

	<p>Constitution, Ethics and Probity Committee</p> <p>17 March 2016</p>
<p>Title</p>	<p>Constitution Review</p>
<p>Report of</p>	<p>Head of Governance</p>
<p>Wards</p>	<p>None</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>Appendix A: Article 9 Appendix B: Responsibility for Functions Appendix C: Responsibility for Functions, Annex A Appendix D: Responsibility for Functions, Annex B Appendix E: Meetings Procedure Rules</p>
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<p>Summary</p>	
<p>This report seeks discussion and approval of revisions to the Constitution following the review of elements which require updating and review.</p>	

<p>Recommendations</p>
<p>That the Committee recommend to Council that the Constitution be amended to incorporate the changes set out in this report and the track change versions attached at Appendix A to Appendix E.</p>

1. WHY THIS REPORT IS NEEDED

- 1.1 The Council adopted a new Constitution at their annual meeting on 2 June 2014 when a Committee System form of governance was introduced. The system has now completed six full cycles of committee meetings:
- June – July 2014;

- September – December 2014;
- January – March 2015; and
- April – May 2015
- June – July 2015

- September – December 2015

- 1.2 At the Committee meetings held on 2 September 2014, 25 November 2014, 31 March 2015, 30 June 2015 and 16 November 2015 a number of changes were proposed to ensure the smooth running of committees most of which were approved for referral to Council. These changes to the constitution were adopted by Council on 23 September 2014, 16 December 2014, 14 April 2015, 28 July 2015, and 8 December 2015 respectively.
- 1.3 Since the November meeting of the Committee, a number of other issues have been identified. Changes to improve clarity in a number of areas are proposed in section 1.4 below.

1.4 The following table represents the changes proposed to sections of the Constitution and the reasons for the changes:

No.	Section	Reference	Issue Identified	Changes Made
1	Responsibility for Functions	Page 55-60	<p>The current wording of paragraph 6.2 of Responsibility for Functions currently states that the Chairman of an Area Committee and/or Area Planning Committee "...may refer any item that it considers with a recommendation to the relevant committee within whose Terms of Reference it falls, by indicating immediately after the decision is taken that they require the decision to be referred up." As currently drafted it is not clear that a Chairman of an Area and/or Area Planning Committee is required to give reasons when using his / her authority to refer a matter to another committee and this is contrary to Article 10.2 which states that: All decisions of the Council will be made in accordance with the following principles...(g) the giving of reasons for the decision and the proper recording of those reasons." It would be best practice to specify that a reason should be given, consistent with the requirement for Committees to give reasons when referring a matter up.</p>	<p>Amend paragraph 6.2 of Responsibility for Functions to add:</p> <p>'The report on the referral to Full Council or the relevant Committee to which the Committee or Sub-Committee reports shall set out the reasons given for the referral.'</p>
2	Responsibility for Functions	Page 55-60	<p>Members have proposed that an amendment be made to Section 6 of Responsibility for Functions (Members Rights to Refer Matters to Parent Body) to enable Area Committee Chairmen to have the ability to refer applications to the Area Committee Budget to relevant Theme Committee (Environment Committee for environment related schemes or Community Leadership Committee for community related projects). The proposed amendment would provide Chairmen with the flexibility and discretion to ensure that Area Committees achieve an appropriate balance between environment and community based projects when allocating funds via the Area Committee Budget.</p>	<p>Amend Responsibility for Functions to add a new paragraph 6.3:</p> <p>"A Chairman of an Area Committee may refer applications to the Area Committee Budget to the relevant Theme Committee (Environment Committee for environment related schemes or Community Leadership Committee for community related projects). The report to the relevant Committee to which the Area Committee refers the application shall set out the reasons given for the referral."</p> <p>Renumber subsequent sections.</p>

