



Constitution and General Purposes Committee

1 April 2020

Title	Constitution Review (including recommendations of Committee on Standards in Public Life on Local Government Ethical Standards (CSPL))
Report of	Monitoring Officer Head of Governance
Wards	Not Applicable
Status	Public
Urgent	No
Key	No
Enclosures	<p>Appendix A – Committee on Standards in Public Life, Local Government Ethical Standards – Best Practice Guidelines, Status and Actions</p> <p>Appendix B – Members Code of Conduct (Tracked)</p> <p>Appendix C – Members Code of Conduct</p> <p>Appendix D – Procedure for Dealing with Complaints (Tracked)</p> <p>Appendix E – Procedure for Dealing with Complaints</p> <p>Appendix F – Article 4 – The Full Council (Tracked)</p> <p>Appendix G – Article 4 – The Full Council</p> <p>Appendix H – Full Council Procedure Rules (Tracked)</p> <p>Appendix I – Full Council Procedure Rules</p> <p>Appendix J – HR Regulations (Tracked)</p> <p>Appendix K – HR Regulations</p> <p>Appendix L – Financial Regulations (Tracked)</p>

	<p>Appendix M – Financial Regulations</p> <p>Appendix N – Article 7 (Committees, Forums, Working Groups and Partnerships) (Tracked)</p> <p>Appendix O – Article 7 (Committees, Forums, Working Groups and Partnerships)</p> <p>Appendix P – Article 3 - Residents and Public Participation (Tracked)</p> <p>Appendix Q – Article 3 - Residents and Public Participation</p> <p>Appendix R – Article 2 – Members of the Council (Tracked)</p> <p>Appendix S – Article 2 – Members of the Council</p> <p>Appendix T – Article 10 – Decision Making (Tracked)</p> <p>Appendix U – Article 10 – Decision Making</p>
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Summary

Following the comprehensive review of the Constitution which was completed in May 2018 a number of housekeeping amendments are proposed as set out in the report and appendices. In addition, the Committee on Standards in Public Life has published a report on Local Government Ethical Standards and several amendments to the Constitution are required to comply with their guidelines.

Officers Recommendations

- 1. That the Committee agree the actions to comply with the Committee on Standards in Public Life, Local Government Ethical Standards best practice recommendations as detailed in Appendix A.**
- 2. That the Committee instruct the Monitoring Officer to circulate to all Members:**
 - i) the report of the Committee on Standards in Public Life on Local Government Ethical Standards;**
 - ii) the best practice guidelines and actions as detailed in Appendix B; and**
 - iii) the revised and updated Members Code of Conduct (Appendix C).**
- 3. That the Committee recommend to Council that the Constitution be amended to incorporate the changes set out in this report and the amended versions attached at Appendices B to U.**

1. WHY THIS REPORT IS NEEDED

- 1.1 The terms of reference Committee include 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”.
- 1.2 Detailed changes and the reason for them are as set out in the table below:

No.	Section	Reference(s)	Issue Identified	Changes Proposed
1.	Members Code of Conduct and Procedure for Dealing with Complaints	<p>Section 2</p> <p>Section 3 (2) (g)</p> <p>Section 3 (3) (e)</p> <p>Section 3 (3) (j)</p> <p>Section 4 (new)</p> <p>Section 5 (new)</p> <p>Section 6 (revised)</p> <p>Section 8 (new)</p> <p>Section 9 (new)</p>	<p>In January 2019, the Committee for Standards in Public Life published a report on local government ethical standards (see link in Background Documents section). To comply with the recommendations, updates are required to Barnet's Members Code of Conduct and Procedure for Dealing with Complaints. Officers have reviewed the recommendations (refer to Appendix A) and proposals are as per the tracked changes appendices.</p> <p>In addition to making changes to comply with the best practice recommendations, the new Monitoring Officer is proposing some amendments to the Code to improve clarity.</p>	<p>Section 2 – amend to clarify that the Code only applies when a Member is acting in their capacity as a councillor.</p> <p>Section 3 (2) (g) – add a new section to require Members to comply with any formal investigation under the Code of Conduct</p> <p>Section 3 (3) (e) – amend to include 'harass' and include definitions of bullying and harassment as a footnote</p> <p>Section 3 (3) (j) – add a new section regarding trivial or malicious allegations</p> <p>Move the definition of Pecuniary Interest from the form attached to the Code into a new section 4 to improve clarity.</p> <p>Add a definition of Other Interests' to replace the current definition of non-pecuniary interests.</p> <p>Amendments to (new) section 6 in relation to the declaration of interests to improve clarity.</p> <p>Delete section on exemptions and replace with a new section on dispensations.</p> <p>Add a new section on gifts and hospitality to replace the form previously included in the code.</p>

