

	<p align="center"><b>CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT</b></p>
<p align="center"><b>Title</b></p>	<p align="center"><b>Correction to Wording of Delegated Powers</b></p>
<p align="center"><b>Report of</b></p>	<p>Monitoring Officer (in consultation with the Chairman of the Constitution, Ethics and Probity Committee)</p>
<p align="center"><b>Wards</b></p>	<p>N/A</p>
<p align="center"><b>Status</b></p>	<p>N/A</p>
<p align="center"><b>Enclosures</b></p>	<p>Appendix – Article 10 of the Constitution</p>
<p align="center"><b>Officer Contact Details</b></p>	<p>David Tatlow, Monitoring Officer, <a href="mailto: david.tatlow@barnet.gov.uk">david.tatlow@barnet.gov.uk</a></p>

<h2>Summary</h2>
<p>In order to avoid the possibility of legal challenge the current wording of Article 10 needs to be corrected and slightly amended.</p>

<h2>Decisions</h2>
<p><b>1. That the current wording of Article 10.4 be noted and in particular that the word ‘jointly’ is not transparent in its precise meaning in this context:</b></p> <p><b>10.4 Decision making by Chairmen of Theme Committees jointly with Chief Officers</b></p> <p>Chairmen of Theme Committees (Policy &amp; Resources, Children, Adults, Environment, Assets, Housing, Community Leadership) jointly with Chief Officers have delegated authority to make decisions which are not key decisions and which have a value between £165K and £500K. A written report will be prepared for every decision.</p>

**2. That for wording of Article 10.4 be amended to the following:**

**10.4 Decision making by Chief Officers in consultation with the Chairmen of Theme Committees**

**Chairmen of Theme Committees (Policy & Resources, Children, Adults, Environment, Assets, Housing, Community Leadership) are to be consulted by Chief Officers who have delegated authority to make decisions which are not key decisions and which have a value between £181,302 and £500,000. A written report will be prepared for every decision.**

**And that the property and contract decision-making charts annexed to Article 10 be similarly amended.**

**1. WHY THIS REPORT IS NEEDED**

- 1.1 In order to avoid the possibility of legal challenge and on the recommendation of the Council's solicitors – Harrow & Barnet Public Law
- 1.2 Under section 101 of the 1972 Local Government Act a local authority may arrange for the discharge of any of their functions:
  - (a) by a committee, a sub-committee or an officer of the authority; or
  - (b) by any other local authority.
- 1.3 In the case of R. v Secretary of State for the Environment Ex p. Hillingdon LBC - Court of Appeal (Civil Division) 17 April 1986  
"Committee" in the Local Government Act 1972 s.101(1) has its modern meaning of a body of more than one member. The Council's standing orders allowed for the delegation to the chairman of the planning committee of the function of authorising the service of enforcement notices under the Town and Country Planning Act 1971 s.87(1). The chairman authorised the service of a notice on a company requiring it to comply with the terms of a temporary planning permission. The company appealed to the Secretary of State who held that the council could not delegate its functions to a committee with only one member under s.101(1) of the 1972 Act. The council were refused judicial review, on the ground that "committee" under s.101(1) has its modern meaning of a body of more than one member.

Held, dismissing the appeal to the Court of Appeal, that the judge's decision was correct.

**2. REASONS FOR RECOMMENDATIONS**

- 2.1 Advice received from the Council's solicitors.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 Leave the wording as currently agreed with the consequential risk of legal challenge.

### **4. POST DECISION IMPLEMENTATION**

- 4.1 The constitution will be amended immediately in accordance with the recommendation in this report.
- 4.2 Delegated decisions by the Chief Officer in consultation with the Chairmen of Theme Committees will not be implemented unless the covering report has been signed by the relevant chief officer and by the relevant chairman acknowledging that s/he has been consulted.

### **5. IMPLICATIONS OF DECISION**

- 5.1 **Corporate Priorities and Performance** – no implications
- 5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)** – no implications
- 5.3 **Social Value** – no implications
- 5.4 **Legal and Constitutional References**
  - 5.4.1 Where minor amendments to the Constitution are required, the Monitoring Officer is authorised to make the necessary changes following consultation with the Chairman of the Constitution, Ethics and Probity Committee.
- 5.5 **Risk Management**
  - 5.5.1 As set out in 1.1 above.
- 5.6 **Equalities and Diversity**
  - 5.6.1 N/A
- 5.7 **Corporate Parenting**
  - 5.7.1 n/a
- 5.8 **Consultation and Engagement**
  - 5.8.1 The Leader of the Council and Leader of the Opposition have been consulted.

### **6. BACKGROUND PAPERS**

- 6.1 None

Chairman (Has been consulted): Cllr John Marshall

Date: 14 December 2017

Officer (Decision maker having taken into account the views of the Chairman):

David Tatlow

Date: 14 December 2017