No.	Section	Reference	Issue Identified	Changes Made
				<p>Amend Responsibility for Functions, Annex A, to add to Environment Committee and Community Leadership Committee terms of reference:</p> <p>“Determining applications to the Area Committee Budget referred by Area Committees.”</p>
3	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	Audit Committee terms of reference does not contain anything about ability to ‘refer’ or ‘recommend’ matters of concern to bring them to the attention of the relevant Committee for attention (frequently recently this has concerned contract compliance or performance issues by CSG or Re, but should equally encompass the ability to raise concerns regarding internal delivery units)	Amend Responsibility for Functions Annex A to add to Audit Committee terms of reference: ‘To make recommendations to the relevant Committee for consideration of audit assurance matters of significant concern’
4	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	It is recommended that performance and contract monitoring information be reported to Theme Committees in addition to Performance and Contract Management Committee to close a gap. It is suggested this be added to the terms of reference of each of the Theme Committees, and clarification provided from officers as to how this will work in practice.	Amend Responsibility for Functions Annex A to add to all Theme Committee terms of reference: ‘To receive reports on relevant performance information on Delivery Units providing services under the remit of the Committee’
5	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	The terms of reference of the Performance and Contract Management Committee note that the committee has a responsibility regarding Monitoring of Performance ‘against targets’. It has been noted that the committee monitors against KPIs and should be able to raise any matter regarding performance.	Amend Responsibility for Functions, Annex A to delete the words ‘against targets by’ from paragraph 2 and add the word ‘of’.
6	Responsibility for	Page 61-99	General Functions Committee terms of reference still	Amend Responsibility for Functions Annex A to

No.	Section	Reference	Issue Identified	Changes Made
	Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)		includes that GFC recommends calendar of meeting dates to Annual Council. This changed in October 2015 and it is now Council and not Annual Council which has the authority to approve	remove the word 'Annual' from the relevant paragraph in General Functions Committee terms of reference.
7	<p>Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)</p> <p>And</p> <p>Meeting Procedure Rules</p>	<p>Page 61-99</p> <p>Page 125-136</p>	<p>The rules regarding the process for changing committee meeting dates require clarification. Currently the process involves:</p> <ol style="list-style-type: none"> 1. Consult with Chairman of the General Functions Committee and Group Leaders (as per decision of Council on 26 January 2016); and 2. Consult with relevant Committee Chairman. Date to be amended subject to a majority of committee members being in agreement (in accordance with Meeting Procedure Rules 4.2) <p>It is also noted that General Functions Committee has within its terms of reference 'Agreeing mid-year adjustments to the approved Calendar of Meetings'. It is noted that in practice the involvement of GFC Committee in agreeing changes to individual meeting dates is does not occur, as there has been earlier involvement of the Chairman of GFC, the Group Leaders and the Chairman and committee members, who will have agreed a change.</p> <p>It is recommended that to avoid confusion this provision be deleted from GFC Committee terms of reference and that instead Meeting Procedure Rules are amended to clarify the process agreed by Council on 26 January of ensuring that the Chairman of GFC Committee and</p>	<p>Amend Responsibility for Functions, Annex A, terms of reference of General Functions Committee to delete 'Agreeing mid-year adjustments to the approved Calendar of Meetings'</p> <p>Amend Meeting Procedure Rule 4.2 to clarify that the process for changing a meeting date additionally requires consultation with the Chairman of GFC Committee and Group Leaders</p>