2.	Article 4 – The Full Council Council Procedure Rules	Section 4.1 Rule 1	Schedule 2, Part 1, Paragraph 5 of the Local Government Act 1972 provides that ‘The mayor of a London borough may appoint a councillor of the borough to be deputy mayor.’ Some sections of the Constitution incorrectly refer to the Deputy Mayor being appointed by Council which requires correction.	Amend Section 4.1 to delete reference to the Deputy Mayor Amend Rule 1 a. iii. to remove electing a Deputy Mayor and add a new (d) Noting the appointment of the Deputy Mayor and re-number subsequent sections.
3.	Council Procedure Rules	Rule 17.2 Rule 17.7 Rule 17.7 Rules 9, 17.4 and 17.5	Rule 17.2 refers to Business Items which have been discontinued Rule 17.7 refers to rule 20.2 which no longer exists. Rule 17.7 time for debate states 5 minutes for first speakers from each group and 4 minutes for subsequent speakers. These timings are not adhered to in practice and it is recommended that the timings be amended to reflect the current practice. The Committee may wish to consider: a) Should Groups be able to move amendments to their own motions; and/or b) Whether there should be a limit on the number of amendments moved by each Group in relation to Motions on the agenda.	Amend rule 17.2 to refer to Motions instead of Business Items. Amend rule 17.7 to refer to rule 17.2 instead of 20.2. Amend rule 17.7 to change speech timings to 3 minutes for the first speakers from each group and 2 minutes for each subsequent speaker. No changes proposed at this stage. If changes are required, rules 9, 17.4 and 17.5 may require amendment.
4.	Council Procedure Rules	Sections 17.1 and 17.2	Following the formation of a Liberal Democrat Group, Members may wish to review speaking arrangements at Council	No changes currently proposed. Members could amend section 17.2 to place limitations

			<p>meetings. The Council agreed an amendment to the procedure for Questions to the Leader as follows to make the Liberal Democrats entitlement to ask questions to be proportionate to their strength on the Council: <i>“The smaller Opposition Group will be entitled to have one question in every six throughout this sequence.”</i></p> <p>At present, Council Procedure Rules 17.2 and 17.3 state that “...the leader of each of the other groups, or another member of their group, will then have an opportunity to comment on the motion or recommendation” which enables the Liberal Democrat Group to speak on all motions and committee reports. Members may wish to revise these arrangements.</p>	<p>on speaking rights on Motions. Members could amend section 17.3 to place limitations on speaking rights on committee reports (i.e. the Liberal Democrats are only able to speak on reports from committees where they have a seat entitlement (P&R, Adults & Safeguarding, Planning and Licensing)</p>
5.	HR Regulations	Section 2.1	<p>HR Regulations currently include a requirement that: “No vacant posts at Assistant Director level or above shall be advertised or recruited to without prior Committee approval and all new posts at Assistant Director level or above shall be created by committee decision (Constitution & General Purposes Committee, Policy and Resources Committee or Urgency Committee) and not by delegated powers”</p> <p>The Constitution & General Purposes Committee approves the senior officer structure as and when major changes are required. For the tier below chief officers, consideration should be given as to whether chief officers should have delegated powers</p>	<p>Delete the following:</p> <p>“Sections 2.1.3 to 2.1.5 are subject to the following restriction:</p> <p>*No vacant posts at Assistant Director level or above shall be advertised or recruited to without prior Committee approval and all new posts at Assistant Director level or above shall be created by committee decision (Constitution & General Purposes Committee, Policy and Resources Committee or Urgency Committee) and not by delegated powers.”</p>

			<p>to approve the officer structure below them as and when changes be required (i.e. aside from a major review). Section 2.1.5 already requires that for the recruitment of senior officers below chief officer level that: “The Head of Paid Service will consult the chairman of the Chief Officer Appointments Panel. Appointment of Deputy Chief Officers will be reported to Constitution & General Purposes Committee for information.” Officers recommend that the provision referred to be deleted to reduce bureaucracy.</p>	
6.	Financial Regulations		<p>Alternative Budget Motions are referred to in section 3.3.11 of the Financial Regulations and state that they need to be submitted to the Section 151 Officer 5-clear days before the meeting so that s/he may advise Council whether the resulting amended or alternative budget would provide robust estimates and reserves for the purpose of section 25 of the Local Government Act 2003.</p> <p>The administration’s budget proposals are published initially at Policy & Resources Committee in late November or early December (pre-consultation) and then again at Policy & Resources Committee in February before being published 5-clear working days in advance of the Budget Council meeting.</p> <p>The Constitution is silent on when opposition budget motions should be</p>	No changes currently proposed.

