

CONSITUTION AND GENERAL PURPOSES COMMITTEE
Thursday 17 January 2019

ITEM 5 – PUBLIC QUESTIONS AND COMMENTS

Note

At the meeting a total of 30 minutes is available for public questions and comments. The questioner may ask one supplementary question at the meeting which will be answered without discussion. The supplementary question must be relevant to the original question put to the Chairman.

Public Comment (up to 3 minutes per comment)

| Agenda Item No | Public Comment Request |
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| Item 7 – Senior Management Restructure | Mr John Dix |

| Qn No | Agenda Item No | Raised By | Question Raised | Answer |
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| 1. | Item 10 – Constitution Review | Mr John Cox | <p>You say: <i>“ENSURING LAWFULNESS AND FAIRNESS OF DECISION-MAKING: After consulting with the Head of Paid Service, Assurance Director, and the Chief Finance Officer the Monitoring Officer (‘MO’) will report to the Full Council if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.”</i></p> <p>(a) Does that consideration apply equally to common law and to statute law?</p> <p>(b) Does the MO read all “proposals and decisions” made by the Authority in order to constitutionally meet this obligation? What is a generic list of sources that is read (all committee agendas, all committee reports, but what else)?</p> | <p>(a) Yes</p> <p>(b) No, the Monitoring Officer does not read all proposals and decisions. However, committee reports are reviewed and cleared by various officers in the Council before being published. The minimum clearance requirement for all committee reports is Legal, Finance, Governance and the Committee Chairman. Other officers are also involved in the clearance process where there is a specific requirement to do so (for example, Procurement, Equalities, Commercial, Risk, etc.) During the clearance process, if Legal, Finance or Governance have any concerns regarding the decision(s) in question then they would refer them to the Monitoring Officer.</p> |

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| | | | <p>(c) Is it a fair characterisation of the usual procedure that the MO will (i) firstly consider material to be either ‘innocent’ or ‘of concern’, (ii) give that latter category further consideration, (iii) finally deciding (“<i>after consulting with the Head of Paid Service, Assurance Director, and the Chief Finance Officer</i>”) if the material meets the ‘take-action’ threshold or not?</p> <p>(d) To be a repeatable and robust procedure, how is such ‘of concern’ material documented, including those cases considered by the MO but falling short of their ‘take-action’ threshold? Are there separate lists for possible unlawfulness and maladministration?</p> <p>(e) To be fair under common law, what is the mechanism the Authority operates, to allow the public to swiftly suggest to the Monitoring Officer (MO) that a “proposal, decision or omission” meets one of those criteria (it being especially unclear how the MO reliably notices an “omission” if no Member or Officer points it out, since Officers are unlikely to undermine their own reports)? How does the authority log such suggestions from the public?</p> | <p>(c) Details of the council’s clearance process and how matter may be referred to the Monitoring Officer are detailed in (b) above. However, other matters may come to the attention of the Monitoring Officer via avenues other than that described above. The Monitoring Officer would consider each matter on the information before them and decide whether to follow the procedure for stopping the proposal.</p> <p>(d) The Monitoring Officer maintains records of matters that have been referred to him/her for consideration.</p> <p>(e) The public are able to contact the Monitoring Officer via email or phone to raise issues. As stated in (b) above, reports are subject to a clearance process. As stated in (d) above, the Monitoring Officer maintains records of matters that have been referred to him/her for consideration.</p> |
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| 2. | Item 10 – Constitution Review | Mr John Cox | <p>You say: <i>“ENSURING LAWFULNESS AND FAIRNESS OF COUNCIL OPERATING PROCEDURES: After consulting with the Head of Governance and the relevant senior line manager the Monitoring Officer (‘MO’) will report to the Head of Paid Service, Assurance Director, and the Chief Finance Officer any council process or procedure which s/he considers would give rise to unlawfulness or if any such process or procedure would give rise to maladministration.”</i></p> <p>(a) Does that consideration apply equally to common law and to statute law?</p> <p>(b) How does the MO discover and therefore is able to consider all “processes and procedures” operated by the Authority, in order to constitutionally meet this obligation?</p> <p>(c) Is it a fair characterisation of the usual procedure that the MO will (i) firstly consider material to be either ‘innocent’ or ‘of concern’, (ii) give that latter category further consideration, (iii) finally deciding (<i>“after consulting with the Head of Governance and the relevant senior line manager”</i>) if the material meets the ‘take-action’ threshold or not?</p> | Please see response to question 1 above. |
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| | | | <p>(d) To be a repeatable and robust procedure, how is such 'of concern' material documented, including those cases considered by the MO but falling short of their 'take-action' threshold?</p> <p>(e) To be fair under common law, what is the mechanism the Authority operates, to allow the public to swiftly suggest to the Monitoring Officer (MO) that a "process or procedure" meets one of those criteria? How does the authority log such suggestions from the public?</p> | |
| 3. | Item 10 – Constitution Review | Mr John Cox | <p>How long does the Authority consider it has to retain records of full council meetings, meaning agendas, reports and minutes? Is it just six years? Are there not contractual arrangements and strategic planning decisions for instance, that may depend on earlier records?</p> <p>Is the Authority aware that it has lost all full council records, both in its archive and in legal/governance services, from about fifteen years ago? Does it care? Is it still paying for the off-site storage of non-existent records? When did it last carry out an audit of such payments?</p> | <p>The Access to Information Act 1985 states:</p> <p>100C Inspection of minutes and other documents after meetings:</p> <p>(1) After a meeting of a principal council the following documents shall be open to inspection by members of the public at the offices of the council until the expiration of the period of six years beginning with the date of the meeting, namely—</p> <p>(a) the minutes, or a copy of the minutes, of the meeting, excluding so much of the minutes of proceedings during which the meeting was not open to the public as discloses exempt information;</p> <p>(b) where applicable, a summary under subsection (2) below;</p> <p>(c) a copy of the agenda for the meeting; and</p> <p>(d) a copy of so much of any report for the meeting as relates to any item during which the meeting was open to the public.</p> |

