

Meeting	Constitution, Ethics and Probity Committee
Date	19 December 2013
Subject	Constitution Development
Report of	Assurance Director Head of Governance
Summary	A review of the Constitution is taking place with a view to moving to the Committee style of governance. In order to undertake that review Member guidance is required on aspects where there are options available to the Council. This paper sets out the issues and options for discussion.

Officer Contributors	Maryellen Salter, Assurance Director Andrew Nathan, Head of Governance
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix A – Constitution Sections Appendix B – Terms of Reference of proposed Committees Appendix C – Urgent Procedures Appendix D – Council Procedure Rules Appendix E – Public Participation Rules
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1. RECOMMENDATIONS

- 1.1 That the Committee comment on the options contained within this report for inclusion in the drafting of the Constitution.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 22 January 2013- item 9
- 2.2 Constitution Ethics and Probity Committee, 8 July 2013 - item 6
- 2.3 Constitution Ethics and Probity Committee, 21 October 2013- item 7

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The overriding purpose of a Governance System review is to ensure that the Council's decision making structures operate in a way that best enables the Council to deliver its objectives set out in the Corporate Plan.

4. RISK MANAGEMENT ISSUES

- 4.1 The process of managing the change of governance system through the Constitution Ethics and Probity ensures that the proposals developed meet the needs of key stakeholders, and minimises the risk that the system may not achieve the desired outcomes determined at the start of the project.

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. This review of the Governance system will help ensure that this is the case and ensure the Council is meeting its equality obligations.
- 5.2 An extensive Equalities questionnaire was included within the first phase of Consultation of the change in system of governance and an analysis has been undertaken of different responses from relevant groups.

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

- 6.1 A commitment was made at Council that the effect of a move to a new system of governance would be cost neutral. All proposals will be costed to ensure they fit within this envelope.
- 6.2 The costs incurred to date (end of November 2013) are £9,105. This is funded from current budgets.

7. LEGAL ISSUES

- 7.1 The Localism Act 2011 allows Councils to return to a committee form of governance under schedule 2.

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

8.1 Council Constitution, Part 3, Section 3 – 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”.

8.2 This is not a ‘key decision’.

9. BACKGROUND INFORMATION

9.1 Under the Localism Act 2011, local authorities in England operating under executive arrangements have been given power to choose to move to a Committee System form of governance. On 22 January 2013, Council noted that the provisions of the Localism Act allow for changes to the system from an Annual Meeting of the Council for a minimum of five years and resolved to ‘ask officers and the Constitution, Ethics and Probity Committee to bring forward proposals to enable early approval of such change to commence operationally from the Annual Meeting 2014”.

9.2 This Committee, at its meeting of 8 July 2013, endorsed a Business Case and requested that the project be brought forward to enable Council in January 2014 to consider options. The Business Case included proposals for consultation with the public and wider stakeholders. The results of the consultation phases 1 and 2 are included elsewhere within the agenda.

9.3 Section 9KC of the Localism Act requires that a resolution of a local authority is required in order for the authority to make a change in governance arrangements. As soon as practicable after passing such a resolution a local authority must:

(a) secure that copies of a document setting out the provisions of the arrangements that are to have effect following the resolution are available at its principal office for inspection by members of the public

9.4 Any decision made by Full Council on the 21st January 2014 will therefore need to ensure that the principles of the change to a Committee system are available for inspection and it is proposed that it will be in the form of the Constitution that the Council intends to adopt. These overall principles will be subject to amendments until the Annual Meeting in June 2014 if the decision is taken to move to a Committee system.

9.5 It is therefore important that the detail is worked up for the Committee system. Officers have started the process of comparing the current Constitution to a model Constitution for authorities operating a committee system and highlighting the issues that require Member discussion. The following sections represent a number of issues that need consideration prior to drafting of the Constitution for decision at the 14th January 2014 meeting of this C ommittee.

Overall Structure

9.6 The current structure is understandable to a wide range of stakeholders who currently use it. Broadly the structure is as follows:

Section 1

Summary and explanation

Section 2

Articles of the Constitution

Section 3

Responsibilities for Functions

Section 4

Standing Orders, procedure rules, public participation and engagement rules, contract procedure rules and financial regulations

Section 5

Codes, protocols and handbooks

Section 6

Members allowance scheme

9.7 Due to the level of change expected through-out the Constitution it is suggested that where ever possible the structure is retained for ease of understanding and accessibility to current users. Members are asked to endorse this approach.

Procedure Rules

9.8 Through-out the current Constitution there are a number of procedure rules, outside the (Full) Council Procedure Rules, that essentially say the same thing. To ensure consistency amongst the conduct of each Committee under the emerging governance system it is proposed to keep the Full Council procedure rules separate and then combine all other procedure rules into one document. Members are asked to endorse this approach.

Sections of the Constitution

9.9 The sections of the Constitution will be reviewed against the following principles:

- Follow current procedures except where there is a clear case for change
- Avoid duplication

9.10 Appendix A notes the sections of the Constitution and the required Member decisions/steer for redrafting the detail of the Constitution.

