
Meeting	Constitution, Ethics and Probity Committee
Date	14 January 2014
Subject	Constitution Development
Report of	Assurance Director Head of Governance
Summary	A review of the Constitution has taken place in accordance with Council instruction to consider the Committee style of governance as opposed to the current Executive model. Member guidance is required on the redrafting of the Constitution in line with principles previously agreed by the Committee. As a result of the review of the Constitution further Member decision is required on various options for specific elements of the redrafting exercise. This paper sets out the changes made and where relevant options available.

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	Appendices- Proposed draft Constitution Appendix A – Introduction to Constitution Appendix B- Article 1 Appendix C- Article 2 Appendix D- Article 3 Appendix E- Article 4

Appendix F- Article 5
Appendix G- (New) Article 6
Appendix H- (New) Article 7
Appendix I- (Renumbered) Article 8
Appendix J- (Renumbered) Article 9
Appendix K- (Renumbered) Article 10
Appendix L- (Renumbered) Article 11
Appendix M- (Renumbered) Article 12
Appendix N- (Renumbered) Article 13
Appendix O- Part 3, Responsibility for Functions
Appendix P- Annexe to Part 3, Responsibilities of Committees **(To follow)**
Appendix Q- Annexe B to Part 3 Scheme of Delegation to Officers
Appendix R- Part 4.1, Council Procedure Rules
Appendix S- Part 4.2, Meeting Procedure Rules
Appendix T- Part 4.3, Public Participation and Engagement Rules
Appendix U- Part 4.4- Access to Information Procedure Rules
Appendix V- Part 4.5- Budget and Policy Framework Procedure Rules

Contact for Further Andrew Nathan 020 8359 7029
Information: andrew.nathan@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the Committee comment on further proposals/options contained within this report for inclusion in the drafting of the Constitution.**
- 1.2 Officers be instructed make the required amendments to the proposed Constitution for inclusion in the papers for Full Council to consider.**
- 1.3 The Committee recommends to Full Council on the 21st January 2014 that they resolve under the provisions of the Localism Act 2011:
 - (a) To change its governance arrangements and start to operate a committee system form of governance**
 - (b) That the relevant change time for the London Borough of Barnet to cease operating the existing form of governance and start operating the new committee form of governance shall be at its Annual Meeting in June 2014**
 - (c) To request the Constitution, Ethics and Probity Committee to continue to work up the detailed proposals for the operation of the committee system, to be considered at a future Council meeting, in advance of the June 2014 implementation date.****

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
- 2.4 Constitution Ethics and Probity Committee, 19 December 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 December 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 does not fall within the legal definition of 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.

9.3 The Committee has considered proposals since July 2013 for drafting within the Constitution. This paper discusses the proposals developed thus far and attaches the Constitution from Appendix A onwards with tracked changes for further consideration.

9.4 Within the narrative of the report we have included the section of the Constitution, the changes made and the reasons for the change.

- 9.5 Any further changes resulting from this Committee's discussion will be incorporated and put forward to Full Council for recommendation on the 21st January 2014. A resolution to change the system of governance to a Committee system will come into effect from the Annual Meeting of Full Council on the 2nd June 2014 and cannot be changed for 5 years from the date of resolution (January 2014).
- 9.6 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.
- 9.7 The Committee are asked to note the Constitution has been drafted with Articles included. As discussed at the last meeting there is potential for the number of articles to be further reduced or deleted entirely however we will review these leading up to the Annual Meeting in June and bring forward any potential options to the Committee at a future date.

9.8 The following Table represents the sections of the current Constitution and the changes redrafted:

No.	Section	Reference	Changes contained within Document
0	Introduction	Appendix A	<p>An introduction to Constitution has been drafted including the following sections:</p> <p style="padding-left: 40px;"><u>Part 1</u> Summary and explanation</p> <p style="padding-left: 40px;"><u>Part 2</u> Articles of the Constitution</p> <p style="padding-left: 40px;"><u>Part 3</u> Responsibilities for Functions</p> <p style="padding-left: 40px;"><u>Part 4</u> Procedure rules, public participation and engagement rules, contract procedure rules and financial regulations</p> <p style="padding-left: 40px;"><u>Part 5</u> Codes, protocols and handbooks</p> <p style="padding-left: 40px;"><u>Part 6</u> Members allowance scheme</p> <p>A structure chart has been added to visually include the Committees that will come into effect from June 2014.</p> <p>Redrafted to be named “Introduction to the Constitution” rather than Decision Making.</p> <p>A definition of the Committee System has been added and the Executive System removed.</p> <p>Removed reference to overview and scrutiny Committees and renumbered some of the articles that have been changed or removed. A number of the references have also changed</p>