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| | | | | <p>Notwithstanding this, the authority seeks to maintain records for council and committee meetings beyond the statutory minimum as previous decisions may be relevant to current decisions. However, retaining documents in both electronic and hard copy format has cost implications and the council are managing records for the whole authority within a finite resource envelope. If the questioner can provide details of the lost records, officers will endeavor to locate the records from the archivist and/or document storage facility located off-site. Payments to the off-site storage provider will be made in accordance with the council's contractual obligations. We are not aware of a recent audit of payments.</p> |
| 4. | Item 10 – Constitution Review | Mr John Cox | <p>Constitutionally, what procedure does the Authority operate to consider appeals against specific items being considered by committees only after the exclusion of the public?</p> <p>What procedure does the Authority operate when it receives a request for the public release of committee records that at the time were held only in private? Is there a blanket ban on the release of such records, for ever?</p> | <p>There is no procedure prescribed within the Constitution.</p> <p>The Access to Information Rules state: "Information which falls within any of paragraphs 1 to 7 above is exempt information so long as the public interest in maintaining the exemption outweighs the public interest in disclosing the information." As such, it is possible that a report that was exempt at the time it was considered by a committee later becomes publicly accessible following consideration of the public interest. If a member of the public were to request an exempt report, the Monitoring Officer and/or Head of Governance would consider the request. Whether the information is released or not will depend on the specific circumstances of the matter in question</p> |

