

	<p style="text-align: center;">Constitution, Ethics and Probity Committee</p> <p style="text-align: center;">25 November 2014</p>
<p>Title</p>	<p>Constitution Review</p>
<p>Report of</p>	<p>Head of Governance (Acting)</p>
<p>Wards</p>	<p>None</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>Appendix A: Meetings Procedure Rules</p> <p>Appendix B: Responsibility for Functions, Annex A, Membership and Terms of Reference of Committees and Partnership Boards</p> <p>Appendix C: Public Participation and Engagement Rules</p> <p>Appendix D: Full Council Procedure Rules</p> <p>Appendix E: Article 9 – Chief Officers</p> <p>Appendix F: Responsibility for Functions, Annex B, Scheme of Delegated Authority to Officers</p> <p>Appendix G: Members Code of Conduct, Appendix 2</p>
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<p>Summary</p>
<p>This report seeks discussion and approval of revisions to the Constitution following the review of elements which require updating and review.</p>

<p>Recommendations</p>
<p>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 D.</p>

2. That the Committee note the amendments to Article 9 - Chief Officers (Appendix D) and Responsibility for Functions, Annex B, Scheme of Delegated Authority to Officers (Appendix E) as approved by Council on 4 November 2014.

1. WHY THIS REPORT IS NEEDED

- 1.1 The Council adopted a new Constitution at their annual meeting on 2 June 2014 when a Committee System form of governance was introduced. The new system has now completed one full cycle of committee meetings (June – July) and is part way through the second cycle (September – December).
- 1.2 At the Committee meeting held on 2 September 2014, a number of changes were proposed to ensure the smooth running of committees most of which were approved for referral to Council, with the exception of proposed changes to the Access to Information Procedure Rules. These changes to the constitution were adopted by Council on 23 September 2014.
- 1.3 Since the September meeting, a number of other issues have been identified. Changes to improve clarity in a number of areas are proposed in section 1.6.
- 1.4 At the meeting held on 2 September 2014, the Committee requested that a number of other areas of the Constitution be reviewed. These items are detailed in section 1.7. Specific changes are not recommended at this time to afford the Committee an opportunity to consider the issues and then provide guidance to officers for the development of specific proposals for consideration and approval at a future meeting.
- 1.5 Members have also raised a number of constitutional issues to the Governance Service which may require review and have requested that the Committee consider these as part of their on-going review of the constitution. The areas identified are set out section 1.8.

1.6 The following table represents the changes proposed to sections of the Constitution (in addition to minor factual and typographical corrections) and the reasons for the changes:

No.	Section	Reference	Issue Identified	Changes Made
1	Meeting Procedure Rules, Section 7.3	Page 50	Section 4.3 of the Public Participation and Engagement Rules detail the arrangements for Members to address planning committees only. There is no reference elsewhere in the Constitution to the length of time that Members have to address other committees and sub-committees.	Additional wording has been included in Section 7 (Councillors; rights to attend committees or sub-committees where they are not a member). Section 7.3 now specifies that non-committee Members have up to 3 minutes to address other committees.
2	Responsibility for Functions, Annex A, Terms of Reference of Residents Forums	Page 81	Resident's Forums provide an opportunity any resident to raise local matters. However, the definition of 'local matters' is not included in the Constitution. This could lead to issues regarding the interpretation of what is within the remit of the Forums. On 16 July 2013, full Council made changes to the terms of reference of Residents Forums following a review of their arrangements. The Council approved at that time the definition of a local matter. It is recommended that the definition now be added to the Constitution.	Additional wording has been included in Responsibility for Functions, Annex A, Terms of Reference of Residents Forums to include the definition of a local matter.
3.	Public Participation Rules, Section 4.5	Page 89	Section 4.5 includes a requirement for members of the public speaking at planning committees to provide written consent to a Governance Officer that they are authorised to speak on behalf of others. In practice, members of the public speaking at planning committees are often putting forward the views of others in the public gallery who are able to confirm their support verbally thereby negating the	Revised section 4.5 to remove the requirement for written authorisation.

