
Meeting	Constitution, Ethics and Probity Committee
Date	8 July 2013
Subject	Constitutional Review
Report of	Assurance Director
Summary	This paper makes a number of recommendations for further changes to the Constitution that was agreed by this Committee on 10 April 2013 and Council on 16 April 2013.

Officer Contributors	Maryellen Salter, Assurance Director Andrew Nathan, Head of Governance
Status (public or exempt)	Public
Wards Affected	None
Key Decision	Not applicable
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Tracked changes of sections proposed
Contact for Further Information:	Andrew Nathan, Head of Governance, 020 8359 7029, andrew.nathan@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the Committee consider the proposed changes to the Constitution as set out in the report, and discuss the recommendations proposed.**
- 1.2 That under Article 4.02 of the Constitution, these changes are recommended to Full Council on 16 July 2013 for adoption.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Constitution, Ethics and Probity Committee, 22 October 2012, Constitution Review – the Committee agreed that a full review of the constitution should be undertaken to reflect the new organisational structure and incorporate changes required as a result of the Localism Act 2011 and other legislative changes.
- 2.2 Constitution, Ethics and Probity Committee, 10 April 2013, Constitution Review – the Committee agreed changes to the Constitution for recommendation to Council
- 2.3 Council, 16 April 2013, item 4.3- agreed the above recommendations.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 To ensure that the Council has robust corporate governance arrangements, that enable the Council to deliver its objectives set out in the Corporate Plan, the Constitution should be kept under review and subject to amendments and alterations periodically to ensure that it continues to be a living document and reflects the pace of change of the organisation as a whole.

4. RISK MANAGEMENT ISSUES

- 4.1 Without effective governance arrangements in place, there is a risk of delays in decision making that may adversely impact the ability of Commissioners and Delivery Units to deliver outcomes for local people.

5. EQUALITIES AND DIVERSITY ISSUES

- 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. The regular review of the Constitution will help ensure that this is the case and ensure the Council is meeting its equality obligations.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The Constitutional Review is being undertaken, in consultation with Members, with senior management involvement across the Council. There are no specific budget implications arising from this review, and the impact on

arrangements for decision making involving finance, procurement, human resources and property will be within existing resources.

7. LEGAL ISSUES

- 7.1 Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 made several changes such as removing the requirement for local authorities to produce a Forward Plan of key decisions and replaced with a requirement to publish an Advanced Notice of Proposed Decisions Under Executive Functions; requirements to publish the intention to hold private meetings, to publish Background papers electronically, and additional rights to Members of Overview and Scrutiny to request documents..
- 7.2 The Localism Act requires that every Council has a Code of Conduct for Members and a procedure for investigating complaints. These changes had previously been accounted for and adopted by Full Council and are excluded from this review.
- 7.3 This Review does not suggest any legislative changes to the Constitution, but it is important that the Constitution is clear and concise.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council Constitution, Article 12, paragraph 12.03 (a) – one of the functions of the Monitoring Officer is to maintain an up-to-date version of the Constitution and ensure that it is widely available for consultation by members, staff and the public.
- 8.2 Council Constitution, Part 3, Section 2 – details the functions of the Constitution, Ethics and Probity Committee, which are 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”.

9. BACKGROUND INFORMATION

- 9.1 At the Constitution, Ethics and Probity Committee meeting on 22 October 2012 it was agreed that a major review be undertaken of the Constitution to ensure that it meets the needs of the new organisation following the senior management restructure.
- 9.2 This review was overseen by this Committee, which established a Working Group to review every section of the Constitution in detail. As a result, this Committee on 10 April 2013 agreed to recommend a series of changes to the Constitution, which was adopted by Council on 16 April 2013.
- 9.3 It was always intended that the constitution be kept under constant review to ensure it is fit for purpose. A number of issues have already been identified since that date and the Committee are requested to consider these and whether to recommend further changes.