			<p>published with the Council papers. Currently alternative budgets are published as amendments in accordance with Council Procedure Rule 9.3 (i.e. by 10.30am the day before the Council meeting). This means that alternative budgets are not published until the day before the budget is debated and decided by Full Council.</p> <p>Members may wish to consider whether it is appropriate for alternative budgets to be published earlier and, if so, what amendments to the Council Procedure Rules and Financial Regulations may be required.</p>	
7.	Financial Regulations	Section 1.6	The text refers to the Constitution, Ethics & Probity Committee which has been replaced by the Constitution & General Purposes Committee.	Amend section 1.6 to refer to the correct committee.
8.	Article 7 (Terms of Reference of Committees) and Financial Regulations	Terms of reference of Policy & Resources Committee, theme committees, planning committee and licensing committee	The Councils approach to the approval of fees and charges is currently confusing and would benefit from review. There is currently a distinction between the approval arrangement for above inflation (committee approval) and below inflation (officer delegated powers) fees and charges. It is proposed that all fees and charges are recommended by theme committees to the Policy & Resources Committee as part of the budget proposals and that the Policy & Resources Committee recommend these to Full Council for approval as part of the budget setting process.	Amend Article 7 (Terms of Reference of Committees) and Financial Regulations to remove the approval of fees and charges from the remit of committee and include them as part of the budget recommended by Policy & Resources Committee for approval by Full Council.

11.	Article 7 (Terms of Reference of Committees)	Terms of reference of committees	The terms of reference of the Health & wellbeing Board are duplicated in Article 7.	Delete the duplicate terms of reference for the Health & Wellbeing Board.
12.	Article 3 (Residents and Public Participation)	Section 3.7	<p>Amend section 3.7 to enable residents who have registered to make a representation to planning committee to send a substitute to be consistent with the wording in section 3.2 relating to questions.</p> <p>Amend section 3.7 to specify that in cases where the membership of the committee which considers the deferred or adjourned application is different from the committee which originally heard the application, then the application should be fully re-heard including speakers.</p>	Amend Article 3 as proposed.
13.	Article 2 (Members of the Council)	Section 2.3 (h)	The current wording states that "...Members may only address a planning committee on applications which affect their ward." It is the view of the Monitoring Officer that Members should be able to address planning committees on all applications regardless of whether they are in their ward or not.	Amend the wording of section 2.3 (h) as proposed to allow Members to address planning committees on any application.
14.	Article 7 (Terms of Reference of Committees)	Terms of reference of the Community Leadership & Libraries Committee	In a previous version of the Constitution equalities was in the terms of reference of the Policy & Resources Committee. However, this was removed from the terms of reference of the committee around 18 months ago. Subsequently there have been some queries about which committee should agree the revised policy. The Leader and	Add 'Equalities' to the terms of reference of the Community Leadership & Libraries Committee

			Chairman of the Community Leadership & Libraries Committee are of the view that equalities should be a function assign to the Community Leadership & Libraries Committee.	
15.	Article 7 (Terms of Reference of Committees)	Terms of reference of the Children's Partnership Board	The terms of reference of the Board currently state "... <i>signing off all agreed Plans and Strategies relating to Children and Young People in Barnet prior to presentation to executive groups.</i> " The Board has no authority to sign-off the Plans and Strategies as these should be approved by the relevant executive body. The wording has been amended to state that the Board will review the Plans and Strategies prior to the executive body considering them.	Amend the terms of reference of the Board to say that it will review Plans and Strategies prior to approval rather than sign-off.
16.	Article 7 (Terms of Reference of Committees)	Terms of reference of the Children's Partnership Board	The membership of the Board currently includes 'Cambridge Education – Education & Skills Director'. The functions of Cambridge Education are now discharged by Barnet Education & Learning Service.	Correct the post title to 'Barnet Education & Learning Service – Chief Executive'
17.	Article 7 (Terms of Reference of Committees)	Terms of reference of the Health Overview & Scrutiny Committee	Since January 2010, Barnet have participated in North Central London Joint Health Overview & Scrutiny Committee (NCL JHOSC). The Committee has a standing role in scrutinising strategic sector wide issues though regular engagement with the North Central London Clinical Commissioning Group and other health providers in the sub-region. The Joint Committee is not currently referred to in the Constitution. It is proposed to refer to it in	Amend the terms of reference of the Health Overview & Scrutiny Committee to include reference to the Joint Health Overview & Scrutiny Committee.