No.	Section	Reference	Issue Identified	Changes Made
			need for written authorisation.	
4.	Public Participation Rules, Section 6.6	Page 91	<p>Section 6 of the Public Participation and Engagement Rules sets out how the Council manages petitions. Section 6.6 details two ways in which petitions which have received over 25 signatures could be considered.</p> <p>6.6 i) refers to the Terms of Reference being in Article 7 which is incorrect as the terms of reference are now included in Responsibility for Functions</p> <p>Section 6.6. ii) states that petitions over 25 signatures will be referred to the appropriate Committee and Director which contradicts the provision at section 6.9 for petitions which received over 2,000 signatures to be considered by the relevant theme committee.</p>	<p>Amend Section 6.6 i) to refer to the correct section of the Constitution.</p> <p>Revise Section ii) to refer to require petitions to be reported to the next available Residents Forum and state that the relevant Director or Lead Commissioner will provide a written response within 20 working days and the outcome will be reported to the next available Forum.</p>
5.	Meeting Procedure Rules, Section 2.1 Responsibility for Functions, Annex A, Terms of Reference of Area Committees	Page 47	The membership of Area Committees and Area Planning Committees are on the basis of one per ward and one substitute per ward. In Meetings Procedure Rules Section 2.1 there is no requirement for substitutions to Area Committees and Area Planning Committees to be made on the basis of ward rather than political party. As these committees are appointed on the basis of ward, Meeting Procedure Rules, Section 2.1 and Responsibility for Functions, Annex A, Terms of Reference of Area Committees have been amended	Added wording to Section 2.1 of Meetings Procedure Rules to clarify arrangements for making substitutions to Area Planning Committees and Area Committees

No.	Section	Reference	Issue Identified	Changes Made
			to clarify that substitutions must be on the basis of ward rather than political party.	
6.	Meetings Procedure Rules	Page 49	<p>Committee agendas include as standard an item titled 'Any other business that the Chairman decides is urgent'. However, there is no reference in the Meeting Procedure Rules in the new Constitution regarding the procedure for dealing with requests for urgent late items of business for committees. To ensure that urgent late items of business are managed in an open and transparent way, it is recommended that an additional section is included in Meeting Procedure Rules titled 'Urgency Provisions'.</p> <p>It should be noted that the proposed new procedure for the management of urgent late items of business for committees is separate and distinct from the provision for an Urgency Committee (as detailed on page 27 of Responsibility for Functions, Annex A).</p>	<p>New section 7 added to Meetings Procedure Rules containing details of how urgent late items of business will be managed.</p> <p>All subsequent sections to be renumbered.</p>
7.	Full Council Procedure Rules	Pages 96 – 101	Following changes to procedures for full Council introduced with the Committee System, Business Items no longer exist. However, references to Business Items are still included in the Full Council Procedure Rules. It is proposed that references to Business Items be removed and be replaced with Motions where appropriate.	Delete reference to Business Items from the following sections of the Full Council Procedure Rules: 8, 9, 10, 11, 12.7, 13, 14, 17.1a, 20.2, 20.5, 21.3, 21.4, 23.1

No.	Section	Reference	Issue Identified	Changes Made
8.	Responsibility for Functions, Annex A, Terms of Reference of the Performance & Contract Management Committee	Page 57	<p>The Performance & Contract Management Committee has within its terms of reference the following responsibility:</p> <p>(6) Approve the Annual Report of the Barnet Group Ltd.</p> <p>During the report clearance process for Performance & Contract Management Committee on 11 November 2014, officers identified that Committee actually had no decision making powers to approve (or otherwise) the Annual Report of The Barnet Group Ltd. as the Articles of Association of the Group authorise its directors to be responsible for the management of its business and to exercise all the powers of the company. Under the Companies (Model Articles) Regulations 2008, Schedule 1, which applies to the Articles of Association of The Barnet Group Limited, 'the shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.' There has been no special resolution approved by The Barnet Group Ltd. to require approval of the annual report by the shareholders (i.e. the Council). The Council would only be able to approve the Annual Report of The Barnet Group Ltd. if such a resolution had been passed.</p>	Amend the Terms of Reference of the Committee to note rather than approve the Annual Report of The Barnet Group Ltd.
9.	Public Participation and Engagement Rules, Section 4.5	Page 89	When area planning committees refer applications to the Planning Committee for approval, there is currently no provision within the Constitution for	Add a new section 4.9 to enable speakers rights to transfer to the Planning Committee

No.	Section	Reference	Issue Identified	Changes Made
			speakers' rights to automatically transfer to the Planning Committee. It is recommended an additional section be included in the Public Participation and Engagement Rules to ensure that speaking rights be automatically transferred to enable the public to address the body responsible for determining the application.	