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			Group Leaders are also consulted on proposed changes to dates.	
8	Responsibility for Functions Annex B (Scheme of Delegated Authority to Officers); and Article 9	Page 101-123 Page 49-53	It is proposed that the post of Strategic Director for Commissioning position be deleted. This decision is due to be considered by General Functions Committee on 21 March. Subject to GFC's decision, it is recommended that references to the position and relevant delegated authority be deleted from the Constitution. To note, the position's delegated authority would transfer to the CE who has the authority 'To make any decision delegated to another officer'.	Amend Responsibility for Functions Annex B to delete the reference to the Delegated Authority to the Strategic Director for Commissioning: Amend Article 9 to delete references to the post in 9.01 b and 9.01 d.
9	Meeting Procedure Rules	Page 125-136	The current rules relating to Members' Items only allow Members to submit a Members Item to a committee or sub-committee to which they have been appointed to. The revised arrangements for Area Committee Budgets (being reported to the Community Leadership Committee on 9 March 2016) recommend that any Member should be able to sponsor an application to the Area Committee Budgets via a Members Item. Section 6 of Meetings Procedure Rules has been amended to give effect to this proposal.	Amend Meetings Procedure Rules to include a new Section 6.4 as follows: "Any Member will be permitted to have one matter only (with no sub-items) on the agenda for an Area Committee where the Member is sponsoring an application to an Area Committee Budget. Members' Items sponsoring an application to the Area Committee Budget must be submitted 12 clear working days before the meeting. Items received after that time will only be dealt with at the meeting if the Chairman agrees they are urgent."
10	Meeting Procedure Rules	Page 125-136	The Council's Constitution is currently silent in the event that a MP or GLA Member, or elected member from another neighbouring council makes a request to give an oral representation at a Planning Committee. Currently the following Meetings Procedures Rules may be referred to:	Amend Meeting Procedure Rules, paragraph 8.5 to add a new paragraph 8.5.3, as follows: The following arrangements applies in the case of Planning Committees: '8.5.3 MPs, GLA Members and Members from neighbouring councils may request to address

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			<p>“4.3 Any procedural issues or challenges to the conduct of the meeting that arise during the course of a meeting shall be determined by the person presiding at the meeting.</p> <p>4.4 The Chairman shall have the power to invite any persons or bodies with a particular expertise on a given agenda item to give evidence to the Committee and answer questions. This power is in addition to the Public Participation Rules elsewhere in the Constitution.”</p> <p>However this has been challenged as:</p> <ol style="list-style-type: none"> 1. Invoking Meeting Procedure Rule 4.3 contradicts Public Participation rule 4.3 which states “In respect of planning committees only, there can be a maximum of two speakers in favour or against an application” 2. It is inaccurate to describe an elected member as having ‘particular expertise’. Also, invariably they will not have been invited by the Chairman, but instead have requested to speak. <p>It is currently not clear whether or not the ‘external’ elected representatives should be treated as members of the public for the purposes of Public Participation and Engagement Rules’ (currently in practice they are not).</p>	<p>a Planning or Area Planning meeting on a matter which affects their constituency or ward. Any such Member should give notice to the Chairman of the meeting before the start of the meeting. Any such Member would be allowed up to 3 minutes.’</p>
11	Responsibility for Functions	Page 55-60	<p>In order to increase the visibility of statutory role of the Lead Member for Children’s Services (LMCS), the Commissioning Director for Children’s Services has requested that a Member Role Profile for the LMCS be created and posted on the council’s website and that explicit reference is made to the role profile in the</p>	<p>Amend Section 1.19 of Responsibility for Functions as follows:</p> <p>Appointing the Lead Member for Children's Services, who will have the responsibilities as set out in the Role Profile for the Lead Member</p>

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			Constitution. The role profile will be updated on a regular basis to reflect changes to regulations / government guidance and reflect best practice.	for Children's Services published on the Council's website which will reflect relevant Regulations and Government guidance
12	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	As part of a number of improvements to children's governance arrangements, it is proposed that the constitution includes a specific responsibility in the terms of reference of the Children, Education, Libraries & Safeguarding Committee to receive and consider reports from the Corporate Parenting Advisory Panel. The purpose of the proposed amendment is to improve the linkages between the Panel and the Committee.	Amend Responsibility for Functions, Annex A to include in the terms of reference of the Children, Education, Libraries & Safeguarding Committee: To receive and consider reports as appropriate from the Corporate Parenting Advisory Panel
13	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	To strengthen the role of the Lead Member for Children's Services, it is proposed to enable the LMCS to present an annual report on critical children's issues to the Children, Education, Libraries & Safeguarding Committee	Amend Responsibility for Functions, Annex A to include in the terms of reference of the Children, Education, Libraries & Safeguarding Committee: Receive an annual report from the Lead Member for Children's Services covering key matters.
14	Responsibility for Functions, Annex A (Membership and Terms of Reference of Committees, Sub-Committee and Partnership Boards)	Page 61-99	The Commissioning Director for Children's & Young People has identified that the current arrangements for the Children's Trust Board are not facilitating the statutory duty to cooperate (as required by Section 10 of the Children's Act 2004). It is proposed that the current terms of reference of the Children's Trust Board be deleted and updated including: i) updated terms of reference; and ii) a proposal that the Board meets as an Annual Children and Young People's Conference	Delete the previous terms of reference of the Children's Trust Board and update as set out in tracked changes amendments
15	Meetings Procedure	Page 125 -	To strengthen the role of the Lead Member for Children's	Create a new section 8.4 of Meetings

