

Decisions of the Constitution, Ethics and Probity Committee

19 December 2013

Members Present:-

Councillor Melvin Cohen (Chairman)
Councillor Joan Scannell (Vice-Chairman)

Councillor Jack Cohen	Councillor Barry Rawlings
Councillor Richard Cornelius	Councillor Alan Schneiderman
Councillor Alison Moore	Councillor Rowan Quigley Turner (substituting for Councillor Anthony Finn)

Apologies for Absence

Councillor Anthony Finn	Councillor Andrew Strongolou
Councillor Mark Shooter	

1. MINUTES OF LAST MEETING

RESOLVED – That the Minutes of the meeting held on 21 October 2013 be approved as a correct record.

2. ABSENCE OF MEMBERS (IF ANY)

Apologies for absence were received from Councillor Anthony Finn, Councillor Mark Shooter and Councillor Andrew Strongolou. Apologies for absence were received from Councillor Rowan Quigley-Turner for agenda items 1-6.

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

There were none.

4. PUBLIC QUESTION TIME (IF ANY)

There were none.

5. MEMBERS' ITEMS (IF ANY)

There were none.

6. CHANGE TO GOVERNANCE SYSTEM - PUBLIC CONSULTATION - FINAL REPORT

The Head of Governance introduced the report. Public comments were received on this item from Mr Dix. The Committee noted the views of Mr Dix on proposed changes to public participation processes, including proposals to allow the submission of written comments and to set the time limit for oral comments at 3 minutes per person.

The Committee noted the contents of the consultation findings report, and commented that the public consultation event had provided constructive input to help shape the committee's recommendations as well as inform future actions, including improving communications to increase public awareness and participation.

RESOLVED - That these comments are taken into account as part of the development of options on item 7 on this agenda.

7. CONSTITUTION DEVELOPMENT

The Assurance Director introduced the report.

RESOLVED - That the Committee's recommendations on the options contained within this report, as noted in the Appendix A to these minutes, be included in the drafting of the Constitution.

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

There were none.

The following Table represents the sections of the current Constitution, issues and decisions taken:

No.	Section	Issue	Decision Required	Decision
1	Article 1 – Constitution	Nothing specific regarding the Executive Model therefore review to ensure consistent at the end of the process.	N/A	.
2	Article 2 – Members of the Council	Nothing specific regarding the Executive Model therefore review to ensure consistent at the end of the process.	N/A	
3	Article 3 – Citizens of the Council	These need to refer to the Public Participation Rules to ensure readability of the Constitution.	This minor amendment will be included within the redraft of the Constitution.	Agreed
4	Article 4 – The Full Council	<p>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.</p> <p>Article 4 is to retain definitions relevant for reading across the Constitution, such as budget and policy framework and listing plans and strategies requiring approval.</p> <p>Currently the following are required by law to be adopted by Full Council:</p> <ul style="list-style-type: none"> • Safer Communities Strategy • Sustainable Community Strategy • Development Plan Documents comprising 	Appendix B has the Statutory Role of full Council listed for review.	<p>Agreed.</p> <p>The contents in Appendix B were agreed subject to the amendment of the wording in 1.12 in Appendix B to read 'Electing the Chairman and Vice-Chairman of the Committees.'</p>

No.	Section	Issue	Decision Required	Decision
		<p>the Local Plan</p> <ul style="list-style-type: none"> • Adoption of Neighbourhood Development Plans, Neighbourhood Development Orders and Community Right to Build Orders • Statement of Licensing Policy (under the Licensing Act 2003) • Statement of Gambling Licensing Policy (under the Gambling Act 2005) 		
5	Article 5 – Chairing the Council	Nothing specific regarding the Executive Model therefore review to ensure consistent at the end of the process.	N/A	
6	Article 6 – Overview and Scrutiny Committee	Proposed to be deleted and the Terms of Reference for the Health Overview and Scrutiny Committee are included within the Responsibility for Functions, and it will be covered by the overall Meeting Procedure Rules.	Health Overview and Scrutiny Committee is included within Appendix B for consideration by the Committee.	Agreed – subject to amendment of typographical error to correct spelling of ‘Secretary’ under point 2 of Responsibilities.
7	Article 7 – Executive	This will need deleting, but will need to be replaced with an Article that sets out the committees and sub-committees and how they are created and appointed to.	The Article will be drafted for consideration by the Committee in January 2014.	Agreed
8	Article 8 – Regulatory and Other Committees	Nothing specific regarding the Executive Model therefore review to ensure consistent at the end of the process.	N/A	
9	Article 9 – Area Committees, Forums and LSP	It is proposed that the Area Committees and Forums are included within the new Article 7 setting out committees and sub-committees, and within the Responsibility for Functions.	The Committee is asked to consider whether the Article is required and whether the contents can be included with in the	Agreed that the Area Committee and Forums be included in the new Responsibilities for Functions redraft. Agreed, that the