No.	Section	Reference	Changes contained within Document
			due to the change in the Committee System that will not exist under this model.
1	Article 1 – Constitution	Appendix B	There is nothing specific regarding the Executive Model therefore reviewed for consistency purposes and renumbered sections where appropriate.
2	Article 2 – Members of the Council	Appendix C	There is nothing specific regarding the Executive Model therefore reviewed for consistency purposes.
3	Article 3 – Citizens of the Council	Appendix D	<p>The first paragraph has been amended to include the wording of the Model Constitution.</p> <p>B (ii) and (iii) have been removed as they refer to Executive functions and Overview and Scrutiny Committees.</p> <p>These now refer to the Public Participation Rules to ensure readability of the Constitution.</p>
4	Article 4 – The Full Council	Appendix E	<p>The section now has an introduction to explain what the purpose is of Full Council.</p> <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. These sections have now been cross referenced into the Responsibility for Functions as a result of the recommendation from the Constitution, Ethics and Probity Committee on 19th December 2013.</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>
5	Article 5 – Chairing the Council	Appendix F	Minor change to delete reference to the Executive.
6	Article 6 – Overview and	Deleted	This article has been deleted and the Terms of Reference for the Health Overview and

No.	Section	Reference	Changes contained within Document
	Scrutiny Committee		Scrutiny Committee has been included within the Responsibility for Functions, and it will be covered by the overall Meeting Procedure Rules.
7	Article 7 – Executive	Appendix G	This Article has been renamed “The Leader” and becomes Article 6. The majority of the current article deals with the Executive model of governance which will not be applicable. The aspect retained is in relation to the Leader and also where no Leader is elected.
8	Article 8 – Regulatory and Other Committees	Deleted and Merged	These have been merged into a new Article 7 titled “Committees, Sub-Committees, Area Committees and Forums, and the Local Strategic Partnership”.
9	Article 9 – Area Committees, Forums and LSP	Deleted and Merged	It is proposed that the Area Committees and Forums are included within the new Article 7 setting out committees and sub-committees, and the detail within the Responsibility for Functions.
10	NEW Article 7 - Committees, Sub-Committees, Area Committees and Forums, and the Local Strategic Partnership	Appendix H	<p>This new Article describes all of the previous article 8 and 9 detailing all Committees, Sub-Committees, Area Committees and Forums, and the Local Strategic Partnership.</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 Structure. The LSP has been transferred to the Responsibility for Functions section of the Constitution and the description of the LSP retained within the Article.</p>
10	Article 10 Joint Arrangements	Appendix I	Renumbered Article 8. These powers will need to be exercised by Council, not the Executive. The Article has been redrafted deleting the references to the Executive.
11	Article 11 – Chief Officers	Appendix J	Renumbered Article 9. This section has been redrafted to remove references to the Executive.
12	Article 12 – Decision Making	Appendix K	Renumbered Article 10. As well as replacing references to the Executive, there are some changes of wording that have been amended resulting from the approval of the

No.	Section	Reference	Changes contained within Document
			<p>Constitution, Ethics and Probity Committee in December 2013 where it was approved to include 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. <p>This was to ensure compliance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.</p> <p>Issue for Consideration</p> <p>We are proposing to delete within this section references to Key Decisions because they are statutorily defined as Executive decisions that meet certain criteria. Under a Committee System the Executive model does not exist and therefore there is no requirement to have a key decision defined within the Constitution. As a result these have been deleted within this redrafted section. The Committee are asked to comment on this change.</p>
13	Article 13 – Finance, Contracts, Land Disposal and Legal Matters	Appendix L	Renumbered to Article 11. Minor amendments redrafted excluding references to the Executive.
14	Article 14 – Review and Revision of the Constitution	Appendix M	<p>Renumbered to Article 12. This Article has been amended to describe the system in governance 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 now Article 9.</p>

No.	Section	Reference	Changes contained within Document
15	Article 15 – Suspension, interpretation and publication of the Constitution	Appendix N	Renumbered to Article 13.
16	Responsibility for Functions	Appendix O	<ul style="list-style-type: none"> • Inserted an introduction to ensure its readability • Major changes to take out reference to Executive and to the ‘consideration of local choice’ (where authorities determined which were Executive or Council functions). • Statutory Functions have been added for Full council as approved by the Constitution, Ethics and Probity Committee in December 2013. • 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 • Removing the general powers reserved to Cabinet and specific strategies and reallocating to Full Council or Committees. • A redraft has been made to reflect the changes agreed by the Constitution, Ethics and Probity Committee on the Health and Well Being Board and the Health Overview and Scrutiny Committee <p>It was agreed that the proposed new Terms of Reference (ToR) of all Committees as considered by the Constitution, Ethics and Probity Committee in December 2013 be</p>

