

	Constitution, Ethics and Probity Committee 2 <sup>nd</sup> September 2014	
Title	Constitution Review	
Report of	Assurance Director	
Wards	None	
Status	Public	
Enclosures	Appendix A: Introduction Appendix B: Article 3 Appendix C: Article 7 Appendix D: Article 9 Appendix E: Article 10 Appendix F: Article 12 Appendix G: Responsibility for Functions Appendix H: Responsibility for Functions Annex A Appendix I: Responsibility for Functions Annex B Appendix J: Full Council Procedure Rules Appendix K: Meeting Procedure Rules Appendix L: Public Participation and Engagement Rules Appendix M: Access to Information Rules Appendix N: Budget and Policy Framework Appendix P: Asset Land and Property Rules Appendix Q: HR Regulations Appendix R: Protocol for Member-Officer relations	
Officer Contact Details	Maryellen Salter, Assurance Director, maryellen.salter@barnet.gov.uk, 020 8359 3167	

**Summary** This report seeks discussion and approval of revisions to the Constitution based on the first cycle of meetings under the Committee system of governance.

## Recommendations

1. That the Committee recommend to Council that the Constitution be amended to incorporate the changes set out in this report and the track change versions attached at Appendix A to Appendix R.

#### 1. WHY THIS REPORT IS NEEDED

1.1 The Committee system has had one cycle of meetings and as a result it has been observed how the Constitution works in practice and there are a number of changes proposed as a result to ensure the smooth running of Committees. 1.2 The following table represents the changes proposed to the section of the Constitution (in addition to minor factual corrections and typos) and the reasons for the changes

No.	Section	Reference	Issue Identified	Changes Made
1	Introduction to the Appendix A Constitution Pages 43 to 48		Citizens Rights Section does not include latest constitutional provision for written questions to Full Council Minor matter - In the Explanatory Notes, the reference to	
			the working day ending at 11pm it should however end at midnight.	Change explanatory note to 12am rather than 11pm.
2	Article 3- Citizens and the Council	Appendix B Pages 49 to 50	The reference to exclusion of press and public from meetings could imply that the whole of a meeting is closed to the public, not just when exempt items are being discussed.	At 3.01 (b) add the words 'part of' to 'the meeting is held in private'
3.	Committees, Sub- Committees, Area Pages 51 Co		Local Strategic Partnership is referred to in the Constitution as a non-statutory body; however in fact this is an advisory Committee with co-opted Members.	Remove the term "non-statutory body" and replace with advisory Committee.
4.	Article 9- Chief Officers	Appendix D Pages 53	Duplication- it is unnecessary to list the specific functions that the Assurance Director can exercise on behalf of the Head of Legal or Head of Governance, as these are	List of functions removed.

No.	Section	Reference	Issue Identified	Changes Made
		to 56	already listed in Responsibility for Functions- Scheme of	
			Delegation to Officers.	
5.	Article 10- Decision	Appendix E	Paragraphs 10.04 and 10.05 are insufficiently clear on	Amendments made to clarify which Procedure
	Making	Pages 57	what Procedure Rules apply, and the difference between	Rules apply in particular situations.
		to 58	Full Council Procedure Rules and Meeting Procedure	
			Rules.	
6.	Article 12- Review	Appendix F	Procedures to be followed to change governance system	Within 12.01 further procedure added to
	and Revision of the Constitution	Pages 59	- this section still refers to changes from the Executive	change to a Cabinet system from a Committee
	Constitution	to 60	Leader and Cabinet system to the Committee System,	system.
			and so needs to be updated following the authority's	
			transition to the Committee system.	
7	Responsibility for	Appendix G	Whilst having the power to appoint the Head of Paid	Amend 1.14 of the Full Council Functions to
	Functions	Pages 61	Service Council also have a power to dismiss the Head of	include dismissal of the Head of Paid Service.
		to 68	Paid Service, through the process described in the HR	
			Regulations.	
			The section in Paragraph 5.3 refers to Article 7 of the	
			previous Constitution, in which Area Environment Sub-	
			Committees exercised Executive in addition to Council	Amend Para 5.3 to remove outdated reference
			functions and included provisions for Joint Meetings of	and incorporate new para within Terms of
			Committees, and the relevant sections in that article. The	Reference of Area Committees under Annex A.
			issue about demarcation of boundaries is covered by a	

