

**LONDON BOROUGH OF BRENT**

**ANNUAL MEETING OF FULL COUNCIL – MONDAY 19<sup>th</sup> MAY 2003**

**REPORT FROM DIRECTOR OF POLICY & REGENERATION AND THE BOROUGH  
SOLICITOR**

**FOR ACTION**

**ALL WARDS**

**Modernising Decision Making – Proposed Revisions to Brent's  
Constitution**

**1 INTRODUCTION**

- 1.1 In May 2002 the Council agreed to adopt a new constitution which fulfilled the legislative requirements of the Local Government Act 2000 and formalised a split of functions between the Executive, Scrutiny and Overview, and the Council.
- 1.2 In adopting the new system the Council had undertaken a detailed two-stage process with a set of reformed interim arrangements adopted in 1999 and further detailed work by two cross-party, member/officer working groups which resulted in a broadly agreed framework and then a subsequent detailed constitution.
- 1.3 At the time of adoption the Council was clear that in agreeing to run a totally new system there would be inevitable teething problems and some aspects might benefit from amendment in the light of experience. In recognition of this, the Council created an all-party, member/officer Constitutional Monitoring Group (CMG) to 'review the implementation of the new constitution in the first year of its operation'. The group began its work in September 2002 and the recommendations set out in this report are the result of its deliberations.
- 1.4 In undertaking its remit the CMG concentrated on those areas of the settlement which were seen to cause the most difficulty. There was a consensus that whilst the executive arrangements were up and running, the constitution as currently operated, was not as effective as it could have been in holding the executive to account and allowing non-executive members the opportunity to pursue issues that they felt to be important outside of the straight jacket of the executive timetable. Consequently, the focus of the CMG and its subsequent recommendations are around the development of scrutiny, the way meetings of full Council work and the flow of information between the executive and non-executive.
- 1.5 These recommendations have been made within the constitutional framework agreed by the Council in 2001 and there has been no attempt to stray from this, rather to amend and build upon it. The spirit of discussion around full Council was framed by shared views that the constitution was still inadequate in relation to the non-executive and that therefore the recommendations below tilt the balance of business in Council towards the opposition and all non-executive members. With regard to scrutiny, the driving consideration was to give scrutiny more coherence and flexibility whilst keeping within the spirit of the 2001 framework which sought to have the 'whole' of the council under scrutiny as well as its component parts.

- 1.6 The recommendations also reflect the view from all participants that members could make more progress on focussed work in smaller groups. The recommendations therefore seek a balance between the ability to scrutinise at service/thematic level and the ability to look at the whole council in relation to critical issues such as performance and finance. It was also agreed that a 'select committee' was the most fruitful mode to adopt in relation to some of the wider activities. The capability for and emphasis on working through time limited panels remains unchanged. The other innovations detailed below are the more to give a sharper focus to monitoring the executive through the forward plan select committee and the creation of a management board which would guide the actions of the whole of the scrutiny family during the municipal year. The CMG have also agreed a protocol on access to information, an area they felt needed more clarity.
- 1.7 It was the view of the CMG that were the recommendations to be agreed then the expectation was that the constitution should continue without major amendment during the life of this council and the onus would shift from examination to making it work. However, it was agreed that there should continue to be some cross-party, officer/member dialogue on constitutional issues and therefore the CMG should continue to meet albeit on the less frequent basis of three times during the municipal year.
- 1.8 This report covers all aspects of change to the Constitution. Many of these are considered minor or administrative changes but are also covered by the scope of this report. These are referred to in the paper but all recommended changes have been set out in Appendix I .

## **2 RECOMMENDATIONS**

- 2.1 Members are recommended to agree:
- 2.1.1 the proposed future monitoring of the executive arrangements (para. 6.1)
  - 2.1.2 the proposed revised arrangements for full Council (para. 6.2-6.8)
  - 2.1.3 the proposed revised arrangements for Scrutiny (para. 6.14-6.21)
  - 2.1.4 the proposed arrangements for overview and scrutiny of health (para. 6.22-6.25)
  - 2.1.5 the proposed protocol on access to information (para. 6.26-6.30)
  - 2.1.6 the amendments to the Constitution, submitted with this report (Appendix I).

## **3 LEGAL IMPLICATIONS**

- 3.1 The legal implications are set out in Appendix I.

## **4 FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications arising directly from this report.

## **5 STAFFING IMPLICATIONS**

- 5.1 There are no further staffing implications arising directly from this report.

## 6 **DETAILED CONSIDERATIONS**

### *Revisions to the Constitution*

- 6.1. The CMG considered that in future years, a lighter touch approach could be taken to reviewing the constitution and this could be done through a continuation of the CMG (consisting of members and officers). Such a review group would meet for a more brief period of time to assess progress and give the constitution a 'health check.'