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		The Local Strategic 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. It is proposed that the LSP should be transferred to the Responsibility for Functions section of the Constitution.	Responsibility for Functions redraft.	responsibilities of the LSP be included in the Responsibility for Functions to be drafted, which should also include other partnership Boards, where not currently listed separately within the Constitution.
10	Article 10 Joint Arrangements	These powers will need to be exercised by Council, not the Executive.	The Committee are asked to note that the Constitution will be redrafted deleting the references to the Executive.	Agreed
11	Article 11 – Chief Officers	There are no expected changes to this section as a result of moving to the Committee system of governance. A consistency check will be carried out at the end of the redraft.	N/A	
12	Article 12 – Decision Making	<p>As well as replacing references to the Executive, there are some changes of wording that are proposed. Most significant is the inclusion of 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. • This will ensure compliance with The Local Authorities (Executive Arrangements) 	Committee is asked to consider whether they would like any amendments to revise inclusions to Committee reports.	Agreed to include the proposed inclusions.

No.	Section	Issue	Decision Required	Decision
		(Meetings and Access to Information) (England) Regulations 2012		
13	Article 13 – Finance, Contracts, Land Disposal and Legal Matters	Minor amendments required to remove references to the Executive.	N/A	
14	Article 14 – Review and Revision of the Constitution	<p>It is suggested that this Article describes the system 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 Article 11.</p>	Committee are asked to endorse these additions and amendments to the Article.	Agreed.
15	Article 15 – Suspension, interpretation and publication of the Constitution	No changes expected, review at the end of the redraft to ensure Consistent numbering.	N/A	
16	Responsibility for Functions	<ul style="list-style-type: none"> • Major changes to take out reference to Executive and to the ‘consideration of local choice’ (where authorities determined which were Executive or Council functions). • Moving the Environment functions of the current Planning and Environment to the Environment 	The Committees is asked to consider the new Terms of References for the proposed new Committees in	<p>Noted, and agreed that the proposed new TOR be recommended for adoption, subject to the following amendments:</p> <ul style="list-style-type: none"> • For each proposed Committee, amend the wording of Member Composition to

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		<p data-bbox="587 208 724 237">Committee</p> <ul data-bbox="541 277 884 1357" style="list-style-type: none"> <li data-bbox="541 277 884 387">• Incorporating Terms of reference of the new Committees <li data-bbox="541 562 884 837">• Removing Cabinet portfolios, and replacing with terms of reference of the new committees, ensuring all relevant functions are re-allocated <li data-bbox="541 1012 884 1245">• Removing the general powers reserved to Cabinet and specific strategies and reallocating to Full Council or Committees <li data-bbox="541 1285 884 1357">• Include new urgency provisions 	<p data-bbox="906 208 1043 237">Appendix B.</p> <p data-bbox="906 277 1169 763">Officers are currently ensuring all responsibilities are mapped to Committees, any subsequent changes to the draft terms of reference will be notified at the next Constitution, Ethics and Probity Committee.</p> <p data-bbox="906 898 1169 969">The Committee is asked to note.</p> <p data-bbox="906 1088 1169 1279">The Committee is asked consider the options for urgency procedures in Appendix C.</p>	<p data-bbox="1289 208 1477 566">clarify that the entire composition of the committee will be made up in accordance with proportionality</p> <ul data-bbox="1243 618 1477 2042" style="list-style-type: none"> <li data-bbox="1243 618 1477 808">• For Policy and Resources, clarify committee size is 12 <li data-bbox="1243 864 1477 1301">• For all committees amend the wording of Member Composition to read 'Chairman and Vice Chairmen to be appointed by Council' <li data-bbox="1243 1357 1477 1626">• For all committees add in the ability to award grants to the voluntary sector. <li data-bbox="1243 1682 1477 2042">• For Children, Education, Libraries and Safeguarding, add in that the Committee can receive reports from the Children's Trust

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				<p>Board</p> <ul style="list-style-type: none"> • For Environment, remove Commons registration and town and village greens, which will continue to be the remit of the Planning Committees. • 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