			the terms of reference of the Health Overview & Scrutiny Committee. Council appoint to the NCL JHOSC at annual council.	
18.	Article 7 (Terms of Reference of Committees)	Terms of reference of the Children's Education & Safeguarding Committee	The terms of reference of the Children, Education & Safeguarding Committee currently includes the following: '(6) Receive an annual report from the Lead Member for Children's Services (Chairman of Children, Education and Safeguarding Committee) covering key matters.' In practice, this information is captured in a variety of reports that come to the Committee, mostly the Family Services update which is a standing item at each meeting in the name of the Chairman.	Amend the terms of reference of the Committee to refer to 'regular updates' rather than an 'annual report'.
19.	Article 10 (Decision-Making)	N/A	<p>The current constitution doesn't currently contain any provisions for decision-making in emergency situations and this was identified as an issue during the current pandemic when several emergency decisions were required to be taken. As Barnet operate a Committee System, it is not possible to give delegated authority to any individual Members. The Urgency Committee can only be convened within statutory timescales (i.e. with 5 clear working days' notice) and there is a risk that officers would have to make ultra vires decisions which are then retrospectively approved by a committee.</p> <p>It is proposed that additional wording be added to Article 10 to enable officers to take</p>	Add a new section 10.8 as proposed.

			decisions in genuine emergency situations (following consultation with Leader and relevant committee chair). These powers would only be excised in genuine emergency situations (e.g. civil emergency, to comply with Government directions, etc.)	
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2. REASONS FOR RECOMMENDATIONS

- 2.1 The Constitution and General Purposes 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 The Committee could retain the current Constitution un-amended. This is not recommended as the Constitution needs to be kept under review to ensure that it complies with legislation and best practice.

4. POST DECISION IMPLEMENTATION

- 4.1 Subject to the committee's approval, the recommendations will form part of a report to Full Council on 20 October 2020 to make final approval.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Barnet 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 Social Value

- 5.3.1 None in the context of this decision

5.4 Legal and Constitutional References

- 5.4.1 The Committee on Standards in Public Life ("CSPL") advises the Prime Minister on ethical standards across the whole of public life in England. It monitors and reports on issues relating to the standards of conduct of all public office holders. CSPL is an independent advisory non-departmental public body.
- 5.4.2 During 2018, the CSPL has undertaken a review of local government ethical standards. This review was not prompted by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.
- 5.4.3 The review covered all local authorities in England,. The Committee did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

5.4.4 On 30 January 2019, the CSPL published its report and recommendations on ethical standards in local government.

5.4.5 Key recommendations include:

- a new power for local authorities to suspend councillors without allowances for up to six months with a right of appeal for suspended councillors to the Local Government Ombudsman. (these would need changes to legislation)
- revised rules on declaring interests and gifts and hospitality
- an updated voluntary Model Code of Conduct to be introduced with local authorities to retain ownership of their own Codes of Conduct
- a strengthened role for the Independent Person greater transparency about the number and nature of Code complaints
- Political groups set clear expectations of behaviour by their members
- Code of conduct training to be mandatory

5.4.6 A copy of the full CSPL report can be found at Appendix A and is available at <https://www.gov.uk/government/publications/localgovernmentethical-standards-report>

5.4.7 Many of the CSPL recommendations will require primary legislation; the implementation of which will be subject to Parliamentary timetabling. Some changes can be made through secondary legislation.

5.4.8 The best practice recommendations are a matter for individual local authorities and can be introduced by the Council without the need for new legislation they need to be introduced in 2020. Many of the best practice recommendations are already in place in Barnet. The work on the model code of conduct is being led by the LGA and they are in the process of consulting on this. Members were sent a link to the consultation over the summer.

5.4.9 Council's Constitution, Article 7 - the Constitution and General Purposes Committee terms of reference includes responsibility "To 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".

5.5 Risk Management

5.5.1 The process of managing changes to the Constitution through the Constitution and General Purposes Committee ensures that the proposals are developed through Member participation and consideration.

5.6 Equalities and Diversity

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

5.7 Corporate Parenting

5.7.1 None in the context of this decision

5.8 **Consultation and Engagement**

5.8.1 None in context of this decision

5.8 **Insight**

5.8.1 None in the context of this decision.

6. **BACKGROUND PAPERS**

6.1 The currently adopted Constitution can be accessed here:

<http://barnet.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=13581&path=0>

6.2 Committee on Standards in Public Life, Local Government Ethical Standards, 21 January 2019: <https://www.gov.uk/government/collections/local-government-ethical-standards>