No.	Section	Reference	Issue Identified	Changes Made
			<ul> <li>slight amendment in the description of Area Committees under their Terms of reference to make it clear they can only act on matters within their boundary.</li> <li>Paragraph 6.2 and 6.3 describe a process whereby the Chairman of the Area Committee or a specified number of Members of a Committee or Sub-Committee can refer the matter up to Full Council or its parent committee. The legal advice however is that this referral must occur before the decision has been taken at the relevant committee. In addition, 6.2 needs to make clear that any referral that is made must be within the terms of reference of the committee to which it is referred.</li> </ul>	Amend 6.2 and 6.3 to state that the referral must occur before the Committee has made a decision on the recommendation. An amendment to 6.2 is also proposed to ensure that a referral can only be made where it is within the committee's terms of reference.
			Paragraph 6.6 and 6.8 need slight amendment to reflect the fact that, as they are no longer sub-committees, Area Planning Committees can refer, rather than refer <i>up</i> , matters to the Planning Committee. These must be matters that are within the Terms of Reference of the Planning Committee, albeit these are broadly defined in terms of town and country planning. Paragraph 6.8 refers to referring up and the last row	Reference to 'referring up' changed to 'referring where within Terms of reference' at 6.6 and 6.8.

No.	Section	Reference	Issue Identified	Changes Made
			states all other committees can refer up with 4 members where the Committee has more than 10 members – there is effectively no procedure where there is less than 10.	Replace Membership of 10 or more with 9.
8	Responsibility for Functions Annex A	Appendix H Pages 69 to 100	i) All petitions that contain between 2,000 and 6,999 signatures currently go to Policy and Resources Committee and then are allocated to the relevant Theme Committee. This has the effect of delaying consideration of the issue.	Propose that each theme Committee has added to its terms of reference the ability to consider petitions relevant to its remit.
			ii). Contract Procedure Rules give theme committees a role to approve authorisation and acceptance of a procurement process but these are not made explicit within the Terms of References of the Theme Committees. As such it is recommended to add into each Theme Committee the specific reference to their procurement authority, in the context of the Contract Procedure Rules and the thresholds set out there.	Add for each theme Committee 'Authorise procurement activity within the remit of the Committee and any acceptance of variations or extensions if within budget in accordance with the responsibilities and thresholds set out in Contract Procedure Rules.'
			iii) Responsibilities for Neighbourhood Plans (as introduced by the 2011 Localism Act) are currently	Terms of reference of Policy and Resources, Assets Regeneration and Growth, Planning

No.	Section	Reference	Issue Identified	Changes Made
			divided between several bodies:	Committees and Area Committees amended
			<ul> <li>Planning Committee – responsible for designating neighbourhood areas and neighbourhood forums for the purposes of neighbourhood planning</li> <li>Assets, Regeneration &amp; Growth – responsible for Neighbourhood Plans (for adoption by Full Council)</li> <li>Area Committees – responsible for considering any proposals for Neighbourhood Planning under the 2011 Localism Act and proposing plans to the Assets, Regeneration and Growth Committee.</li> </ul>	accordingly.
			Responsibility for statutory plans ie the Local Development Framework (renamed as the Local Plan) rests with Policy & Resources Committee.	
			It would be more appropriate to rationalise the number of committees that consider Neighbourhood Development Plans. It is suggested that Planning Committee should determine Neighbourhood Area and Forum designations and Neighbourhood Development Orders, while Policy and Resources approve development of statutory Local	