- 1.7 The matters detailed below are those that the Committee agreed to keep under review at their meeting on 2 September 2014. The Committee's instructions on these matters are requested:

Section	Issue Identified
Meeting Procedure Rules	<p><u>Issue:</u> Review whether the Constitution should include a provision that the Chairman be required to indicate that s/he is proposing to move to the vote.</p> <p><u>Reason:</u> The amendment to Section 6 (Members Rights to Refer Matters to Parent Body) of Responsibility for Functions which stipulates that referrals to a parent body must take place before the vote could result in matters being moved for decision (Meeting Procedure Rule 10.4) prior to other Members having an opportunity to move a referral to the parent body (Responsibility for Functions, Section 6). It is suggested that the Constitution could include a provision that the Chairman be required to indicate that s/he is proposing to move to the vote.</p>
Responsibility for Functions, Section 6.2	<p><u>Issue:</u> Review whether the Chairman of an Area Committee should retain the power to "...refer any item that it considers with a recommendation to the relevant committee."</p> <p><u>Reason:</u> Consistency with the referral mechanism for other committees</p>
Full Council Procedure Rules, Section 27	<p><u>Issue:</u> Consider amending section 27.1, bullet 14 to state that written responses will be provided to questions to the Leader and that members of the public will be entitled to ask supplementary questions</p> <p><u>Reason:</u> Alignment with the Public Participation and Procedure Rules.</p>
Full Council Procedure Rules, Section 20.4	<p><u>Issue:</u> Review Full Council Procedure Rules section 20.4 at November meeting for review against existing custom and practice</p> <p><u>Reason:</u> Consider whether section 20.4 should be amended to enable the mover of the substantive Motion to have the right to respond rather than the Member who opened the</p>

Section	Issue Identified
	debate.
Responsibility for Functions, Annex A	<p><u>Issue:</u> Consider whether to reduce the number of theme committees by subsuming responsibilities into other committees from eight to six.</p> <p><u>Reason:</u> Frequency of meetings.</p>

1.8 Members and officers have identified the following areas as matters which should be considered by the Committee for review:

Section	Issue Identified
Access to Information Procedure Rules	<p>At the meeting held on 2 September 2014 the Committee considered and rejected proposed changes to the Access to Information Procedure Rules. Officers have been requested to undertake a comprehensive review of the rules to ensure compliance with legislation and to provide Members with clarity around their rights of access to information that the Council holds.</p> <p>Governance are working with a legally qualified officer in the Information Management team to review the existing rules prior to the development of a revised Rules. Members will be consulted throughout the process of developing updated Rules.</p>
Public Participation and Engagement	Consider reviewing Section 2 of the Public Participation and Engagement Rules to ensure that guidelines around how public questions are handled are robust.
Responsibility for Functions, Annex A, Terms of Reference of Group Leaders Panel	<p>A Member has requested additional information on the composition of the 'Standards Committee' body at other local authorities to inform Barnet's arrangements. Details of the research, which details the arrangements in both Executive and Committee System authorities and Barnet's own arrangements, are set out below:</p> <p>Barnet Five (By convention the Members comprise the Leaders of the political groups) The Group Leaders Panel will take account the view of an Independent Person</p> <p>Royal Borough of Kingston Six Members: Chairman – Leader of the Council</p>