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| | | | <p>As an example, some years ago the Authority ejected the public from a committee meeting that then considered the sale of <i>public-sector</i> LB Barnet land in the <i>public-sector</i> LB of Haringey (at Pinkham Way, North Circular Road) to the <i>public-sector</i> North London Waste Authority (NLWA).</p> <p>There has been no known procedural change by Barnet since then, so how can the public object to such blatant lack of public-sector transparency, and why is such material <u>still</u> 'secret', even following requests under the Freedom of Information Act 2000 (although exactly the same text has always been freely available from the NLWA)?</p> | <p>If the resident can provide details of the meeting in question, the exempt report can be considered within the context outlined above.</p> <p>Please see response to question above.</p> |
| 5. | Item 10 – Constitution Review | Mr John Cox | <p>Since public written questions to committees have recently included at least one image, will the Authority formalise its regulations, so that images can always be submitted embedded as parts of questions, using the same acceptance criteria as for words (but with the proviso that the words can still be accepted for answering, even if images in the same questions were for some reason rejected)?</p> <p>In case there were relevant 'before' and 'after' images, maybe a limit of two images per question would be reasonable.</p> | <p>Public participation procedures are detailed in Article 3 (Residents and Public Participation): http://barnet.moderngov.co.uk/documents/s47980/04Article3ResidentsandPublicParticipation.doc.pdf The Constitution is currently silent on whether images are accepted alongside questions or comments. If Members wish to amend the Constitution to make explicit reference, they can do so via this Committee which will make a recommendation to Full Council.</p> <p>If a resident submits a question with formatting, Governance Officers would endeavour to retain this in the questions and responses document considered by a committee. However, occasionally formatting is lost when questions are copied and pasted between documents and software.</p> |

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| | | | <p>Furthermore, in the interests of non-controversial clarity, will the Authority allow minor formatting – that of Bold, <i>Italic</i> and <u>Underline</u> – in successfully submitted questions to committees to be retained when the wording is published? (For clarity, that last sentence has examples of such formatting, so we shall see what survives...)</p> | |
| 6. | Item 10 – Constitution Review | Mr John Cox | <p>In defining whether a written question to a committee is acceptable, the constitution says that it must relate to a substantive agenda item. However, some committee agenda items are regular, routine reports on the same subject, including long sections of repeated wording from one meeting to another.</p> <ul style="list-style-type: none"> • Does the Authority consider it reasonable or not to allow the public to have questions accepted for answer at a committee, based on the contents of such a regular report at the <u>previous</u> meeting of that committee, and therefore mentioned as <u>decisions in the minutes at the current meeting</u>, even if Officers for some reason happen to fail to mention the subject in their routine update report at the current meeting? • To avoid possible unfairness under common law, can that be made an explicit addition to the criteria for considering whether written questions from the public to a committee are legitimate or not? | <p>Minutes of the previous meeting are not considered to be a substantive item of business on the agenda and therefore questions and/or comments would not be allowed. Determining whether an item of the agenda is substantive or not is a matter for the committee chairman in consultation with the Head of Governance. In general terms, substantive means that there is a standalone report on the agenda on the matter in question.</p> |

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| 7. | Item 10 – Constitution Review | Mr John Cox | <p>Can the Chief Legal Advisor and Monitoring Officer be different people? What is the significance and context of adding the former title into the wording: “9.3: Functions of the Chief Legal Advisor and Monitoring Officer”? For instance, did they used to be, or could they have been, different people?</p> <p>Is the behaviour of the Chief Legal Advisor (in terms of “proposals, decisions or omissions” or “process or procedures” investigable by the Monitoring Officer, and vice versa?</p> <p>What routine, unchanging source can the public use to know who holds the one(/two) post(/s), and how to contact them?</p> <p>Do they have a deputy or a secretariat, so that requests or queries from the public can always be promptly answered? Where is that documented, please?</p> | <p>The Chief Legal Advisor and Monitoring Officer are one and the same person. If the public have a query on procedural or governance matters , they can contact the Governance Service (governanceservice@barnet.gov.uk) who will direct the query to the correct person, including the Monitoring Officer and/or Head of Governance.</p> |

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| 8. | Item 10 – Constitution Review | Mr John Cox | <p>Have references in the Constitution to the “Constitution, Ethics and Probity Committee” been changed to the “Constitution and General Purposes Committee?</p> <p>Assuming this week’s changes are approved, must the Constitution and General Purposes Committee have its decisions on the Constitution ratified by full council, or do they come into effect at the end of the current committee meeting?</p> | <p>Yes.</p> <p>Full Council approves changes to the Constitution on the recommendation of the Constitution and General Purposes Committee.</p> |