No.	Section	Reference	Issue Identified	Changes Made
			Plan and Neighbourhood Plans, to enable a joined up approach to spatial planning policy. There would be no additional role for Assets Regeneration and Growth nor Area Committees. iv) General Functions Committee- includes the terms of reference to appointing representatives on outside bodies and appointing representatives on school governing bodies. Under Responsibility for Functions, function 1.8 of Full Council is to 'appoint representatives to outside bodies'. In addition it has been custom and practice for school governing body appointments to be made either at GFC or at Full Council, which meets more frequently. In these circumstances, and to ensure clarity, it is proposed that these be removed from the Terms of Reference of GFC with Full Council having sole responsibility.	These two responsibilities deleted from GFC terms of reference, and Full Council responsibilities clarified that outside bodies includes school governing bodies, at 1.8 of Responsibility for Functions (Appendix G).
			v) The report to Council on 15 July 2014 amended the existing powers for the Health Overview and Scrutiny Committee (OSC) to establish Joint Health OSCs with other Boroughs for NHS services that cross Borough boundaries, to allow Council to exercise those powers.	Text amended to clarify that both HOSC and Council can establish a Joint Health OSC.

No.	Section	Reference	Issue Identified	Changes Made
			The recommendation needs clarifying to allow Council to	
			have this power in addition to, and not instead of, the	
			HOSC's powers. It was already agreed at Council that	
			only Council could appoint members to these bodies.	
			vi) The reference to the nature of the Local Strategic	Text amended.
			Partnership has been amended for the same reason as in	Text amended.
			Article 7 above.	
			vii) Budget responsibilities of theme committees are	
			ambiguous as they currently stand. Based on the financial	
			regulations in place and the terms of reference of the	New terms of reference for each theme
			Policy and Resources Committee, it is suggested that	Committee to cover submitting proposals on
			Theme Committees include a reference that they have	the Committee's budget for the following year
			responsibility to deliver services within their areas of	and making clear that any changes to budget
			responsibilities within their agreed budget, but have to	and proposals for fees and charges must go to
			recommend to Policy and Resources any other matter	Policy and Resources.
			relating to budgets including budget proposals for the	
			following year, fees and charges proposals, virements or	
			underspends and overspends on their budget.	
9.	Responsibility for	Appendix I	(i) It is proposed that in addition to the current delegations	Add to delegated authority of the Monitoring
	Functions – Officer Scheme of	Pages 101	of the Monitoring Officer to authorise payments of up to	Officer after to authorise payments of up to

No.	Section	Reference	Issue Identified			Changes Made
	Delegation Annex B	to 124	£5,000 in settleme	nt of maladministrat	ion, to make it clear	£5,000 in settlement of maladministration
			that this is before	e any finding by th	ne Ombudsman, in	"before any finding by the Ombudsman, in
			accordance with S	ection 92 of the Lo	cal Government Act	accordance with Section 92 of the Local
			2000.			Government Act 2000".
			(ii) Each Theme	Committee has wi	thin their terms of	Under the Scheme of Delegation insert
			reference "grants t	to the voluntary sec	ctor within the remit	delegations of the Deputy Chief Operating
			of the Committee",	but there has been	no de minimis level	Officer (Deputy Section 151 Officer) to include
			set or a delegation	n to officers for sm	all amounts. It has	approving issuance of grants to the voluntary
			been proposed tha	t the Deputy Chief (	Operating Officer be	sector for amounts up to £5,000.
			delegated the res	sponsibility to app	rove grants up to	
			£5,000. This prop	posed level is base	ed on the following	
			numbers of grants	being assessed ye	ear on year and the	
			values:			
			Range	Number of grants	Number of grants	
				assessed	assessed	
				2012/13	2013/14	
			£0 - £500	1	0	
			£501 - £1000	2	3	
			£1,001 - £2,000	2	1	