(1) Articles

9.11 The current Articles contain a lot of information that is repeated elsewhere within the Constitution. It is therefore necessary to consider whether (1) these are necessary at all or (2) can be scaled down significantly to include only those items not elsewhere within the Constitution. Members are asked to comment on these options.

(2) Area Committees

9.12 It is proposed that Area Committees can be delegated a range of functions from themed committees, for all matters that are suitable for devolution to a sub-Borough level, not only environmental issues as currently.

- 9.13 To assist the Area Committees in exercising these powers and achieving better outcomes for local areas, it is suggested that Policy and Resources earmark £100,000 from the Capital programme for each Area Committee to consider proposals for capital expenditure within their respective remit.
- 9.14 Policy and Resources Committee would agree a framework for how this budget is managed and the process for submitting potential projects. The scheme would be reviewed after one year and reviewed, and possibly expanded if it is proving successful.
- 9.15 The Terms of Reference included within Appendix B includes the Area Committees.

(3) Urgent Decisions

- 9.16 A decision is required for provision drafted into the Responsibility for Functions section in relation to taking urgent decisions. These have been included in Appendix C for discussion and recommendations.

(4) Full Council

- 9.17 Appendix D makes suggestions on how the Full Council will be run procedurally to take into account the changing nature of motions as a result of moving to the Committee system. It also reflects that changes will be required to the current process of questions to the Leader and the Cabinet, and there may well be more decisions referred up from Committees as a result of the reference up functions within the Responsibilities for Functions section of the Constitution, that it is proposed to retain within the Committee system of governance. Options available to replace the current procedures are noted in Appendix D.

(5) Public Participation and Engagement Rules

- 9.18 As a result of the Consultation process there were some points noted for consideration within the Public Participation and Engagement Rules. As a result of moving to the Committee system there will be a need to ensure that the business is conducted to time for each meeting's agenda, allowing for the fact that there will be cross party membership on all Committees. Suggestions have been made for the Committee to consider in Appendix E.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	LW

The following Table represents the sections of the current Constitution and the issues requiring decision:

No.	Section	Issue	Decision Required
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.
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 the Local Plan 	Appendix B has the Statutory Role of full Council listed for review.

No.	Section	Issue	Decision Required
		<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.
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.
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	<p>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.</p> <p>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</p>	The Committee is asked to consider whether the Article is required and whether the contents can be included with in the Responsibility for Functions redraft.

No.	Section	Issue	Decision Required
		Structure. It is proposed that the LSP should be transferred to the Responsibility for Functions section of 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.
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) (Meetings and Access to Information) (England) Regulations 2012 	Committee is asked to consider whether they would like any amendments to revise inclusions to Committee reports.
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	It is suggested that this Article describes the system in place and the mechanism to change this under	Committee are asked to endorse these additions and amendments to the

No.	Section	Issue	Decision Required
	Constitution	<p>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>	Article.
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 Committee • Incorporating Terms of reference of the new Committees • Removing Cabinet portfolios, and replacing with terms of reference of the new committees, ensuring all relevant functions are re-allocated 	<p>The Committees is asked to consider the new Terms of References for the proposed new Committees in Appendix B.</p> <p>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</p>

No.	Section	Issue	Decision Required
		<ul style="list-style-type: none"> • Removing the general powers reserved to Cabinet and specific strategies and reallocating to Full Council or Committees • Include new urgency provisions 	<p>and Probity Committee.</p> <p>The Committee is asked to note.</p> <p>The Committee is asked consider the options for urgency procedures in Appendix C.</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 s in Appendix D.</p> <p>The views of the Committee are requested on whether this be retained with minor changes to reflect the fact there will no longer be a Cabinet or Scrutiny, or whether this special</p>

No.	Section	Issue	Decision Required
			procedure is no longer required and adoption of the budget be treated in the same way as other recommendations from Committees to Council.
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>
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>

No.	Section	Issue	Decision Required
		<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>	
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 apply in a committee system). • In addition, the Model Constitution seems more comprehensive- e.g. it expands information on categories of exempt information by including qualifications and explanations 	The views of the Committee are requested on whether to follow the Model Constitution, or to retain the existing rules, suitably updated to reflect the fact there will no longer be an Executive/Scrutiny system.
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 	Committee is asked to note these changes to be incorporated into the final model.

No.	Section	Issue	Decision Required
		<p>new Committees and their terms of reference at Appendix B- specifically Performance and Contracts Committee.</p>	
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 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>
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 £173,000 to £500,000 an officer full delegated powers report in consultation with the Chairman</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>

No.	Section	Issue	Decision Required
		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>
28	HR Regulations	It is not expected that there will 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.	N/A
29	Members Code of Conduct	Minor changes to delete reference to Executive.	N/A

No.	Section	Issue	Decision Required
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 and SOLACE."	It is recommended that the Code of Corporate Governance is maintained in its current detail. It will 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 include within the Responsibility for Functions. This would enable a layperson to understand

No.	Section	Issue	Decision Required
			whether a Committee or an Officer has authority to take decisions, and would ensure that it is kept in one place.
36	Member Allowances Scheme	The Member Allowance Scheme may need to be amended to reflect responsibilities of new Committees.	None at this stage.