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				<p>would agree a framework for how this budget is managed and the process by which Area Committees would submit potential projects.</p> <p>Agreed, that the urgency provisions (2 options) outlined in Appendix C be recommended for inclusion in the Constitution.</p> <p>Agreed, that urgent decisions be reported to the next meeting of that committee, and published on the website.</p>
17	The Council	<p>Changes to Section 2 to reflect changes to agenda of business for Full Council in Appendix D.</p> <p>Minor changes of wording, eg Section 16 'Member's Dissent' would be more accurately called 'Right of Vote to be recorded'</p> <p>Changes to rules on Part 3 and 4 (rules of debate) to reflect the options in Appendix D.</p> <p>Procedure for Cabinet's budget report will need review.</p>	<p>The Committee is asked to consider the proposals for Full Council agendas in Appendix D.</p> <p>The Committee is asked to consider the proposals for business items/motions in Appendix D.</p> <p>The views of the Committee are requested on whether this be</p>	<p>Agreed that the proposals outlined in Appendix D be recommended for adoption, subject to the following amendments:</p> <ul style="list-style-type: none"> 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. Officers to

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			<p>retained with minor changes to reflect the fact there will no longer be a Cabinet or Scrutiny, or whether this special procedure is no longer required and adoption of the budget be treated in the same way as other recommendations from Committees to Council.</p>	<p>propose appropriate wording.</p> <ul style="list-style-type: none"> • That there be provision for Motions for adjournment, to allow the opportunity to debate additional motions if there is time. • For Statutory Business allow for up to 60 minutes, or as long as it takes for the Council to conclude the business. • 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. • Explore options for placing petitions at an early point in the agenda, to facilitate public participation.

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18	Committees and Sub Committees (Meetings Procedures)	<p>The list of Committees, with membership and quorum, will need to be updated, reflecting the proposed committees and terms of reference at Appendix B.</p> <p>The procedure for referring up items from a Committee to Council as outlined in Appendix D will need to be included within Section 12 (reports of Committees to Council or parent body)</p> <p>Relevant sections of the Executive Procedure Rules and Overview and Scrutiny Procedure Rules (included at sections 22 and 23 below) will need inclusion.</p>	<p>The Committee's decision on Committee Terms of reference will govern changes to this section</p> <p>The views of the Committee are sought on the referral upward procedures as outlined in Appendix D.</p>	Agreed, as per Appendix D.
19	Public Participation and Engagement	<ul style="list-style-type: none"> • This is a major issue as there is no separate section on 'Public Participation' in the Model Constitution – the majority of relevant sections are embedded in Council Procedure Rules. • The views of the Working Group are requested on whether this section should still be separate, or incorporated into Council meeting procedures. • In any event some separate document should be required which shows the public their democratic rights 	<p>The views of the Committee are requested on whether this should continue to be a separate section, or embedded into meeting procedures.</p> <p>The views of the Committee are requested on options for public participation as included at Appendix E.</p>	<p>Agreed that this should continue as a separate section.</p> <p>With respect to Appendix E, agreed:</p> <ul style="list-style-type: none"> • To allow 30 minutes in total for public questions and comments (at present 30 minutes, or 20 questions if that occurs first is allowed for questions, with no specific time allocated for comments); • To reduce the time for each individual

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		<p>in one place.</p> <p>Options for changes to participation rules that have arisen through discussion by Members are attached at Appendix 'E'.</p>		<p>comment from 5 minutes to 3 to allow as wide a range of people as possible to participate;</p> <ul style="list-style-type: none"> • 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; • 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.
20	Access to Information Rules	<ul style="list-style-type: none"> • Much of the existing sections relate to requirements on Executive business and the rights of Scrutiny. These will need deleting (subject to Legal advice on the extent to which these 	The views of the Committee are requested on whether to follow the Model Constitution, or to retain the existing rules, suitably updated to reflect	<p>Agreed to retain the existing rules.</p> <p>Agreed, to include a definition of exempt information, including the reasons for withholding, within this section.</p>

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		<p>apply in a committee system).</p> <ul style="list-style-type: none"> In addition, the Model Constitution seems more comprehensive- e.g. it expands information on categories of exempt information by including qualifications and explanations 	<p>the fact there will no longer be an Executive/Scrutiny system.</p>	
21	Budget and Policy Framework Procedure Rules	Broadly similar but references to Executive replaced by Council	N/A	
22	Executive Procedure Rules	These will be deleted but there are some sections- e.g. on Leader's conflict of interest, principles of decision making and consultation need to be integrated within other procedure rules	N/A	
23	Overview and Scrutiny Procedure Rules	<ul style="list-style-type: none"> These will be 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 at Appendix B- specifically Performance and 	Committee is asked to note these changes to be incorporated into the final model.	Noted and Agreed.