No.	Section	Reference	Issue Identified			Changes Made
			£2,001 - £5,000	8	7	
			£5,001 – £10,000	12	12	
			Total	25	23	
			The proposal of	officers approving	grants less than	
			£5,000 will mean a	pproximately half w	ill be approved by a	
			Committee.			
			(iii) Section 1.10 se	ets out delegated p	owers in respect of	
			virements, in cons	ultation with the Co	ommittee Chairman	Under Section 1.10 replace 'the Committee
			concerned. In Fin	ancial Regulations	it states that this	Chairman concerned' with 'the Chairman of
			power is exercised	d in consultation wi	th the Chairman of	Policy and Resources Committee'
			Policy and Resources Committee. It is proposed to			
			change section 1.10 to ensure consistency with Financial			
			Regulations.			Under Section 1.11 deletion of two bullet points
			(iv) Section 1.11 se	ets out some powers	s of the Section 151	on powers of Section 151 Officer in
			Officer over land a	and property transa	ctions. These have	consultation with Chairman of Assets
			not been updated t	to reflect the thresh	olds included within	Regeneration and Growth Committee
			the Asset, Land an	d Property Rules th	at were revised and	
			agreed by Counc	il in the constitut	ional review. It is	
			suggested that this	s section is deleted	to avoid duplication	
			and ensure consist	ency of future upda	tes.	

No.	Section	Reference	Issue Identified	Changes Made
			(v) Likewise, the table of powers delegated to the Chief Operating Officer (COO)/Director of Finance includes a section on powers in respect to Assets, Land and Property where the thresholds are out of date. It is proposed this section remains but only sets out the general powers and refers to the Asset, Land and	Fourth row from top in COO delegation amended to take out reference to specific thresholds and say that this power must be exercised in accordance with the powers set out in the Asset, Land and Property Rules and legislation relating to Best Consideration.
			Property Rules as the source for setting out the exact rules and thresholds. Again this will ensure consistency in future by only updating in one place.	
10.	Full Council Procedure Rules	Appendix J Pages 125 to 136	<b>Timetabling</b> Provision for adjournment motions was agreed by Council in April 2014. It was ambiguous whether the provision that no such motions can be discussed after 10.00pm could be overridden by the Mayor's powers to extend the meeting beyond 10.00pm so it has been made explicit that this is not the case. The powers of the Mayor, or person presiding, to extend the time is currently only set out in Meeting Procedure Rules, and so for completeness and easy reference a	Clarification that adjournment debates cannot take place after 10.00pm even if the Mayor has extended the time for business. Additional para 2.2 cross-refers to Meeting Procedure Rules to set out the Mayor's powers

No.	Section	Reference	Issue Identified	Changes Made
			section has been added to these rules at 2.2.	
			Decisions	
			Currently it is not included within the Constitution that decisions shall be taken by a majority of those Members present and voting (although this is the practice), except where statute requires a higher threshold, such as a requirement for a nem com vote to depart from proportionality.	It is proposed to add to 15.2 "Decisions shall be taken by a majority of those members present and voting except where specific provisions in this Constitution provide otherwise.".
			Rules of debate	
			Rule 20.3 allows for reports of Committees to be debated by opening up by the Chairman or Vice Chairman of the relevant Committee and allowing for one more speaker i.e the Leader of each of the other groups, or another member of their group.	The Committee is asked to consider whether providing a cap on the number of speakers is appropriate.
			Rule 21 does not specify the time available for each speaker on other items of Council business (eg reports from Committees or Officers). A suggested set of timings is included which codifies existing custom and practice,	The Committee is asked to consider the suggested amendment at Rule 21.2 which sets out timings.

No.	Section	Reference	Issue Identified	Changes Made
			while still allowing the Mayor discretion.	
			Whilst Council has discretion as to its Standing Orders, it is normal for SOs to provide that the mover of a motion may accept an amendment put forward by another member, and remain the mover of the motion, but that where an amendment is carried against the mover, then the mover of the amendment becomes the mover of the substantive motion, and so has the right to sum up at the end of the debate.	The Committee is asked to discuss whether 20.4 should be changed to ensure that the mover of the substantive motion has the right to end the debate.
			The order of business at Full Council is discretionary. To aid in the running of the meeting it is proposed that the Questions to the Leader be changed to be first on the agenda after the formalities.	Part 3 – Questions to the Leader becomes Part 2, and Part 2 Statutory Council Business now becomes Part 3.
11.	Meeting Procedure Rules	Appendix K Pages 137 to 146	Clarify under Members Rights – Member items for the agenda whether a Member's entitlement to one item of business would include any notice of motion referred by Council. This is to ensure that an item referred from Full Council to a Committee does not count as a Member Item. Rule 12 refers to the circumstances where a referral is	Add under 6.1 "A referral from Full Council will not count as a Member Item for the purposes of this rule".