### **Recommendation**

- 1. That the Constitutional Monitoring Group continue to monitor the operation of the executive arrangements and the constitution in Brent and that this takes the form of a lighter programme of meetings commencing in November 2003.**

### *The Business of full Council*

- 6.2. The CMG considered a number of issues relating to the business of full Council, agenda planning and number (and duration) of meetings. The new order of business at full Council had elements which were beginning to work but it was felt that they were too prescriptive and this was stifling debate. Changes were identified, aimed at ensuring that the Council Chamber remains the primary forum for debate.
- 6.3. Question Time was revisited. The CMG agreed that the time allowed for question time should be extended from 30 to 45 minutes. The changes to Question Time need to ensure the maximum participation of all non-executive members irrespective of party. Therefore the proposals are a balance to guarantee the input from both opposition and majority party non-executive members as well as questions which arise entirely through the random ballot. Consequently, there should be a number of questions reserved for the leaders of the two largest opposition parties (or their nominees) as well as for the non-executive members from the Majority group. This would be in proportion to the political balance – two for the Conservatives, one from the Liberal Democrats and three for the Majority group. The remainder of the questions would then be drawn randomly from all of the non-executive, as before. It was agreed that the time allowed for asking supplementary questions would be two minutes. Following these proposed revisions, up to a total of ten supplementary questions will be asked at each Council meeting at which Question Time is included.
- 6.4. The CMG agreed that Non Executive Members Items should be increased also to 45 minutes (in line with the suggested new time slot for question time, with which it alternates). This would provide the opportunity for 3 items per session.
- 6.5. The CMG agreed that 'opposition business' needed agenda time. They agreed that there should be a 40 minute slot in total allocated to the two opposition groups in proportion to the political balance – 25 minutes for the Conservatives and 15 minutes for the Liberal Democrats. This agenda item will be called 'Motions Selected by Leaders of the Two Largest Opposition Groups at Ordinary Meetings', and will be introduced by the leader of each opposition group (or a person nominated by them). There would then follow a debate on each, using normal

debating procedures and timings. This agenda item would take place at meetings of full Council where there were no first reading debates.

- 6.6. Flexibility of approach to agenda planning was again highlighted and therefore the importance of the Mayor's pre-meeting (now attended by all three political groups) at which those attending will discuss how the next meeting will be organised and the matters which members wish to raise during the general debate.
- 6.7. CMG also considered the merits of the opportunity to ask questions of officers for clarification before a general debate begins (as happened at the extraordinary meeting at which the Climbié report was discussed). This would help inform discussion without interfering with the flow of debate. Again, flexibility through timely and effective agenda planning would be paramount as it would not be necessary to ask questions of officers at every meeting. It was agreed that this would also be discussed at the Mayor's pre-meeting when the parties would seek to agree whether there would be questions to officers prior to commencement of the debate. It was acknowledged that there would continue to be questions put to the Monitoring Officer from time to time in the normal way without the need for this to be agreed at the pre-meeting.
- 6.8. There are currently 12 meetings of full Council per annum - one ordinary meeting per month (except May, August and December) plus the Annual Meeting, a Special Meeting in May and the Council Tax setting meeting in March. In order to improve the content and flow of Council meetings, the CMG discussed options for reducing the total number of meetings each year. The options considered were:
- the removal of an ordinary meeting in March (there is already a special meeting that month).
  - the removal of either the June or July meeting. In this case, the July meeting is required to consider budget matters. The CMG concluded that the June meeting should be removed. It was also agreed that at the forthcoming Special Meeting there would be time allowed for the Motions Selected by the Leaders of the Two Largest Opposition Groups - which would be agreed by way of a procedural motion, the changes to the Constitution not being brought into effect until the following meeting.
  - The removal of the February meeting due to the proximity of the ordinary meeting in January and the special budget meeting in March.

### **Recommendations**

- 2. The time allowed for Question Time and Non-Executive Members Items will be extended from 30 minutes to 45 minutes.**
- 3. 3 members will be selected at each Non Executive Members Item.**
- 4. Up to 10 questions may be asked at each Question Time.**
- 5. There shall be allowed a period of up to 2 minutes to ask the supplementary question plus 2 minutes for the Executive to respond.**
- 6. A set of questions will be reserved at each Question Time as follows:**
  - Two questions for the Conservative Group**
  - One question for the Liberal Democrat Group**
  - Three questions for the non-executive members of the Majority group.**
- 7. To introduce an item 'Motions Selected by Leaders of the Opposition groups at Ordinary meetings', provided that there is not a first reading debate taking place.**
- 8. 25 minutes will be allotted for the Conservative Group and 15 minutes for the Liberal Democrat Group for 'Motions Selected by Leaders of the Opposition groups at Ordinary meetings'.**
- 9. In the event that there is an issue in respect of which the groups wish to question officers prior to the debate then members will seek to agree this at the Mayor's pre-meeting and will be agreed by way of a procedural motion.**
- 10. Representatives from all three political groups will attend the Mayor's pre-meeting to discuss arrangements for the meeting and items on which the groups wish to speak during the general debate.**
- 11. The number of ordinary meetings of the Council will be reduced by three per annum. Ordinary meetings will now take place in January, April, July, September, October and November.**

### *Scrutiny*

- 6.9. The CMG considered the scope for broadening members' experience of the new arrangements, and proposed expert briefings for scrutiny members together with visits to other local authorities. The development of scrutiny members will be undertaken through the new member development programme.
- 6.10. The CMG considered the development of scrutiny and scrutiny structures in some detail. Discussion ranged over a number of issues including the size of the committee, its relationship with the executive, using the forward plan more effectively, call-in and more effective scrutiny of executive decisions.
- 6.11. Discussion on how to move scrutiny forward in Brent has been wide ranging, and has involved officers and members across a number of different forums. The issues and proposals discussed for developing scrutiny are summarised below.