No.	Section	Reference	Changes contained within Document
			<p>recommended for adoption, subject to the agreed following amendments:</p> <ul style="list-style-type: none"> • For each proposed Committee, amend the wording of Member Composition to clarify that the entire composition of the committee will be made up in accordance with proportionality • For Policy and Resources, clarify committee size is 12 • For all committees amend the wording of Member Composition to read ‘Chairman and Vice Chairmen to be appointed by Council’ • For all committees add in the ability to award grants to the voluntary sector. • For Children, Education, Libraries and Safeguarding, add in that the Committee can receive reports from the Children’s Trust Board • 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 would agree a framework for how this budget is managed and the process by which Area Committees would submit potential projects. <p>These changes have now been reflected within the Responsibility for Functions and</p>

No.	Section	Reference	Changes contained within Document
			<p>proposed to be included as an Annex (Appendix P).</p> <p>In addition, upon cross referring all Cabinet Meeting responsibilities the forming of neighbourhood plans were not allocated to a Committee as such it has been allocated to the Planning Committee within the redraft.</p> <p>Joint Arrangements have been added into the Responsibility for Functions.</p> <p>Agreed that the urgency provisions (2 options) outlined in the meeting of the 19th December 2013 be included in the redraft of the Constitution. This has been included as a 3 Member committee forming of the Leader, Deputy Leader and the Leader of the Opposition. This Committee must consult with the Chairman of the relevant Committee in making their decision.</p> <p>All Officer Delegations have been removed and combined with the Officer Scheme of Delegation to ensure all officer delegations are included in one document. This document will become Annex B to the Responsibility for Functions (Appendix Q).</p>
17	Officer Scheme of Delegation	Appendix Q	<p>These will now be an Annex to the Responsibility for Functions and include those sections deleted from the Responsibility for Functions. There was duplication noted within the responsibilities delegated to officers and therefore where there was duplication only one remains within the proposed revised document.</p> <p>Reference to key decisions removed due to this only being applicable to an Executive model of governance.</p> <p>Removal of reference to the Executive.</p>

No.	Section	Reference	Changes contained within Document
18	The Council	Appendix R	<p>The Constitution has been redrafted to incorporate changes agreed by the Constitution, Ethics and Probity Committee on the 19th December 2013. The following has been incorporated on request of the Committee</p> <ul style="list-style-type: none"> Officers have been requested to provide wording 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. <p>The following has been drafted and included within the Proposed Constitution:</p> <p>'At least one motion not originating from the Administration to be debated if submitted'</p> <p>This wording keeps it simple, overcomes the issue about what constitutes the opposition and so gives scope for any member not part of the administration to submit a motion. It also covers the position if no motions are submitted by Members not part of the Administration.</p> <p>The motion debated will be determined by Council if there is more than one submitted.</p> <p>This would replace the current 'opposition item'.</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. <p>The following has been drafted and included within the papers:</p> <p>Motions for Adjournment</p> <p>If time permits at the end of a meeting further motions may be debated. The</p>

No.	Section	Reference	Changes contained within Document
			<p>selection of motions (s) to be debated will be decided following a member moving a particular motion and the Mayor putting this to a vote by members present. Voting will be by a show of hands. If agreement is not reached in relation to the first proposed motion, further motions may be proposed until agreement on the motion to be debated is reached. The other Rules of Debate in relation to motions set out in currently within the Constitution will apply to Motions for Adjournment. The process can be repeated, but no motions shall be transacted after 10pm. At 10pm without further debate, the Mayor shall immediately put to the vote the motion under debate and end the meeting.</p> <ul style="list-style-type: none"> • 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. <p>In addition, there was a discussion about the order of business, particularly in relation to having petitions dealt with earlier on the agenda and also allowing motions at the end of the meeting if there was time. It has been drafted within the proposed Constitution a change in the order of the Council meeting to be the following:</p> <ol style="list-style-type: none"> 1. Statutory Formalities 2. Statutory Council Business (which will include petitions)