9.4 Management of Assets, Property and Land and Responsibility for Functions

- 9.4.1 There are currently two minor inconsistencies between the provisions of Management of Assets, Property and Land Appendix 1, Table A and paragraph 7.13 of Responsibility for Functions.
- 9.4.2 The table, at Point C, provides that acquisitions of land for £25,000 or under may be taken by a Director/Chief Operating Officer and recorded through a summary Delegated Powers Report. However the powers delegated to the Chief Finance Officer, in consultation with the Head of Legal Practice - HB Law, as provided in the latter, only authorise acquisitions of less than £10,000 per annum and leases of less than 25 years. It is suggested that the authorisation level 'C' for acquisitions be amended to the same as for level 'D' (Cabinet Member) to make the two consistent.
- 9.4.3 Likewise, Paragraph 7.13 empowers the Section 151 officer to enter into new leases with a consideration between £25,000 and £50,000. This is not reflected in the Table in the Asset, Property and Land Rules which require all leases over £25,000 to be authorised by a Cabinet Member DPR. It is suggested that the authorisation level 'D' for new leases be amended to reflect this threshold. The titles of Officers have also been changed to ensure consistency with the Responsibility for Functions.
- 9.4.4 A tracked version of the Table which makes these changes is appended at Appendix 'A'.

9.5 The Council - Question Time

- 9.5.1 Paragraph 19.2 of 'The Council' Section provides that "Questions will be put to the appropriate Cabinet member in the order in which they are received by the Head of Governance, except that questions shall be ordered so that a question from one political group is followed by a question from another group until all groups have placed one question each. This sequence shall be maintained until all questions have been dealt with or the time limit for question time is reached".
- 9.5.2 At present, in the absence of any explicit reference to an Independent (non-aligned) Member's questions, such questions are taken after all of those from the party groups. Views are requested on the following as possible options:
- (i) Taking them every 4th question
 - (ii) Taking them at a suitable interval, for example, every 25th question
 - (iii) Retaining existing arrangements.

9.6 Contract Procedure Rules – Waiver of Requirement for two written quotes and additional definition of 'Individual Placement Agreement'

- 9.6.1 Two issues have been identified. The first issue regards single source of supply and the procedure to be adopted when the market has been fully tested but there is only one bidding vendor. Footnote ii of Appendix I, Table A allows the Head of Procurement to authorise the acceptance of a procurement based upon this scenario for contract values of less than £75,000.

- 9.6.2 There is no provision within the footnote for the same scenario for contract values above £75,000. Hence, such an Acceptance decision would require a Waiver from the Rules by CRC report (section 15.1) in order to proceed to contract.
- 9.6.3 The key principle here is that the market has been fully tested on the basis set out within the Authorisation decision. This variation to Table A will not dilute the force of the provision for Single tender action (section 9) because it applies to the Acceptance rather than the Authorisation decision.
- 9.6.4 It is recommended that either Footnote ii is amended or an additional Footnote included within Table A which states the following:
- Over £75,000 the Commercial Lead may waive requirement of 2 written quotes subject to assurance that the market place has been fully tested.'
- 9.6.5 In such circumstances final sign off will be governed through the Contract Procedure Rules process, and therefore for contracts over £500,000 a report would go to Cabinet Resources Committee with the officer recommendation.
- 9.6.6 The second issue is of a definition, which refers to section 14.1, and regards the treatment of Placement Agreements for Individuals. Section 14 determines the principles applying to Contract Variations and Extensions. Under normal circumstances a contract that is varied or extended more than once would require a Waiver report. The purpose of 14.1 is to recognise that there is a special form of contract where a high level of variation is expected, the "Individual Placement Agreement".
- 9.6.7 This term has not been defined within the new CPRs and Central Procurement believes that the special characteristics of such a contract requires further clarification for Officers during routine operations.

9.6.8 The proposed definition is:

***"Individual Placement Agreement"** is a contract of care need assigned to a specific individual. It can change significantly over time in terms of its duration, extent and scope. An Individual Placement Agreement award would be made to an approved Service Provider under terms and conditions already agreed commercially through an approved procurement process. They may be viewed as 'call-off' orders against pre-existing framework or similar umbrella commercial agreements.*

9.7 Overview and Scrutiny- Terms of Reference of Contract Monitoring OSC

- 9.7.1 The Contract Monitoring Overview and Scrutiny Committee was established, on the recommendation of this Committee, by Council on 16 April 2013. It met for the first time on 18 June 2013 and recommended that its Terms of Reference be strengthened, to allow scrutiny of major contracts other than those specifically listed in the Terms of Reference, examples being Kier PFI contract, the Street Lighting PFI contract and the Public Health contract; and to make more explicit the ability of the Committee to challenge the external delivery providers. In addition changes of wording are proposed to reflect the fact that the client management of some contracts within the remit of the

Committee sit with in-house Delivery Units rather than the Commissioning Group, and that therefore both parts of the organisation need to be included.

- 9.7.2 Proposed track changes are attached at Appendix 'B' for the Committee's views.