No.	Section	Reference	Issue Identified	Changes Made
	Rules	136	Services, it is proposed that the he/she be given additional rights to address committees, sub-committees or partnership boards which consider matters relating to children and young people	<p>Procedure Rules as follows:</p> <p>The Lead Member for Children’s Services has a right to make an untimed speech at a meeting of Committee, Sub-Committee or Partnership Board which is considering matters which relate children and young people, subject to giving notice to the Chairman of the meeting before the start of the meeting and the Chairman giving his or her consent.</p> <p>Renumber all subsequent sections.</p>
16	Meetings Procedure Rules	Page 125 - 136	To strengthen the role of the Lead Member for Children’s Services, it is proposed that the he/she be given additional rights to present Members Items to committees, sub-committees or partnership boards of which they are not a Member when those bodies are considering matters relating to children and young people	<p>Create a new section 6.3 of Meetings Procedure Rules as follows:</p> <p>The Lead Member for Children’s Services is permitted to have one matter only (with no-sub items) on the agenda for a meeting of a Committee, Sub-Committee or Partnership Board on which s/he does not serve when that body is considering an item which relates to children and young people</p> <p>Renumber all subsequent sections.</p>

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Constitution, Ethics and Probity Committee are required under their terms of reference to proactively review and keep under review all aspects of the Constitution. These proposals are recommended to ensure the smooth running of the Council.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 None considered. The options proposed in this report have been put forward as a result of experience so far in operating the Constitution. The Committee are to consider whether changes are required.

4. POST DECISION IMPLEMENTATION

- 4.1 The recommendations will form part of a report to Full Council on 4 April 2016 to make final approval.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Barnet London Borough Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded, properly accounted for, and used economically, efficiently and effectively. By keeping the Constitution under review it ensures that the framework in which the Council is governed supports the delivery of corporate priorities and performance.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 There are no resource implications as a result of these proposals.

5.3 Legal and Constitutional References

- 5.3.1 Council's Constitution, Responsibilities for Functions, Annex A – the Constitution, Ethics and Probity Committee terms of reference includes responsibility 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”.

- 5.3.2 In April 2013, the Department for Education has issued statutory guidance on the role of the Lead Member for Children's Services:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271429/directors_of_child_services_-_stat_guidance.pdf

5.3.3 Section 19 of the Children Act 2004 details the statutory duty to appoint a Lead Member for Children's Services.

5.3.4 Section 10 of the Children Act 2004 details the statutory duty to co-operate to improve well-being.

5.4 Risk Management

5.4.1 The process of managing changes to the Constitution through the Constitution Ethics and Probity Committee ensures that the proposals are developed through Member participation and consideration.

5.4.2 The proposed amendment to the Responsibility for Functions relating to the introduction of limitations on the referral mechanism will support the Council in ensuring that urgent decisions can be taken.

5.5 Equalities and Diversity

5.5.1 The decision making processes of the Council, as enshrined within the Constitution, need to be transparent and accessible to all sectors of the community.

5.6 Consultation and Engagement

5.6.1 None in the context of this decision.

6. BACKGROUND PAPERS

6.1 None