No.	Section	Reference	Changes contained within Document
			<p data-bbox="1160 288 1368 312">3. Question Time</p> <p data-bbox="1160 355 1429 379">4. Business for Debate</p> <p data-bbox="1066 422 2172 699">As it was the preference noted at the Constitution, Ethics and Probity Committee to have 3 motions to be debated, this ordering of business would allow for additional motions where the time left was known. In addition, this would ensure that all motions would be dealt with together. Under the current suggested timetable there would be 2 motions discussed in Part 3 of the meeting followed by Statutory Council Business and then back to motions again if time permitted. This is a little disjointed. This ordering suggestion will also address the petitions being dealt with sooner on the agenda.</p> <p data-bbox="1066 742 2172 807">Reference to Standing Orders is now changed to refer to Procedure Rules to be consistent with the remainder of the Constitution.</p> <p data-bbox="1066 850 2172 959">The Committee agreed that Full Council were to allow questions from the public to the Leader in writing with responses in writing provided. The options for how these are going to be administered are currently being drafted by officers.</p>
19	Committees and Sub Committees (Meetings Procedures)	Appendix S	<p data-bbox="1066 1003 1771 1027">This section has been renamed "Meeting Procedure Rules".</p> <p data-bbox="1066 1070 2172 1222">The list of Committees, with membership and quorum, has been updated, reflecting the proposed committees, deleting overview and scrutiny and Executive Committees, and ensuring consistency with the Responsibility for Functions. Also adding in an Urgency Committee in line with the urgency procedure noted in the Responsibility for \Functions.</p> <p data-bbox="1066 1265 2172 1374">The Executive Procedure Rules and Overview and Scrutiny Procedure Rules have been compared with the general procedure rules to ensure anything relevant has been included within this section.</p>

No.	Section	Reference	Changes contained within Document
20	Public Participation and Engagement	Appendix T	<p>The following has been incorporated into the rules as agreed by the Constitution, Ethics and Probity Committee on the 19th December 2013:</p> <ul style="list-style-type: none"> • To allow 30 minutes in total for public questions and comments; • Comments to be maximum 3 to allow as wide a range of people as possible to participate; • 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; <p>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.</p> <p>For Petitions those that range between 2,000 to 7,000 signatures go to Business Management Overview and Scrutiny Committee (BMOSC), options could be that these go to:</p> <ul style="list-style-type: none"> • Policy and Resources Committee • The Council threshold be reduced from 7,000 to 2,000 for the petition to be considered • The current rules are observed for petitions up to 7,000, at which point they will be considered by Full Council. <p>The Committee are asked for their comments on these options for including within the draft of the Constitution.</p>

No.	Section	Reference	Changes contained within Document
21	Access to Information Rules	Appendix U	<p>Reference to the Executive form of governance have been removed through-out the document.</p> <p>The definition of exempt information has been extended, including the reasons for withholding, within this section.</p> <p>Removed reference to key decisions, as discussed previously this is not a requirement under the Committee system form of governance.</p> <p>Overview and Scrutiny has been removed from this section.</p>
22	Budget and Policy Framework Procedure Rules	Appendix V	<p>References to Executive replaced by Council or by Policy and Resources where relevant and in line with the Terms of Reference of the Committee.</p> <p>Call-in arrangements have been deleted as there is the referencing up mechanism included within the Responsibility for functions for referring to the parent Committee.</p>
23	Executive Procedure Rules	N/A	<p>These will be deleted but there are some sections- e.g. on Leader's conflict of interest (article 6 – the leader), principles of decision making and consultation are to be integrated within other procedure rules (Article 10 – decision making).</p>
24	Overview and Scrutiny Procedure Rules	N/A	<p>These have been deleted, other than those elements specifically relating to the Health OSC, which if necessary will be incorporated within Meetings Procedures Rules.</p> <p>The Terms of reference of existing Scrutiny Committees have been embedded where relevant in the proposed new Committees and their terms of reference within the Responsibility for Functions (Appendix O).</p>
25	Financial Regulations	N/A	<p>The Financial Regulations are due an annual review by finance officers and will be presented to the Constitution, Ethics and Probity Committee for consideration prior to the Annual</p>

No.	Section	Reference	Changes contained within Document
			Council meeting.
26	Contract Procedure Rules	N/A	The Committee will be presented a revised CPRs for consideration prior to Annual Council in June 2014.
27	Code of Procurement Practice	N/A	As above.
28	Management of Assets, Property and Land Rules	N/A	These will be reviewed as part of the Annual Review and be presented to the Committee prior to the Annual Council for consideration.
29	HR Regulations	N/A	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 prior to Annual Council in June 2014.
30	Members Code of Conduct	N/A	Minor changes to delete reference to Executive no other changes expected.
31	Members Planning Code of Practice	N/A	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.
32	Members Licensing Code of Practice	N/A	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.
33	Officer Code of Conduct	N/A	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.
34	Protocols for Member Officer Relations	N/A	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.

No.	Section	Reference	Changes contained within Document
35	Code of Corporate Governance	N/A	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.
36	Member Allowances Scheme	N/A	These will need to be determined prior to Annual Council.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Cleared by Finance (Officer's initials)	
Cleared by Legal (Officer's initials)	LC/LW