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|  | <b>Full Council</b><br>1 May 2019                        |
|   | <b>Report from the Director of Legal and HR Services</b> |
| <b>Changes to the Constitution</b>  |  |

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| <b>Wards Affected:</b>  | All  |
| <b>Key or Non-Key Decision:</b>   | N/A  |
| <b>Open or Part/Fully Exempt:</b><br><small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small> | Open   |
| <b>No. of Appendices:</b>   | One<br>Appendix 1 – Changes to Constitution  |
| <b>Background Papers:</b>   | None   |
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## 1.0 Purpose of the Report

- 1.1 This report proposes a number of changes to the Council's Constitution. These mainly affect officer delegated powers and decision making but also include some minor updating arising from the annual review of the Constitution.

## 2.0 Recommendations

- 2.1 To approve the changes to the Constitution proposed in this report and/or contained in the Appendices.
- 2.2 To authorise the Director of Legal and HR Services to amend the Constitution accordingly, including making any necessary incidental or consequential changes.
- 2.3 To note that, to the extent that the changes relate to executive functions of the Council, they have been approved by the Leader.

### **3.0 Detail**

#### Officer Delegated Powers

- 3.1 All decisions are delegated to officers unless they are reserved to members. The categories of decisions reserved to members are:
- (a) Matters specifically delegated to committees or individual Cabinet Members or reserved to Full Council.
  - (b) Matters covered by the general restrictions on officer which are set out in Part 3 Section 10.1. These are set out in Appendix 1.
  - (c) Additional specific decisions in respect of particular powers set out in a table in Part 3 Section 9.5. This table is contained in Appendix 1.
  - (d) Specific financial thresholds in respect of Property related decisions contained in Part 3 Section 1.
  - (e) Specific reservations to members in respect of highways matters contained in Part 3 Section 12.
- 3.2 Powers are delegated to the Chief Executive, Strategic Directors, the Chief Finance Officer, the Director of Legal and HR Services and the Director of Public Health. Strategic Directors are able to authorise officers in their departments, by name, to exercise powers on their behalf, and are required to record these authorisations in a list submitted to the Director of Legal and HR Services.
- 3.3 A recent Audit has highlighted that covering exercise of officers powers by way of lists maintained by Strategic Directors outside the constitution, means that it is often not readily apparent what powers are available to which officers below the level of those specifically listed in the Constitution. Due to the requirement to authorise named officers, it is also challenging to keep these lists up to date.
- 3.4 The Appendix to this report contains some proposed amendments to the exclusions from officer powers and new delegations direct to Operational Directors, to remove the need to issue and keep up to date individual authorisations and to provide consistency in officer powers at this level.
- 3.5 The existing power for Strategic Directors to issue authorisations would be retained. This will ensure there is a reserve power for the Chief Executive and Strategic Directors to authorise another officer to exercise particular functions if the need arose.
- 3.6 It is also proposed in the Appendix that express provision for the Chief Executive and Strategic Directors to nominate a deputy from time to time to act in their absence be added to the Constitution, to make the deputising arrangements transparent

#### Officer Decision-making Processes

- 3.7 Where officers make decisions which are “Key” decisions those decisions are required to follow most of the same processes as is the case where members

and member bodies make decisions. In particular, such decisions must be included in the Forward Plan and the reports and decisions must be published.

3.8 Key decisions are defined in the Constitution simply by reference to the statutory provisions as follows:

“A decision will be a Key Decision if it relates to an executive function and is likely:

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.”

It can be difficult to apply this test. A recent survey of some London boroughs reveals that of the 13 boroughs considered, 10 have a defined financial threshold above which decisions will be regarded as “Key”. The most common threshold level for revenue is £500k and it is proposed that this threshold be adopted for Brent. This will apply to member decisions as well as officer decisions.

Other Important Decisions

3.9 In addition to the key decision requirements, Regulations require that officers should as soon as reasonably practicable after making an executive decision, (even when the decisions are not key) produce or instruct the proper officer to produce a written statement of that decision which includes information specified in the legislation, including the date it was made and the reasons for it.

3.10 Since this cannot reasonably be interpreted to cover all decision making by officers, the approach recommended in guidance is that administrative and minor decision making should be excluded from the requirement so that only decisions involving exercise of discretion, and likely to be of significance and interest to the public, are caught.

3.11 There is also a specific requirement in Regulations to publish decisions (whether concerning executive functions or not) falling into the follow categories:

- a) decisions the officer is specifically authorised to make – e.g. a decision delegated at a cabinet meeting
- b) decisions under a general authorisation which:
  - i. grant a permission or licence;
  - ii. affect the rights of an individual; or

- iii. awards a contract or incurs expenditure which, in either case, **materially affects** that relevant local government body's financial position.

3.12 Guidance provides examples of what is and is not covered. It is considered that the £500k threshold proposed for Key Decisions above covers the requirement at iii. above.

3.13 It is proposed that a level of decisions below key decisions be defined and a process for recording and publishing these be adopted. A proposed definition for these "recordable" decisions is contained in Appendix 1.

### ***Other Changes***

3.14 Comments on other minor changes proposed to the Constitution are contained in footnotes in the Appendix

## **4.0 Financial Implications**

4.1 None.

## **5.0 Legal Implications**

5.1 These are contained in the body of the report.

## **6.0 Equality Implications**

6.1 Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have "due regard" to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.2 "Due regard" is the regard that is appropriate in all the circumstances. The weight to be attached to the effect is a matter for the council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged. Depending on the circumstances, regard should be had to the following:

- the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision;
- the need to remove or minimise disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic;
- the need to take steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes taking account of disabled persons' disabilities. There can be a positive duty to take action to help a disabled

person. What matters is how they are affected, whatever proportion of the relevant group of people they might be;

- the need to encourage persons who share a protected characteristic to participate in public life (or in any other activity in which participation by such persons is disproportionately low); and
- the need to tackle prejudice and promote understanding.

6.3 No equalities implications arise directly from this report.

## **7.0 Consultation with Ward Members and Stakeholders**

7.1 The proposals in this report have been considered by the Council's Constitutional Working Group.

## **8.0 Human Resources/Property Implications (if appropriate)**

8.1 None.

## **Background Papers**

None

**Report sign off:**

**DEBRA NORMAN**

Director of Legal and HR Resources