9.8 Appointment of School Governors

- 9.8.1 On 24th June 2013, Cabinet considered the report of the Education Strategy Overview and Scrutiny Panel. At the meeting, Cabinet noted the following recommendation: "The Panel recommend that the Cabinet endorse the proposal to adopt a streamlined approach to nominating Local Authority Governors (as set out in the Annex)." These changes have been proposed to speed up and improve the process for appointing Local Authority Governors to vacancies. Cabinet noted that this matter was to be considered by this Committee and the General Functions Committee.
- 9.8.2 Council Constitution, Responsibility for Functions, Section 3 (Responsibility for Council Functions), Terms of Reference of Committees – sets out the responsibilities of the General Functions Committee which includes: "All other Council functions that are not reserved to Council including appointing representatives to School Governing Bodies."
- 9.8.3 The views of the Constitution, Ethics and Probity Committee are sought on this proposal. Details are attached at Appendix 'C '. Subject to the Committee's endorsement, the proposals will be considered by the General Functions Committee on 22nd July 2013 and Council on 10th September 2013.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.

Cleared by Finance (Officer's initials)	AD
Cleared by Legal (Officer's initials)	JF

APPENDIX A

PROPOSED CHANGES TO APPENDIX 1- TABLE A- Authorisation Delegated Powers in 'the Management of Asset, Property and land Rules'

Deleted: ¶

	Authorisation Level ¹	Acquisitions	Lease in	Lease out for Rent or Consideration	Licences, Easements and Consents	Compensations, Settlements and Covenants	Disposals
A	Less than £5000	Summary DPR -Lead Commissioner/Chief Operating Officer	Summary DPR - <u>Chief Finance officer in consultation with Head HB Public Law</u>	Summary DPR -Lead Commissioner/Chief Operating Officer	Summary DPR -Lead Commissioner/Chief Operating Officer	Summary DPR -Lead Commissioner/Chief Operating Officer	Summary DPR – Cabinet Member – note to CRC
B	£5001 to £10000	Summary DPR –Asst Director/Chief Operating Officer	Summary DPR – <u>Chief Finance officer in consultation with Head HB Public</u>	Summary DPR –Asst Director/Chief Operating Officer	Summary DPR –Asst Director/Chief Operating Officer	Summary DPR –Asst Director/Chief Operating Officer	
C	£10001 to £25000	<u>Full DPR – Cabinet Member – note to CRC</u>	Summary DPR - <u>Chief Finance officer in consultation with Head HB Public Law</u>	Summary DPR - Director/Chief Operating Officer	Summary DPR - Director/Chief Operating Officer	Summary DPR - Director/Chief Operating Officer	

Deleted: Lead Commissioner/Chief Operating Office

Deleted: Asst Director/Chief O

Deleted: Summary DPR - Director/Chief Operating Officer

Deleted: perating Officer

Deleted: Director/Chief Operating Officer

¹ These values may be either Capital or Annualised Income/Expenditure

D	£25001 to £100000	Full DPR – Cabinet Member – note to CRC	Between £25,000 and £50,000- Summary DPR –Section 151 Officer (in consultation with Cab Member) Between £50,000 and £100,000- Full DPR – Cabinet Member – note to CRC	Full DPR – Cabinet Member – note to CRC	Summary DPR – Cabinet Member – note to CRC	Summary DPR – Cabinet Member – note to CRC
----------	----------------------	---	---	---	--	--

E	More than £100000	CRC Report	CRC Report	CRC Report	CRC Report	CRC Report	CRC Report
F	Variations post Authorisation	Delegated Powers Report Approval needed at the NEXT highest threshold above the original decision					

APPENDIX 'B'

Contract Monitoring Overview and Scrutiny Committee

PROPOSED CHANGES TO TERMS OF REFERENCE TRACKED

Responsibilities:

1. To receive and scrutinise reports from the Commissioning Group, Delivery Units and Lead Commissioners detailing the performance against targets that are included within the Corporate Plan and otherwise relating to the services provided by the New Support & Customer Services Organisation, Development & Regulatory Services, The Barnet Group Ltd, HB Public Law (external delivery units), NSL and other major contracts, and to be able to challenge external providers.

Deleted: and

Deleted:

Deleted: Joint Legal Service

Deleted: and

Deleted: .

2. To receive and scrutinise reports from the Commissioning Group, Delivery Units and Lead Commissioners detailing the financial performance of the external delivery units against savings targets detailed in the Budget and Medium Term Financial Strategy.