No.	Section	Reference	Issue Identified	Changes Made
No.	Section Public Participation and Engagement	Appendix L	made to a Committee or Council. It refers to situations where a referral may occur. The provisions in general are confusing and need revision in the light of the new committee system. For example, there is a reference to Planning Committee and General Functions Committee which dates back to the old constitution. The circumstances in which referrals may take place are set out in clause 6 of part 15 and duplication is not advisable. It is therefore suggested that this section should simply refer to clause 6 and require that the original report should be submitted to the Committee or Council as appropriate. Should Committee agree the proposed change set out	Much of this rule has been deleted and the remainder amended slightly to leave a flexible clause to provide that reports are submitted to the relevant meeting along with any recommendations made.
	and Engagement	Pages 147 to 152	above to refer petitions (of 2000-6999 signatures) directly to theme committees rather than Policy and Resources Committee, then the procedure in Section 6.9 will be streamlined to reflect the fact that the Committee considering the issue will be empowered under its Terms of Reference to take its own decision on how to respond. In addition there is no current procedure in the Constitution for Committees to establish Task and Finish	requirement for relevant Committee Chairman to attend, since it will be within that Committee's Terms of Reference in any event, and to set out accurately the options available to the Committee to act.

No.	Section	Reference	Issue Identified	Changes Made
No.	Section Access to Information Rules	Reference Appendix M Pages 155 to 162	Issue Identified Groups or Panels (This does not prevent Members establishing an informal working group to inform the options presented should the Committee request Officers to bring forward a report on the matter to a future committee). The reference in the heading to the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 is no longer required, following the transition to a Committee system. Section 13 - Members' additional rights of access – Members also have a common law "need to know" in respect of any information held by the Council which they need to have access to in order to be able to discharge their functions as a Councillor effectively. Members must state the reason why they need the information when requesting it. In addition, when inspecting documents that a Councillor has a right to inspect there are some procedures that	Changes MadeDeletion of Task and Finish Group or Panel as a possible response to petition.Remove reference to Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 from the list of references.Add to 13.1 the following: "Members have a common law right of access to council documents based on a "need to know". When making a request Members should clearly state the reason why they need the information they have requested.Add after 13.5 the following as paragraph 13.6:
			has a right to inspect there are some procedures that would be useful to guide Members and Officers on how that might occur. These guidelines are not set out in the	Where it is not appropriate to send a Member a document on the grounds it is confidential or exempt the following procedures will be adopted for inspection, keeping in mind

No.	Section	Reference	Issue Identified	Changes Made
			law; they are discretionary and stand as a protocol for that inspection process.	<ul> <li>paragraph 13.3:</li> <li>Members should have access to the information for supervised reading.</li> <li>This means that the Member must attend mutually agreed council premises to read the documents.</li> <li>A paper or electronic copy will not be supplied in these cases nor will photocopying be pemitted.</li> <li>An officer with sufficient understanding and experience to answer any questions should be present, as should a lawyer</li> <li>In some circumstances Members may be asked to sign confidentiality agreements</li> </ul>
14	Budget and Policy Framework	Appendix N Pages 163 to 166	The budget and policy framework needs to be amended to set out the specific role for theme committees in budget preparation as they present ideas and options to Policy and Resources Committee for final approval. The Budget and Policy Framework still refers to the	Add within section 3 "procedure for policy development" the following: "(c) Policy and Resources will take into consideration consultation and proposals from theme committees." Remove section 4 and renumber remaining