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		Contracts Committee.		
24	Financial Regulations	<p>These will need to be amended to take out references to Cabinet and replace by either Full Council or a Committee that has financial management within its remit. It is expected that the Policy and Resources Committee will recommend the Medium Term Financial Strategy for Full Council approval.</p> <p>The reference to the Executive would need to be replaced by reference to a Committee.</p> <p>There are various aspects of financial decision making delegated to officers and once they reach a threshold in monetary terms they then go to either Cabinet or Cabinet Resources Committee for decision. These will need to be redrafted to include the relevant Committee whose remit it now comes under.</p>	<p>The detail will need to be worked on to come back to the Committee after broad responsibilities are determined for the proposed Committees, however the Committee is asked to note the expected changes.</p>	<p>Agreed, subject to further research on the volumes/types of decisions which are made within the highest financial band currently delegated to a Cabinet Member, to vary the thresholds for financial decision making and make committees or an officer responsible for decision making.</p>
25	Contract Procedure Rules	<p>These rules will need to be revised to ensure that they included consistent referencing between sections as they refer to other parts of the Constitution.</p> <p>In addition, as the role of the Cabinet Member will not exist under the Committee structure a number of contracts requiring authorization and acceptance will either require officer decision or a Committee decision over a certain threshold. It is proposed that for contracts ranging from</p>	<p>The Committee is asked to comment on the principles to reviewing the Contract Procedure Rules a redraft will return for consideration in early 2014.</p>	<p>Agreed, subject to further research on the volumes/types of decisions which are made within the highest financial band currently delegated to a Cabinet Member, to vary the thresholds for financial decision making and make committees or an officer responsible for decision making.</p>

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		£173,000 to £500,000 an officer full delegated powers report in consultation with the Chairman of Performance and Contract Management Committee and/or the Chairman of the relevant theme committee; and for contracts over £500,000 the Performance and Contract Management Committee to agree acceptance.		
26	Code of Procurement Practice	As for the Contract Procedure Rules.	N/A	
27	Management of Assets, Property and Land Rules	<p>All items currently affecting Assets, property and Land rules over £100,000 currently go to Cabinet Resources Committee.</p> <p>Where there is currently a provision for the Cabinet Member decision the Committee will need to determine if a provision is drafted to allow officer decision in consultation with the Chairman of the Committee.</p>	<p>The Committee will need to determine where decisions will be made in relation to Assets, Property and Land either to be:</p> <ul style="list-style-type: none"> • Assets, regeneration and Growth Committee or • Policy and Resources. <p>Committee are asked to discuss the provision for officer decision, as there is currently within the rules, for threshold currently allocated to Cabinet Members so long as it is in consultation with the Chair of the relevant Committee.</p>	<p>Agreed that decisions should be made by Assets, Regeneration and Growth Committee.</p> <p>Provision for Committee/officer decision to be determined, following research as noted in 24 above.</p>
28	HR Regulations	It is not expected that there will	N/A	

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		be any significant changes to these rules as result of the change to a Committee system. These will be reviewed after the first phase of review.		
29	Members Code of Conduct	Minor changes to delete reference to Executive.	N/A	
30	Members Planning Code of Practice	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.	N/A	
31	Members Licensing Code of Practice	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.	N/A	
32	Officer Code of Conduct	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.	N/A	
33	Protocols for Member Officer Relations	It is not expected that there will be any changes to these protocols as a result of the change in governance system. However this section will be reviewed after the main changes are redrafted for consistency purposes.	N/A	
34	Code of Corporate Governance	The Model Constitution has a more simplified version, and does not include information on "How the Council meets the 6 core principles of good governance as set out by CIPFA	It is recommended that the Code of Corporate Governance is maintained in its current detail. It will	Agreed

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		and SOLACE.”	be redrafted at the end of the year to ensure it properly described the new system of governance.	
35	Officer Scheme of Delegation	Aspects of Officer delegations are included within the Responsibility for Functions.	It is recommended that Officer Delegations are included within the Responsibility for Functions. This would enable a layperson to understand whether a Committee or an Officer has authority to take decisions, and would ensure that it is kept in one place.	Agreed
36	Member Allowances Scheme	The Member Allowance Scheme may need to be amended to reflect responsibilities of new Committees.	None at this stage.	