### *The problem*

- 6.12 The main scrutiny committee is seen as not being able to undertake its role effectively, for a variety of reasons including:
  - The committee is too large
  - Slow progress has been made on developing and delivering a work programme
  - Lack of officer resources for scrutiny activities

- Management structures do not relate to scrutiny arrangements and therefore do not engage with them
- The slow progress is compounded by growing expectations of what scrutiny should be doing
- Traditional 'committee' values pervade
- Scrutiny operates agenda based meetings in reaction to the executive agenda
- Effective, independent scrutiny agendas are hampered by under developed monitoring arrangements

### *Options*

6.13 A number of different options have been examined and considered by officers and members, including:

- Do nothing – match the flexibility of the existing arrangements with effective resources to make them work.
- Thematic approach – based on, for example, the corporate strategy themes or executive portfolios.
- Service based approach – mirroring the service areas and corporate functions, similar to the system of scrutiny adopted during the interim arrangements from 1999 to 2002.
- Cross-cutting approach – based on performance and decision monitoring coupled with time limited investigations. This model would adopt a 'select committee' style of scrutiny.
- Hybrid approach – there are many different combinations of the above options with varying emphasis between cross-cutting, service based and thematic.

### *Proposal*

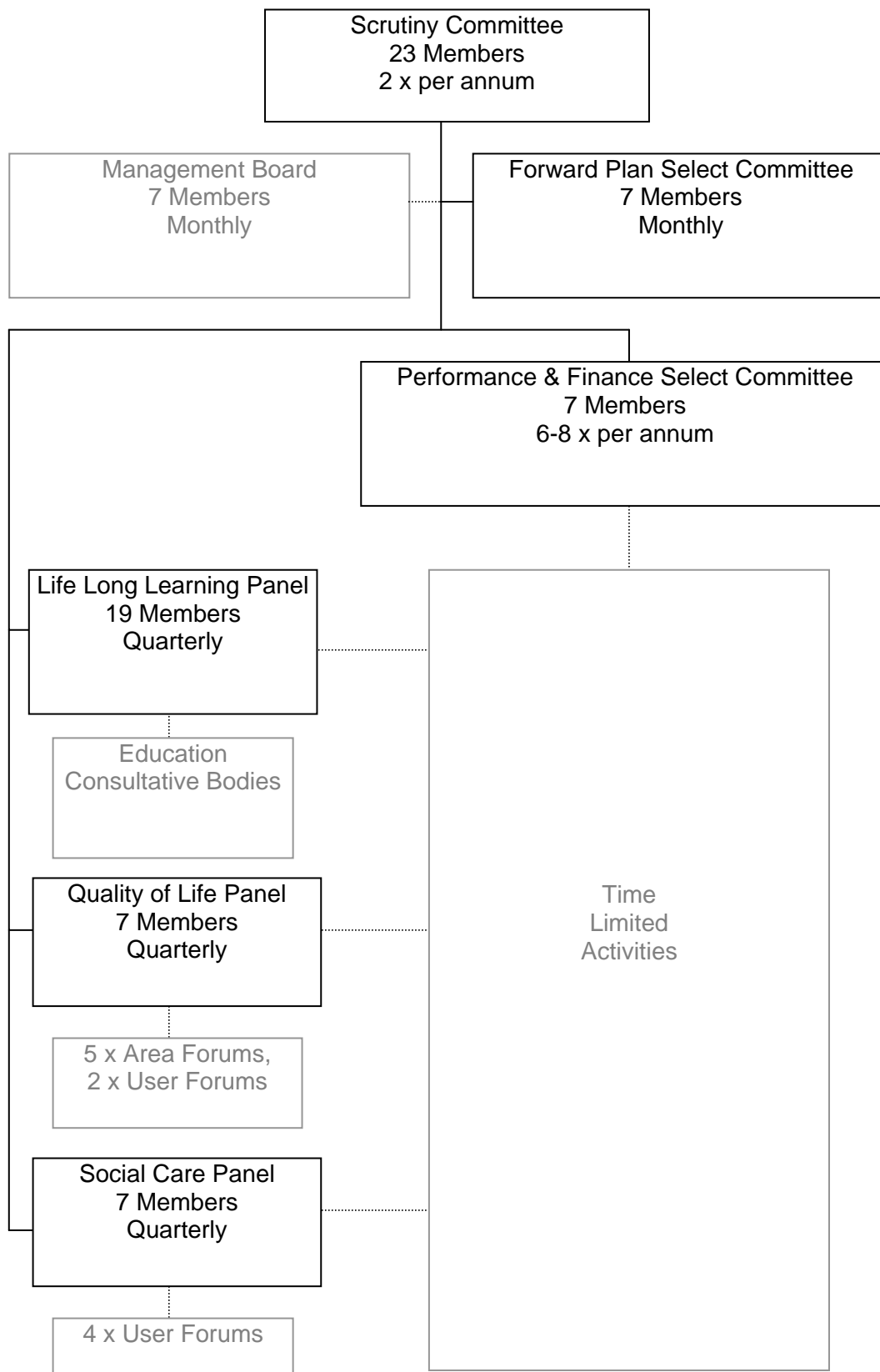
6.14 The proposed model is shown in Figure 1 and consists of the following components:

- The main scrutiny committee, as under the existing arrangements
- A forward plan select committee, to undertake pre-decision scrutiny and call-in
- A performance and finance select committee
- Three service based panels, managing closer scrutiny of the executive's delivery of services through time limited investigations and consultation.

6.15 All of the above would be politically balanced. The panel considering education matters would continue to be balanced after taking account of the co-opted members.

