



Full Council
18 November 2013

**Report from Director of Legal and
Procurement**

For Action

Wards Affected: ALL

Changes to the Constitution

1.0 Summary

- 1.1 This report proposes changes to the Constitution reflect the decisions taken by the General Purposes Committee on 28th March 2013 and 7th November 2013 to restructure the senior management of the Council and also recommends other miscellaneous changes required in relation to Contract Standing Orders and other matters.

2.0 Recommendation

- 2.1 That Members agree the recommended changes to the Constitution shown as track changes in **Appendix 1** to reflect the changes to the management structure and the miscellaneous changes to the constitution.

3.0 Detail

- 3.1 At meetings of the General Purposes Committee on 28th March 2013 and 7th November 2013 members agreed to various changes to the senior management of the Council. This involved a change in the management structure by creating four Strategic Directors in place of the previous eight Directors. The change in the allocation of functions and roles of various senior posts requires changes to the delegations by the Leader and Full Council.
- 3.2 For the avoidance of doubt any previous delegation by Full Council, a Committee of the Council, or the Executive, or its sub committees to an officer shall continue to be valid and shall be carried out by the Strategic Director or other senior officer who now has responsibility for that Council function.
- 3.3 The following are various miscellaneous matters which require updates to the Council's constitution.
- 3.4 *Contract Standing Orders:*

- 3.4.1 The following amendments are proposed to the contracts Standing Orders:
- 3.4.2 Council arrangements for the supply of temporary staff: the Council's supplier of temporary staff changed with effect from 5th August. The reference to the former arrangement with Comensura is therefore proposed for deletion, and the new arrangement with Reed substituted.
- 3.4.3 Following the implementation of the Public Services (Social Value) Act 2012, Brent is now under a duty to consider how every procurement for services can be designed so as to deliver measures of social value e.g. promotion of local jobs. It is therefore proposed that this is added to the list of pre-tender matters to be considered by the Executive (for High Value contracts) and Chief Officers (for all other contracts) before authorising the commencement of a tender process. This makes clear that while consideration of such a matter is compulsory for services contracts, it should also be considered for other types of contracts. A consequential amendment is also proposed to make clear that the same list applies for each forum.
- 3.4.4 An amendment to make clear that for supplies contract, it is possible to adopt lowest price as the basis for award, as opposed to the most economically advantageous tender, so bringing supplies contracts into line with works and energy supply contracts. Services contracts will always have to be awarded on the basis of most economically advantageous tender.
- 3.4.5 An amendment to the provision about how late tenders can be accepted, because this no longer reflects the electronic tendering system currently used.
- 3.4.6 An amendment to the provision about supply of services BY the Council, to reflect that this can be done under the General Power of Competence in the Localism Act 2011, as well as under the Local Authorities (Goods and Services) Act 1970.

3.5 *Returning Officer*

- 3.5.1 The post of Chief Executive is ordinarily given the role of Returning Officer and Electoral Registration Officer for local, parliamentary and European elections. While arrangements were made last year for the post of Chief Executive, the Director of Legal and Procurement was temporarily allocated this function. It is now appropriate to re-designate this function to the Chief Executive.

3.6 *Changes to the Audit Committee and General Purposes Committee*

- 3.6.1 The amendments to the terms of reference of the Audit Committee and General Purposes Committee reflect two particular changes in local government finance:
- (1) The pre-approval of accounts before audit is no longer a statutory requirement. Instead, in line with practice in other sectors, those charged with governance are asked to consider and approve the accounts having been provided with the findings from the external

auditor's review. The proposed changes clarify the role of the Audit Committee as undertaking that role.

- (2) The introduction of the localisation of business rates means that councils have to calculate an estimate of business rates to be collected as well as council tax. It is proposed that the terms of reference for the General Purposes Committee be amended to explicitly reflect this.

3.7 *Property delegations*

- 3.7.1 Changes are proposed in relation to the officer delegation to the Operational Director Property and Projects under Part 4. It is proposed that paragraph 4.8 be added.
- 3.7.2 Paragraph 4.8 (a) is necessary because of the timescale for the Council as landlord to respond in accordance with time limits to statutory claims by a group of leaseholders to acquire the freehold reversion to blocks of flats under the 1993 Act, or statutory claims by individual leaseholders for extensions to leases held in regard to individual flats under the 1993 Act. The lease extensions required to be granted to individual leaseholders under statute may exceed 25 years and where there are claims to acquire freehold reversions of blocks of flats comprising a majority of leaseholds there is the statutory requirement for the Council to take a lease back on 999 years of flats occupied by secure tenants.
- 3.7.3 Paragraph 4.8 (b) is necessary because of the tight timescale for conversion of schools into, or designation of schools as, Academies under Academy legislation to dovetail the conversion or establishment of a new category of school with the start of the school term /year .Education authorities are advised to grant leases of 125 years of school land to academies under guidance issued by the Secretary of State, in default of which Councils are at risk of the Secretary of State issuing a transfer order under academies legislation. Where there is a conversion of community schools into foundation schools under a statutory requirement under education legislation there is a requirement to transfer the freehold of the school site and where applicable a 125 leasehold of any shared land i.e. playing fields.
- 3.7.4 Under the current delegations these matters require a decision by the Executive. Accordingly, in order to respond in a timely and appropriate manner to these matters it is proposed that these matters be delegated to the Operational Director, Property and Projects.

3.8 *Media changes*

- 3.8.1 The constitution is presently silent on the use by the public of social media at committee meetings and the use of hand held devices to record meetings. The use of devices for these purposes has grown enormously over recent years and there is a greater expectation on the Council to be open and transparent in its decision making. It is therefore felt that the opportunity should be taken to clarify the Council's position by amending the Access to Information Rules.

3.9 *Call in Standing Order 20*

- 3.9.1 Paragraph 20 (b) provides a 5 day time scale within which a call in request can be made. With internet and out of ordinary office hour correspondence it is important that the limit for an application be clear and accordingly it is proposed that the 5 day period expire at 6.00pm on the 5th clear day after the Executive Committee has taken its decision or 6.00pm on the 5th Clear day after the record of the officer decision is made publically available.

4.0 Financial Implications

- 4.1 There are none arising directly from this report.

5.0 Legal Implications

- 5.1 The Local Government Act 2000 Section 9P requires Councils to have a Constitution, which must including Standing Orders and such other matters as the Council considers appropriate.

6.0 Diversity Implications

- 6.1 This report has been screened by officers and there are not considered to be any diversity implications arising from it.

Background Papers

The Brent Constitution

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