No.	Section	Reference	Issue Identified	Changes Made
			Leader (Part 4 adoption of the budget and policies within the statutory framework) which is more appropriate for the Executive Model of governance.	sections.
			The Budget and Policy Framework (section 7) allows in year changes to the statutory policy framework in some circumstances. This does not fit in with the intention for this to be restricted to Council. Provision for urgent decisions is already catered for in section 6	Remove the latter part of Section 7.
15.	Financial Regulations	Appendix O Pages 167 to 192	The financial regulations are silent on the role of Theme Committees in the budget process. It is suggested that a statement is added on their role in producing proposals for the Policy and Resources Committee.	<ul><li>Add in "Annual Budget Setting" the following:</li><li>4.3.3 "Theme Committees will work up proposals for Policy and Resources Committee consideration".</li></ul>
16.	Asset Land and Property Rules	Appendix P Pages 193 to 204	It is suggested that references to the Senior Responsible Officer (the senior officer responsible for client side management of estates) be replaced by a reference to Approved Officer, which would follow the definition in Contract Procedure Rules of a Director, Assistant Director or Head of Service with relevant responsibilities). This allows this power to be exercised by more than one person, for example either the Assistant Director or the	Definition at Para 13 and Tables 1 and 2 changed.

No.	Section	Reference	Issue Identified	Changes Made
			Head of Estates.	
			The implication of this is that there is also a single	Descriptions of Officers in Annex A and B
			authorisation process for transactions of up to £10,000	changed, and Rows A and B in Table 1
			and £25,000, simplifying the Constitution.	become a single row.
17.	HR Regulations	Appendix Q	Disciplinary Action - the Chief Executive and the	Under 2.1.6 (a) second column add "The Head
		Pages 205	Monitoring Officer should have the specific power to	of Paid Service has the power to appoint a
		to 210	appoint a Designated Independent Person.	Designated Independent Person. Where the
				process involves the Head of Paid Service the
				Monitoring Officer shall have this power".
18.	Protocol for Member Officer Relations	Appendix R	The Code Is endorsed by all Group Leaders so needs amending to reflect that there are now only two Political Groups.	Signatories changed.
		Pages 211	Section 2.4 includes a description of scrutiny work - the	
		to 224	nature of work is still broadly true but an amendment	Text added.
			'holding the committee and officers and other public	
			services' would more accurately reflect the specific	
			Overview and Scrutiny arrangements that still survive now	
			that an Executive form of governance has been replaced	
			by a committee form of governance.	

#### 2. REASONS FOR RECOMMENDATIONS

2.1 The Constitution, Ethics and Probity Committee are required under their terms of reference to proactively review and keep under review all aspects of the Constitution. These proposals are recommended to ensure the smooth running of the Council.

#### 3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 None considered. The options proposed in this report have been put forward as a result of experience so far in operating the Constitution, for the Committee to consider whether changes are required.

#### 4. POST DECISION IMPLEMENTATION

4.1 The recommendations will form part of a report for Full Council to make final approval.

#### 5. IMPLICATIONS OF DECISION

#### 5.1 **Corporate Priorities and Performance**

5.1.1 Barnet London Borough Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded, properly accounted for, and used economically, efficiently and effectively. By keeping the Constitution under review it ensures that the framework in which the Council is governed supports the delivery of corporate priorities and performance.

# 5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 There are no resource implications as a result of these proposals.

#### 5.3 Legal and Constitutional References

- 5.3.1 There are no legal issues in the context of this report.
- 5.3.2 The Council's Constitution under Responsibilities for Functions the Constitution, Ethics and Probity Committee terms of reference includes "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".

#### 5.4 **Risk Management**

5.4.1 The process of managing changes to the Constitution through the Constitution Ethics and Probity Committee ensures that the proposals are developed through Member participation and consideration.

### 5.5 Equalities and Diversity

5.5.1 The decision making processes of the Council, as enshrined within the Constitution, need to be transparent and accessible to all sectors of the community.

### 5.6 **Consultation and Engagement**

5.6.1 None in the context of this decision.

#### 6. BACKGROUND PAPERS

6.1 None.