6.16 The role of the main committee will be elevated to a more strategic level, where it will be responsible for agreeing a work programme, an annual report, appointing members [and chairs] to select committees, standing panels and task groups.

**Figure 1. Proposed new structure for scrutiny in Brent.**



- 6.17 In addition there would be an informal group called the Management Board consisting of the Chair and Vice Chair of the main Scrutiny Committee plus the Chairs of the select committees and panels. It will co-ordinate the agreed activities of the main committee on a month by month basis, including marshalling reports back from panels and task groups, liaising with the Executive, considering in-year changes to the work programme, developing the next annual work programme (including assessing and prioritising issues) and producing the scrutiny annual report to be agreed by the Scrutiny Committee.
- 6.18 The Forward Plan Select Committee will have the overall responsibility for monitoring the forward plan and any forthcoming Executive agendas and papers. Where it identifies issues of concern or ambiguity, it will be able to call Executive Members and senior officers before it to account for recommendations or to be briefed on an issue due to go to the executive at a later date. This committee will deal with call-in although it is hoped that the need for call-in will be reduced because of the new pre-scrutiny arrangements.
- 6.19 The Performance and Finance Select Committee will act as the primary committee for monitoring the general performance of the Council. This will mean monitoring performance at a high level through the investigation and analysis of performance information including performance indicators, complaints, budget, and audit reports. To be effective this select committee will need to be able to understand and digest large amounts of performance related information, identify issues of concern or anomaly, ask incisive questions of Executive Members and senior officers and be able to call expert witnesses. Where issues of concern remain unresolved, the committee will be able to 'flag' these issues with the Management Board for consideration. The Management Board may consider the issues to be of immediate concern warranting immediate attention [through in-year change to the work programme] or may choose to consider the issue for inclusion in the next work programme. The issue of concern may require closer monitoring for a period of time or an in-depth, time-limited investigation.
- 6.20 The service based panels will be able to focus on more discreet areas of Council responsibility through closer monitoring of specific functions and time limited investigations into issues of concern. They should also act as a barometer of public opinion through close links with the consultative forums and other elements of consultation. The panels will cover life-long learning, social care and quality of life. This split will mean that the executive is held to account in key areas whilst maintaining a discreet and manageable structure:
- Lifelong Learning Scrutiny Panel – will include the education co-optees allowing them the opportunity to participate fully in an education-specific committee.
  - Social Care Scrutiny Panel – will be able to hold the Executive to account over the delivery of some of the Council's critical social responsibilities, such as child care, mental health and care for older people. Since a social care panel is now recommended it will no longer be necessary to maintain a separate Children's Services Scrutiny Panel.



- Quality of Life Scrutiny Panel – will be able to focus on other key areas including the environment, housing, regeneration, arts and culture, libraries, sport and leisure, community centres, customer service, etc.

6.21 The above summary of the proposals for developing scrutiny deals with the structural arrangements, in line with what is required for the constitution. However, it is clear that in order to make this or any other system of scrutiny work, Members and officers must want to make it work – this requires commitment, effective leadership and support and a willingness to embrace a fundamentally different way of working. If scrutiny is to flourish, Non-Executive Members must embrace the challenge of change and use their positions to maximise their influence over the executive.

### **Recommendations**

- 15. That the main Scrutiny Committee consists of 17 Council Members, 4 voting education co-optees and 2 non-voting education co-optees. And that it meets twice per year to agree the work programme and annual report.**
- 16. That a Forward Plan Select Committee be created, consisting of 7 Council Members, and meeting monthly.**
- 17. That a Performance and Finance Select Committee be created, consisting of 7 Council Members, and meeting six times per year.**
- 18. That a Lifelong Learning Scrutiny Panel be created, consisting of 13 Council Members and 4 voting education co-optees and 2 non-voting education co-optees. It will meet quarterly.**
- 19. That a Quality of Life Scrutiny Panel be created, consisting of 7 Council Members, and meeting quarterly.**
- 20. That a Social Care Scrutiny Panel be created, consisting of 7 Council Members, and meeting quarterly.**
- 21. That political balance rules apply to the Scrutiny Committee and its sub-committees.**
- 22. That any items called in will go to the Forward Plan Select Committee.**
- 23. That the chair and vice chair of the Scrutiny Committee and each scrutiny panel and select committee be selected from different political groups.**
- 24. That an informal Management Board be created, consisting of the Chair and Vice Chair of the Scrutiny Committee plus the Chairs from each of the scrutiny panels and select committees.**
- 25. That the terms of reference for the Scrutiny Committee and its sub-committees be agreed, as set out in Part 5 of the Council's Constitution (see Appendix I).**
- 26. That the terms of reference for the Management Board be agreed, as set out in Article 6, Part 2 of the Council's Constitution (see Appendix I).**

### *Health Scrutiny*

6.22 Options for developing the Council's approach to overview and scrutiny of health were proposed by the Overview Task Group on Health Scrutiny to the Overview Committee on 15<sup>th</sup> April 2003. Proposals covered a number of different aspects of the overview and scrutiny of health. Those recommendations relating to the constitution are repeated below.

6.23 A number of different options were considered by the Task Group including:

- Doing nothing – it is a power not a duty
- A function of Overview – as the responsibility involves looking outside of the council's own responsibilities (as defined by the Constitutional Working Group)
- A function of Scrutiny – given the links between some council services and health, particularly Social Services
- A joint Overview and Scrutiny function – too complex
- A separate Committee reporting directly to full Council – provides an additional third element to Overview and Scrutiny, making the structure more complex, and would require separate support.