Deleted: and

3. To receive and scrutinise change requests and contract variations between the Council and external service providers to include (but not be limited to) the introduction of new key performance indicators, delivery of new commissions via the external delivery units, changes required due to new legislation and commercial development opportunities.

Deleted: delivery units

4. To engage with partner organisations, other relevant public sector bodies, private sector organisations, trade unions, local residents or any other appropriate witnesses when fulfilling the overview and scrutiny role in relation to the monitoring of contracts for services provided by external service providers.

Deleted: delivery units

Other Responsibilities

5. To ensure that overview and scrutiny in Barnet is reflective of Council priorities as evidenced by the Corporate Plan and the programme being followed by the Executive.
6. To contribute to producing an annual report on the overview and scrutiny function in Barnet in accordance with the provisions of Overview & Scrutiny Procedure Rule 7.
7. Additionally and insofar as relating to matters within its remit, to perform the overview and scrutiny role in relation to:
 - The Council's leadership role in relation to diversity and inclusiveness; and
 - The fulfilment of the Council's duties as employer including recruitment and retention, personnel, pensions and payroll services, staff development, equalities and health and safety.

PROPOSED LOCAL AUTHORITY GOVERNOR APPOINTMENT PROCESS

Current Practice in Barnet

In Barnet, the current process for appointing Local Authority (LA) Governors is as follows:

- In the first instance, nominations from political parties are invited for consideration by the Council;
- If vacancies are not filled in a predetermined time period (of three months), the field of candidates is widened to incorporate applications from members of the local community, local groups and Council employees;

Applications from the wider community are screened by Governor Services according to the appointment criteria.

The School Governance (Constitution) (England) Regulations 2012

School Governance (Constitution) (England) Regulations 2012 set out new arrangements for the constitution of the governing body of those maintained schools in England:

- that are established on or after 1 September 2012; or
- whose instrument of government is varied following a decision to vary made on or after 1 September 2012.

The School Governance (Constitution) (England) Regulations 2007 continue to apply to existing governing bodies until such time as it is decided to vary the instrument of government.

Under the new regulations, the number of Authority Governors per Governing Body must not exceed one. The Authority Governor is to be nominated by the local authority but appointed by the Governing Body, based on eligibility criteria. An individual eligible to be a staff governor may not be appointed as an Authority Governor. Removal from office would be by the local authority that nominated them.

Current Practice in London

As part of the review, information was obtained from London boroughs with regard to their LA Governor appointment practices. The majority of appointments are non-party political as set out below. Practice among other boroughs includes

- a panel with one minority and one majority party councillor meet together with Governor Service manager to decide on appointments based on an

application form, CV and comments from the chair of governors regarding desirable skills and experience. Candidates are asked to visit the school to confirm that they understand the role and can make the commitment before finalising the appointment.

- individuals in the community nominate themselves by completing an application form. These applicants are not from political parties, but are members of the community. The application form is considered by a panel of five councillors. If they agree, the person is then appointed by the Director to a vacancy. Parents are not appointed to schools where they have a child and the head teacher's agreement is sought if the applicant is known to the school (e.g. ex-governor).
- the Cabinet Member for Education and Children's Services has power to appoint after Governor Services recruit and nominate. Appointments are made on a non-political basis. Under the new 2012 regulations for schools that have reconstituted, the Cabinet Member has the power to nominate a candidate after Governor Services has identified candidates. The governing body then chooses whether to appoint or not.
- LA Governors appointed by Appointment Panel comprising representative from Council, Representative HT and Representative Governor

Proposal for New Appointment Process in Barnet

It is proposed that Barnet adopts an amended system for LA Governor appointments. Details are set out below:

A Panel with one minority and one majority party councillor would meet together with the Governor Services Manager to decide on appointments. First preference would be given to Ward Members who have put themselves forward. If a ward member is not put forward, other candidates will be assessed for suitability based on an application form and CV, together with comments from the Chair of Governors regarding desirable skills and experience being sought.

The Ward Member/proposed candidate would be invited to visit the school to confirm that they understand the role and can make the commitment before finalising the appointment. The candidate is then appointed to a vacancy, either by the Director of Children's Services (under The School Governance (Constitution) (England) Regulations 2007), or by the Governing Body (under School Governance (Constitution) (England) Regulations 2012).

The proposed new arrangements would: be in accordance with the 2007 and 2012 Regulations; streamline the current process; and would further enhance the promotion of effective governance through the recruitment and appointment of suitably skilled Governors.