing Orders is now changed to refer to Procedure Rules to be consistent with the remainder of the Constitution.</p> <p>The Committee agreed that Full Council were to allow questions from the public to the Leader in writing with responses in writing provided. The options for how these are going to be administered are currently being drafted by officers.</p>	
19	Committees and Sub Committees	Appendix S	This section has been renamed "Meeting Procedure Rules".	Agreed as per report with the following amendments:

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	(Meetings Procedures)		<p>The list of Committees, with membership and quorum, has been updated, reflecting the proposed committees, deleting overview and scrutiny and Executive Committees, and ensuring consistency with the Responsibility for Functions. Also adding in an Urgency Committee in line with the urgency procedure noted in the Responsibility for Functions.</p> <p>The Executive Procedure Rules and Overview and Scrutiny Procedure Rules have been compared with the general procedure rules to ensure anything relevant has been included within this section.</p>	<p>8.1 – Add “the Mayor” so that it reads “If the Mayor or the Chairman considers”</p> <p>Add some wordings on Point of Order</p>
20	Public Participation and Engagement	Appendix T	<p>The following has been incorporated into the rules as agreed by the Constitution, Ethics and Probity Committee on the 19th December 2013:</p> <ul style="list-style-type: none"> • To allow 30 minutes in total for public questions and comments; • Comments to be maximum 3 to allow as wide a range of people as possible to participate; • To allow a facility for members of the public to submit written comments (within the same deadlines as for questions and comments) which would be published as an addendum to a report; 	<p>Agreed as per report with the following amendments:</p> <p>2.4 - add at the end of the sentence “the supplementary question must be relevant to the original question put to the Chairman”.</p> <p>6.8 (2nd bullet point) – Delete “Environment”.</p> <p>6.9 – Add that petitions which receive between 2000 to 7000 signatures will be considered at the next available Policy and Resources Committee.</p>

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			<p>To not allow questions at Full Council, but instead to introduce the ability to submit written questions ahead of Full Council, for the Leader's response. For Petitions those that range between 2,000 to 7,000 signatures go to Business Management Overview and Scrutiny Committee (BMOSC), options could be that these go to:</p> <ul style="list-style-type: none"> • Policy and Resources Committee • The Council threshold be reduced from 7,000 to 2,000 for the petition to be considered • The current rules are observed for petitions up to 7,000, at which point they will be considered by Full Council. <p>The Committee are asked for their comments on these options for including within the draft of the Constitution.</p>	
21	Access to Information Rules	Appendix U	<p>References to the Executive form of governance have been removed through-out the document.</p> <p>The definition of exempt information has been extended, including the reasons for withholding, within this section.</p> <p>Removed reference to key decisions, as discussed previously this is not a requirement under the Committee system form of governance.</p> <p>Overview and Scrutiny has been removed from this</p>	<p>Agreed as per report with the following amendment:</p> <p>7(a) – Add at the end of the sentence “Where a vote is taken, the Minutes will record the number of votes for and against and abstentions will also be recorded.</p>

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			section.	
22	Budget and Policy Framework Procedure Rules	Appendix V	References to Executive replaced by Council or by Policy and Resources where relevant and in line with the Terms of Reference of the Committee. Call-in arrangements have been deleted as there is the referencing up mechanism included within the Responsibility for functions for referring to the parent Committee.	Agreed as per report.
23	Executive Procedure Rules	N/A	These will be deleted but there are some sections- e.g. on Leader's conflict of interest (article 6 – the leader), principles of decision making and consultation are to be integrated within other procedure rules (Article 10 – decision making).	Agreed.
24	Overview and Scrutiny Procedure Rules	N/A	These have been deleted, other than those elements specifically relating to the Health OSC, which if necessary will be incorporated within Meetings Procedures Rules. The Terms of reference of existing Scrutiny Committees have been embedded where relevant in the proposed new Committees and their terms of reference within the Responsibility for Functions (Appendix O).	Agreed.
25	Financial Regulations	N/A	The Financial Regulations are due an annual review by finance officers and will be presented to the Constitution, Ethics and Probity Committee for consideration prior to the Annual Council meeting.	Agreed.
26	Contract Procedure	N/A	The Committee will be presented revised CPRs	Agreed.

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	Rules (CPRs)		for consideration prior to Annual Council in June 2014.	
27	Code of Procurement Practice	N/A	As above.	Agreed.
28	Management of Assets, Property and Land Rules	N/A	These will be reviewed as part of the Annual Review and be presented to the Committee prior to the Annual Council for consideration.	Agreed.
29	HR Regulations	N/A	It is not expected that there will be any significant changes to these rules as result of the change to a Committee system. These will be reviewed prior to Annual Council in June 2014.	Agreed.
30	Members Code of Conduct	N/A	Minor changes to delete reference to Executive no other changes expected.	Agreed.
31	Members Planning Code of Practice	N/A	As these are currently Council functions it is not expected to have significant changes and will be reviewed after the first phase of redrafting for consistency purposes.	Agreed.
32	Members Licensing Code of Practice	N/A	As these are currently Council functions it is not expected to have significant changes and will be reviewed after the first phase of redrafting for consistency purposes.	Agreed.
33	Officer Code of Conduct	N/A	It is not expected that there will be any changes to the Officer Code of Conduct as a result of the change in governance system. However this section will be reviewed after the main changes are redrafted for consistency purposes.	Agreed.
34	Protocols for Member Officer Relations	N/A	It is not expected that there will be any changes to these protocols as a result of the change in governance system.	Agreed.

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			However this section will be reviewed after the main changes are redrafted for consistency purposes.	
35	Code of Corporate Governance	N/A	It is recommended that the Code of Corporate Governance is maintained in its current detail. It will be redrafted at the end of the year to ensure it properly described the new system of governance.	Agreed.
36	Member Allowances Scheme	N/A	These will need to be determined prior to Annual Council.	Agreed.

3. ANY OTHER ITEM(S) THAT THE CHAIRMAN DECIDES ARE URGENT

There were none.

The meeting finished at 8.35 pm