6.24 The Task Group recommended that the overview and scrutiny of health function be a permanent sub-committee or standing panel of the Overview Committee, and that it have the required powers and responsibility to:

- Consult with appropriate interested parties, including the local patients forums
- Act as the official point of consultation for the local authority in the event that there is a “substantial development of the health service” or “a substantial variation in the provision of such service” in the local authority’s area
- Refer consultation issues to the Secretary of State for Health, if necessary and in accordance with the regulations
- Receive health related information from the NHS Trusts as requested
- Require appropriate NHS officers to appear before the panel or time limited function

6.25 The Task Group felt that a permanent, politically balanced sub-committee, meeting at least quarterly, was necessary to undertake the performance monitoring and holding to account roles. In addition this sub-committee could oversee any annual programme of health related activities and make recommendations to the main Overview Committee regarding health related time limited activities.

#### **Recommendations**

**27. That the Overview Committee has responsibility for the power of overview and scrutiny of health.**

**28. That a Health Overview Panel be created to undertake the overview and scrutiny of health, consisting of 7 Council Members, and meeting quarterly.**

**29. That the terms of reference for the Health Overview Panel be agreed, as set out in Part 5 of the Council’s Constitution (see Appendix I).**

#### *Protocols and guidance*

6.26 The CMG considered the issue of member access to information under the new constitution. With the advent of a single party executive undertaking most of the decision making, opposition groups felt that they had been ‘cut off’ from automatic access to information that used to come through their representatives on the various committees under the old arrangements.

6.27 The common practice of placing entire reports ‘below the line’ was reviewed with the intention that there would be a presumption to openness – reports would be placed on the main agenda, with the exempt information being placed in an appendix below the line, where this was practical. It would also be left to the Leader to decide whether non-executive members could remain after the exclusion

of the press and public in meetings of the executive but with a general presumption to openness and transparency. Both of these have already commenced.

- 6.28 Communication between officers and non-executive members needed to be improved if scrutiny was to work properly. There was a clear need for a more productive two-way dialogue where officers would be more proactive in consulting with and briefing Members (including effective understanding/interpretation of political issues) and Members would be more proactive in seeking information and briefings (although there was concern that issues may be missed doing it this way round). The CMG discussed and agreed the need to somehow improve 'information exchange'. Various components were considered by the members of the group including:
- Briefings on specific issues such as Wembley
  - General, periodic thematic briefs to Party Groups or a larger audience
  - Prompt response to Member requests for information
  - The need to improve early consultation with ward members, and to this end the need for guidance on communicating on ward level issues (building on the work already done by the Overview Committee).
  - Briefings for shadow cabinets/shadow cabinet members - the good practice of Education, Arts and Libraries was cited, where the Director meets bi-monthly with members from all three political groups).
  - The opportunity for officers to get opposition viewpoints before the decision or event.
- 6.29 There was the perception that officers had gained more responsibility for decisions under delegated powers. In fact delegations to officers had not changed significantly through the adoption of the new constitution. The issue was more one of 'custom and practice' in that fewer officer decisions were being reported back for information, as may have happened under the old arrangements.
- 6.30 The outcome of the CMG discussions was a recognition that processes under the new arrangements needed to be clarified both for the benefit of members and officers. Officers will continue to develop some principles around this. In the meantime an Access to Information Protocol has been prepared and is included in Part 7 of the Constitution which sets out good practice in relation to members rights to information.

### **Recommendations**

**30. That the Council adopt the proposed protocol on Access to Information Rules.**

## **7 BACKGROUND INFORMATION**

7.1 The following documents were used in the preparation of this report:

Papers from the Constitutional Monitoring Group  
Proposals for developing scrutiny – a discussion paper, April 2003  
Report to Overview Committee from the Overview Task Group on Health Scrutiny,  
15<sup>th</sup> April 2003  
New Council Constitutions – DETR Guidance  
The Brent Constitution 2002/03

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## **A Legal Implications**

Under the Local Government Act 1972 and the Local Government and Housing Act 1989 Full Council is required to agree changes to Standing Orders. In addition, the Brent Constitution specifies that Full Council is responsible for adopting the Constitution.

The form of executive arrangements are largely prescribed by the Local Government Act 2000 and Regulations made thereunder. However, within this there is scope for local variations such as the form which the scrutiny and overview functions will take.

A key feature of the legislation, which is reflected in the Constitution, is the split of functions between the Executive and the Council and its committees. This split is a requirement under the Act.

## **B Explanation of Changes**

Attached as a schedule to this Appendix is the Constitution showing all recommended amendments as tracked changes. Further explanation of these amendments are detailed below. Please note that paragraph numbers and cross referencing will be finalised following the meeting of Full Council. The Borough Solicitor has delegated power to make such minor variations to the Constitution.

### **1. Changes covering more than one part**

#### **1.1 General**

The structure chart needs to be amended to reflect changes such as the restructure of Committee and Member Services and the creation of new Assistant Director posts in the Environment Directorate. Minor changes are proposed throughout the Constitution to reflect this.

The title of the post Director of Human Resources has been changed to Director of Human Resources and Diversity. Minor changes are proposed throughout the Constitution to reflect this.