Section	Issue Identified
	<p>Deputy Leader Leaders of the Opposition (Labour and Lib Dem) Two Committee Chairs</p> <p>London Borough of Sutton Seven Members: Two councillors Five people who are not councillors or employees of the Council or any other body having a Standards Committee (Independent Members). <i>The Leader of the Council may not be a member of the Standards Committee. The Chairman shall be an Independent Member</i></p> <p>London Borough of Newham Standards Advisory Committee comprises nine Members: Four councillors (other than the Mayor) Up to five persons who are not Members or officers of the Council or any other relevant authority (co-opted members.) <i>Co-opted member(s) are entitled to vote at meetings under the provisions of Section 13 (4) (e) of the Local Government and Housing Act 1989.</i> <i>The Committee can establish Hearing Sub-Committees</i> <i>The Council's Independent Person(s) appointed pursuant to the Localism Act 2011 shall be invited to meetings of the Standards Advisory Committee with 'observer status. They have no voting rights.</i></p>
<p>Members Code of Conduct, Appendix 2 (Process for complaints about the conduct of a councillor or co-opted member)</p> <p><i>(See Appendix G to this report)</i></p>	<p>Following the conclusion of investigations into complaints about the conduct of councillors through the Group Leaders Panel, some Members have suggested that there should be an amendment to section (h) of 'Process for complaints about the conduct of a councillor or co-opted member' (Appendix 2, Members Code of Conduct) approved by Council on 5 November 2013) to enable the subject Member to have legal representation.</p> <p>The Committee is requested to consider the current position and whether any amendments to the procedure are required (i.e. to allow the subject Member access to legal representation). Subject to the committee's instructions, officers can investigate practice in other local authorities to ensure consistency.</p>
<p>Responsibility for Functions, Section 6 (Members Rights to Refer Matters to Parent</p>	<p>Following the receipt of advice from HB Public Law that committees should not take a decision and then refer the matter to a parent body and should instead make the referral prior to the decision being taken, the Committee</p>

Section	Issue Identified
Body)	<p>at their 2 September 2014 agreed a change to Section 6 (Members Rights to Refer Matters to Parent Body) of Responsibility for Functions and referred this to Council on 23 September 2014 for decision.</p> <p>When the proposed amendment to Section 6 was recommended to Council for adoption, a Member submitted a proposed amendment to the recommendation which would reverse the requirement for the referral to take place before the vote. Following the consideration of legal advice, the Mayor ruled the amendment out of order in accordance with Council Procedure Rule 8.3 on the basis of the advice that when a public body takes a decision it would be inappropriate for another organ of that same body to re-take the same decision, which could happen if the amendment as proposed was agreed.</p> <p>Section 6 (Members Rights to Refer Matters to Parent Body) of Responsibility for Functions was approved by Council. Members have requested that the Committee reconsider this amendment.</p>
Contract Procedure Rules	<p>The Contract Procedure Rules do not currently cover the authorisation and acceptance thresholds for procurement activity that falls within the remit of a theme committee, but is outside of the approved budget for the committee. It is proposed that Appendix 1, Table A of the Contract Procedure Rules be amended to state that for contracts with a value of over £172,514, the following wording should be added: "If outside budget, Policy and Resources Committee"</p>

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 Legal implications as they relate to the recommended amendment to the Terms of Reference of the Performance & Contract Management Committee are detailed in 1.6 (8) above.

- 5.3.2 Council's Constitution, Responsibilities for Functions, Annex A – the Constitution, Ethics and Probity Committee terms of reference includes responsibility to “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.
- 5.4.2 The proposed amendment to the Meetings Procedure Rules relating to the introduction of rules for to the management of urgent late items of business for committees will introduce additional controls around the publication of late

information for committees. This will ensure that only genuinely urgent decisions come before committees as late items of business thereby mitigating against the risk of committee decisions being liable to challenge.

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 Council, 16 July 2013, Report from the Constitution, Ethics and Probity Committee, 8 July 2013, Review of Residents Forums – includes a definition of ‘local matters’:
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=6643&Ver=4>

6.2 Constitution, Ethics and Probity Committee, 2 September 2014, Decision Item 7, Constitution Review – details the matters referred to full Council for approval and the matters that the Committee have agreed to keep under review:
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=589&MId=7823&Ver=4>