#### **1.2 Pension Functions**

Amendments are proposed to clarify which body or officer is responsible for various pension functions. These are in Parts 4 and 5 of the Constitution. In summary, the proposed changes are:

1. That officers delegated powers be amended to provide for approval of admission agreements by the Director of Finance within criteria approved by the General Purposes Committee or the Pension Fund Sub-Committee.
2. That the terms of reference of the General Purposes Committee be amended to include determining matters referred to it by the Director of Finance or the Pension

Fund Sub-Committee concerning the Council's functions under the Local Government Pension Scheme.

3. Amend the terms of reference of the Pension Fund Sub-Committee to more accurately reflect the current practice and include matters referred to it by the Director of Finance or the General Purposes Committee concerning the Council's functions under the Local Government Pension Scheme.

### 1.3 Scrutiny

1. Changes have been made throughout the Constitution to reflect the new scrutiny structure which is detailed in the body of this report. These are in summary:
  - (a) Amendment to the structure chart in Part 1 to include the new scrutiny structure.
  - (b) Inclusion in Article 6 of Part 2 of the role of the Management Board which includes developing the annual work programme for approval by the Scrutiny Committee, overseeing its implementation and co-ordinating the activities of the scrutiny sub-committees. Article 6 also details that the Scrutiny Sub-Committees (other than the Forward Plan Select Committee) may establish time limited task groups.
  - (c) Standing Orders have been changed to reflect the call in procedure under the new structure. The method of calling in a decision has not changed but Standing Orders now reflect that a called in decision will be considered by the Forward Plan Select Committee (except in relation to education matters which will be considered by the Life Long Learning Scrutiny Panel).
  - (d) Part 5 includes the terms of reference for the proposed scrutiny sub-committees. In summary:
    - (i) The Forward Plan Select Committee will review the Forward Plan, consider any called in decisions (except those relating to education which will be considered by the Life Long Learning Scrutiny Panel) and consider any matter appearing in the Forward Plan or any current or forthcoming Executive Agenda.
    - (ii) The Performance and Finance Select Committee will scrutinise the performance of the Executive and other parts of the Council and monitor and review certain finance and audit functions some of which were previously the responsibility of the Standards Committee.
    - (iii) The Life Long Learning Scrutiny Panel is responsible for the scrutiny of functions in relation to education, including adult and community education.
    - (iv) The Social Care Scrutiny Panel is responsible for the scrutiny of social services functions.
    - (v) The Quality of Life Scrutiny Panel is responsible for the scrutiny of functions in relation to housing, the environment, regeneration, arts

and culture, libraries, sport and leisure, community centres, customer care, crime reduction and any other Council function not otherwise falling within the remit of the other scrutiny panels.

2. The Constitution currently includes provision for the Scrutiny Committee to have two vice chairs. The current Scrutiny Committee only appointed one vice chair and it is anticipated that this will continue under the new scrutiny arrangements. Therefore it is proposed that amendments be made throughout the Constitution to remove the reference to a second vice chair. Amendments have also been made to reflect the intention that the chair and vice chair of the scrutiny panels and select committees will be from different political groups.

#### 1.4 Overview

Part 5 includes the terms of reference for the proposed Overview Health Panel. Changes have also been made to the structure chart in Part 1 and Article 6 of Part 2 to reflect the creation of this Panel.

### 2. **Changes to Part 1 (Introduction and Summary)**

In addition to the general changes detailed above, the following changes have been made to Part 1:

1. Paragraph 13 has been amended in the Summary to refer to the Protocol on Members Rights of Access to Information which is now contained in Part 7.
2. Definitions of "Corporate Directors", "Management Board", "Scrutiny Panel" and "Select Committee" have been added to the definition section.
3. The definition of a "Key Decision" has been changed to reflect the way Key Decisions are described in Brent rather than stating the statutory definition. These changes are for clarification only and do not change the way Key Decisions are defined in Brent.
4. The list of the Council's functions has been updated.

### 3. **Changes to Part 2 (the Articles)**

Article 11 has been amended to include the newly created Schools Forum and Admissions Forum, the actual membership of the School Organisation Committee and to refer to Brent Housing Partnership Limited.

### 4. **Changes to Part 3 (Standing Orders)**

#### 4.1 General

There are a number of minor amendments proposed in order to provide clarification such as additional cross referencing between related Standing Orders. Details of these can be seen in the attached schedule which shows all the proposed amendments as tracked changes. The following is an explanation of the other recommended changes:

- (a) Standing Order 19(d) be amended to provide for the situation if there is no nomination for an opposition chair of the Scrutiny Committee. The proposed amendment would allow a member of the majority group to be appointed if there is no nomination for an opposition Chair from any member of the Committee. In the event that the Committee is unable to agree on the appointment of an opposition Chair, the proposed amendment provides for the matter to be referred to Full Council for decision.
- (b) Standing Order 20 be amended to reflect the fact that appointments to sub-committees of Scrutiny Committee and Overview Committee are made by the parent committee and not Full Council. This does not change the current practice but amends the Constitution to accurately reflect this.
- (c) Standing Order 21 be amended to reflect that under the proposed scrutiny structure called in decisions will be considered by the Forward Plan Select Committee (except if the decision relates to education when it will be considered by the Life Long Learning Scrutiny Panel), to provide for call in of Key Decisions taken by officers and to specify that the Democratic Services Manager may extend the time for the Forward Plan Select Committee to meet to consider a call in to take account of public or religious holidays specified in the municipal calendar.
- (d) A new Standing Order 50(d) be added which expressly prohibits members during meetings making improper remarks, offensive gestures, personal attacks on any persons or using unseemly language. This new Standing Order reflects the obligations placed on members by the Code of Conduct and the existing provisions in Standing Orders.
- (e) Standing Order 50(e) be amended to clarify that the warning from the Chair to a member of the public who interrupts proceedings of a meeting is that if they continue to interrupt the meeting they may be removed.
- (f) Standing Order 53(b) be amended to refer to the new procedure in Standing Order 19(d) where there is no opposition nomination for Chair of the Scrutiny Committee or the Committee cannot agree to appoint any of the opposition nominees.
- (g) Standing Order 63(b) be amended so that members of Planning Committee not present for the entire discussion regarding an item may take part in the discussion but may not vote. This amendment is in accordance with the requirements of the Planning Code of Practice in Part 7 of the Constitution.
- (h) Standing Order 67(e) be amended to clarify that motions cannot be considered under the agenda item "matters arising".

#### 4.2 Developing the Budget and Capital Programme

It is proposed that the procedure for developing the budget and capital programme be amended to largely reflect the procedure which was followed for the 2003/04 budget. The proposed procedure is summarised below:

- (a) A report is presented to Full Council setting out the financial position of the Council, financial forecasts and expenditure priorities and a First Reading Debate is held on this report.



- (b) The record of the First Reading Debate and a copy of the report that was presented to Full Council are referred to Overview Committee for discussion. The Overview Committee may comment on it within 3 weeks.
- (c) Having considered the comments from the Overview Committee and the matters noted at the First Reading Debate, the Executive agrees its budget proposals. These proposals will then be submitted to the Performance and Finance Select Committee for consideration and questions and then to Full Council for approval.

#### 4.3 Developing the Policy Framework

- (a) The proposed procedure for policies subject to a First Reading Debate is largely the same as the existing procedure but amendments are proposed to reflect the late stage at which government guidance on policies is often published. The proposed procedure is:
  - (i) A report is presented to Full Council setting out the issues in respect of the policy and a First Reading Debate is held on those issues.
  - (ii) Following the First Reading Debate, Full Council may refer the report and any issues raised at the meeting to the Overview Committee for advice and consultation. The Overview Committee may comment on the report and any issues referred by Full Council within 8 weeks.
  - (iii) Having considered the comments from the Overview Committee and the matters noted at the First Reading Debate, the Executive agrees its proposals for the policy and refers these to Full Council for consideration and approval.
- (b) If the policy is not subject to a first reading debate the proposed procedure is:
  - (i) A report setting out the various issues in respect of the policy is submitted to the Overview Committee for advice and consideration. The Overview Committee may comment on it within 8 weeks.
  - (ii) Having considered the comments from the Overview Committee the Executive will agree its proposals for the policy and refers these to Full Council for consideration and approval.

#### 4.4 Full Council

Standing Orders 38 to 46 have been amended to reflect the changes to the conduct of business at meetings of Full Council agreed by the Constitutional Monitoring Group. Briefly these are:

- (a) There will be 10 questions taken at each Question Time. Of these 10 questions, 3 will be reserved for the non-executive members of the majority group, 2 for the leader of the largest opposition group (or his or her nominee(s)) and 1 for the leader of the second largest opposition group (or his or her nominee). The remaining 4 questions will be allocated by random ballot as before. Questioners will be allowed up to 2 minutes to ask the supplementary question rather than being limited to the

current 50 word maximum. A further 15 minutes will be added to the time allowed for this item with a total of 45 minutes.

- (b) There will be 3 non-executive members items. A further 15 minutes will be added to the time allowed for this item.
- (c) There will be 40 minutes allowed for motions selected by the leaders of the opposition groups at ordinary meetings where there are no First Reading Debates. 25 minutes will be allocated to the motion selected by the leader of the largest opposition group and 15 minutes to the motion selected by the leader of the second largest opposition group.
- (d) The order in which the reports back to Full Council are taken will be the Leader, the Chair of Overview and the Chair of Scrutiny.
- (e) The changes detailed above would result in a further 55 minutes being added to the duration of the meeting.

#### 4.5 Staff Standing Orders

Recommended changes are:

- (a) General Purposes Committee remain responsible for determining the terms and conditions of posts which are required to be appointed to by members, including the overall grading framework. In the case of positions covered by Standing Order 77(b), the Executive will be responsible for the policy decision as to whether it is appropriate to establish a post attracting a particular grade in the light of financial and policy priorities.
- (b) In the case of positions covered by Standing Order 77(b), the Chief Executive or another chief officer authorised by him or her be responsible for the decision about whether to offer new contracts on the expiry of a fixed term contract or a permanent contract in place of the fixed term contract. This amendment will allow greater scope for assessing the officers performance in the role during the period of the fixed term contract
- (c) A new Standing Order 77(e) be added and Standing Order 77(h) be amended to reflect statutory requirements in relation to advertising and interviewing.

#### 4.6 Contract Standing Orders

It is proposed that Contract Standing Orders remain mainly unchanged except in relation to extensions and variations of contracts. The proposed changes to Contract Standing Orders are in summary:

- (a) Amendments to the definitions of high, medium and low value contracts to clarify that the value is over the life of the contract including any possible extension and that where there is no fixed term the value should be calculated over 48 months (in accordance with the requirements of the EC Regulations).
- (b) A new Standing Order 84(a) is proposed to make explicit that all medium and high value contracts must be let following a competitive tendering exercise unless the

Executive (or General Purposes as the case may be) agree otherwise. This is already the practice and the proposed amendment is to clarify the position.

- (c) Amendments are proposed to Standing Orders 96(b) and (c) to clarify the single and two stage tender processes.
- (d) It is also proposed to make changes in relation to officers delegated powers to extend or vary contracts. These changes will be in Part 4 of the Constitution. It is proposed that Chief Officers may extend or vary contracts in accordance with any provisions in the contract providing for this. Where the proposed extension or variation goes beyond that envisaged in the contract it is recommended that:
  - (i) Chief Officers may extend a contract with a life of up to one year (including any possible extension provided for in the contract) for a further six months
  - (ii) Chief Officers may extend a contract with a life of in excess of one year (including any possible extension provided for in the contract) for a further one year
  - (iii) In the case of any other variations, Chief Officers may vary the contract if the variation is valued at less than £500,000 and if the variation will be more than £50,000 it does not exceed 20% of the original contract value.

These proposals are subject to the European Procurement Legislation and provided that the extension or variation does not substantially alter the terms and conditions of the contract and that there is sufficient existing budgetary provision for the extension or variation.

## **5. Changes to Part 4 (Responsibility for Functions)**

In addition to the amendments already detailed above, the following amendments are proposed:

- (a) Amend the terms of reference of the Highways Committee to clarify that the Chair and Vice Chair are appointed by the Committee. This is the current practice.
- (b) Amend point 5 of the Table at paragraph 2.5 to clarify that limitation (b) applies to premature retirement other than on the grounds of ill health retirement.
- (c) Amend paragraph 4.5 to clarify that the delegated powers of the Director of Housing include selling the leasehold or freehold interest in any residential property pursuant to the voluntary sales scheme. The Director of Housing had this power under the previous Management Scheme and this amendment reinstates that position.

## **6. Changes to Part 5 (Terms of Reference of Council Committee and Sub-Committees)**

It is proposed to amend General Purposes Committee's terms of reference to make explicit that the Committee does not exercise functions delegated to its sub-committees or officers unless the sub-committee or officer is unable or unwilling to exercise its power.

The changes in this Part relating to the scrutiny and overview functions are mentioned above.

## **7. Changes to Part 6 (Other Rules and Regulations)**

### **7.1 Access to Information Rules**

The proposed amendment to Rule 11 is to reflect that the weekly list of upcoming meetings is now published on a Friday instead of a Tuesday.

Amendments are proposed to Rules 22 through to 25 in order to clarify the way Key Decisions are defined in Brent. These proposed changes do not change the definition of Key Decision but set out in a clearer way the current position which is:

- (a) All decisions taken at a meeting of the Executive or its Highways Committee are treated as Key Decisions regardless of whether they come within the statutory definition.
- (b) Decisions made by officers exercising executive functions will be Key Decisions if the decision is likely to:
  - (i) result in the Council spending or saving a significant amount of the budget for the function to which the decision relates; or
  - (ii) result in a significant effect on communities living or working in an area comprising one or more wards or electoral divisions in the area of the Council.

The new Protocol on Members' Rights of Access to Information is discussed below under Part 7

### **7.2 Financial Regulations**

Amendments are proposed to the Financial Regulations to include reference to the Scheme of Transfers and Virements now contained in Part 6 of the Constitution. The scheme itself was agreed by Full Council on 3 March 2003.

### **7.3 Scheme of Transfers and Virements**

Paragraph 1 be amended to clarify that the Scheme does not authorise any virement, transfer or new spending if it is in conflict with the Policy Framework or any Service Development Plan agreed by Full Council.

## **8. Changes to Part 7 (Codes and Protocols)**

The annual review of the Planning Code of Practice was completed in October 2002 and a report on the outcomes of that review was presented to the Standards Committee on 14 January 2003 and 8 April 2003. The Standards Committee agreed to recommend to Full Council the following amendments to the Code:

- (a) A new paragraph 4(iii) be added to require members of the Planning Committee to record in a register maintained by the Director of Environment any approaches they receive in relation to a planning application or a matter which may give rise to a planning application.
- (b) Paragraph 12 be amended to reflect the new paragraph 4(iii) and also to state that other members of the Council may record any approaches they receive in the register if they feel it is appropriate.

- (c) Paragraph 11 be amended to clarify that in the case of requests for site visits, a record must be kept of the members name, reason for the request and any approach in respect of the application. If these details are not provided the site visit will not proceed. Alternatively, during any meeting of Planning Committee any member of the Committee may request (with reasons) a site visit in respect of any application on the agenda of the meeting.

The Protocol for Member/Officer Relations has been amended to remove those parts of the Protocol which are included in the proposed Protocol on Members' Rights of Access to Information, the Access to Information Rules and the Members Allowance Scheme.

Part 7 now includes the new Protocol on Members' Rights of Access to Information. The Protocol:

- (a) sets out members rights of access to Council information;
- (b) provides guidance to members and officers in the approach to be adopted in the exercise of these rights;
- (c) sets out a principle of openness in the writing of committee and executive reports;
- (d) provides guidance on establishing a "need to know";
- (e) provides guidance on particularly sensitive categories of information; and
- (f) sets out guidance on potential penalties and claims if loss is caused by disclosure of personal or commercially sensitive information.