



**Full Council**  
19<sup>th</sup> May 2008

**Report from the Borough Solicitor**

For Action

Wards Affected:  
NONE

**Changes to the Constitution**

**1.0 Summary**

- 1.1 This report sets out proposed changes to the Constitution following the annual review of the operation of the Constitution.

**2.0 Recommendations**

Members are asked to:

- 2.1 Note the changes to the composition of the Standards Committee, as required by the Local Government and Public Involvement in Health Act 2007, and to note that the Standards Committee will, at its first meeting, appoint two sub-committees to be known as i) the Standards (Initial Assessment) Sub-Committee and ii) the Standards (Review) Sub-Committee.
- 2.2 Amend the Constitution so that alternates may be appointed to the Standards Committee and sub-committees for both elected members and independent members.
- 2.3 Amend the Constitution so that more than two independent members may be appointed to the Standards Committee.
- 2.4 Increase the allowance for an independent member of the Standards Committee to £400 per annum plus and additional £100 per meeting for any sub-committee meetings that independent members attend, subject to officers identifying appropriate budgetary provision.

- 2.5 Amend Contract Standing Orders and Financial Regulations in relation to the sealing of contracts, Framework Agreements and the provision of goods and services as shown in **appendix 1**
- 2.6 Note and agree the Terms of Reference for the Joint Overview and Scrutiny Committee for Health as shown in **appendix 1**.
- 2.7 Increase the limit on the amount of the grant that officers can make in relation to funds received from the Edward Harvist Trust from £5,000 per annum to £7,000 per annum
- 2.8 Agree all other changes to the Constitution as shown in **appendix 1**.
- 2.9 Delegate to the Borough Solicitor power to make any consequential changes required to be made to the Constitution as a result of the amendments agreed by members.

### **3.0 Detail**

#### *Introduction*

- 3.1 The Constitution is kept under review throughout the year to ensure that it complies with relevant legislation and that it operates effectively. Each year, in May, the Borough Solicitor brings a report to Full Council with any recommendations for changes that should be made to the Constitution.
- 3.2 This year, as a result of the Local Government and Public Involvement in Health Act 2007, there are changes required to the composition of the Standards Committee, the creation of two sub-committees of the Standards Committee and their terms of reference, the appointment of alternates and a possible increase in the allowance for the independent members. This report also recommends minor changes to Contract Standing Orders and Financial Regulations.
- 3.3 The amendments are all discussed in more detail below and the relevant pages from the Constitution showing the changes are attached as **appendix 1**.
- 3.4 The three leaders of the political groups were consulted about changes to the composition of the Standards Committee during the development of the proposals set out in this report.
- 3.5 The Standards Committee considered reports on the changes required to its structure at its meetings on 30 January and 26 March 2008 and recommended the broad proposals set out in this report.

#### *Composition of the Standards Committee*

- 3.6 The Local Government and Public Involvement in Health Act 2007 ('the Act') has amended the national ethical standards framework for local government. In particular, it has changed the way in which complaints about members conduct are

dealt with. From 8 May 2008 all complaints about members' conduct must now be made direct to the Standards Committee which will decide whether the complaint should be investigated. Prior to that it was the Standards Board for England who made that assessment. Under the new framework a Standards Committee has three separate functions in relation to a complaint about a member's conduct.

1. Initial assessment of the complaint

A complaint about a member's conduct is made to the Standards Committee who then decides whether to refer the complaint to the Monitoring Officer for investigation or other action, refer the complaint to the Standards Board for England or not to investigate the complaint.

2. Review of any decision not to investigate

Where the initial assessment is that a complaint should not be investigated then the person who submitted the complaint may ask for a review of the decision not to investigate. The Standards Committee is required to make a fresh assessment of the complaint and whether to investigate it.

3. Substantive hearing into the complaint

Where a hearing into a complaint is required then the Standards Committee will act as a quasi judicial body and decide whether there was a breach of the Code of Conduct and if so what the appropriate sanction is.

3.7 The Standards Committee is currently made up of five members; two independent members and one from each of the political groups and there are no sub-committees. The Standards Committee (England) Regulations 2008 now require the Council to set up a minimum of two sub-committees, one to conduct the initial assessment of allegations and decide whether to investigate and another to receive any request to review a decision not to investigate. Each sub-committee must have an independent Chair, at least one elected member and has a statutory quorum of three. These Regulations also prevent a member from taking part in the review of a decision not to investigate a complaint if they took part in the initial assessment. Members of the sub-committees must be drawn from the main committee.

3.8 The Standards Committee has recommended the creation of two sub-committees. The first sub-committee would be called the "Standards (Initial Assessment) Sub-Committee" and would, as the name suggests, carry out the initial assessment of any complaint about a members' conduct and decide whether to investigate it. The second sub-committee would be called the "Standards (Review) Sub-Committee" and would carry out any review of a decision not to investigate a complaint made by the Standards (Initial Assessment) Sub-Committee. Each sub-committee will be limited by its terms of reference to the particular function and made up of one member from each of the political groups and an independent member who will be the chair. New regulations provide for the Standards Committee to appoint these sub-committees. Council is therefore merely asked to note the draft terms of reference included in **appendix 1** which will be agreed by the Standards Committee at its first meeting.

- 3.9 Currently it is not possible to create these two sub-committees with entirely separate membership drawn from the Standards Committee because there are not enough members on the main committee to facilitate this. The composition of the Standards Committee therefore has to change. In order to have a sufficient number of members to sit on the sub-committees and meet the statutory requirements the Standards Committee has recommended that alternates should be appointed to the Standards Committee. Officers have taken the advice of Leading Counsel who has confirmed that an alternate to the Standards Committee can be appointed as a member or alternate member of a sub-committee of the Standards Committee.
- 3.10 At the Standards Committee meeting on 26 March the Independent Members both expressed concern that the structure being recommended at the time relied on them both being available at short notice. They considered that this presented a risk to the Standards Committee's ability to perform its functions as sub-committee meetings would be inquorate if they could not attend. Officers accept the assessment of the Independent Members and recommend that an alternate Independent Member should be appointed to help eliminate that risk.
- 3.11 However the Constitution currently prohibits the appointment of alternates to the Standards Committee. It has always been considered desirable to have a small pool of well trained members on the Standards Committee because of the nature of the matters considered by the Standards Committee and in particular hearing allegations of misconduct. Officers now consider that appointing alternates to the Standards Committee is the best way to restructure the Standards Committee because it maintains the smallest overall pool of members (including alternates) but also provides sufficient cover so that sub-committee meetings should always be quorate.
- 3.12 The Constitution currently limits the number of Independent Members that may be appointed to the Standards Committee to two and Members are therefore asked to approve the amendments to the Constitution set out in **appendix 1** to allow the appointment of more than two independent members to the Standards Committee.
- 3.13 In a separate report to Council on the same agenda members will be asked to appoint the elected members, Independent Members and alternates of the Standards Committee.
- 3.14 In accordance with the new Regulations and the Council's Standing Orders, the Standards Committee will appoint the sub-committees, the chairs, members and alternates to the two new sub-committees at the first meeting of the Standards Committee. This is scheduled for 12 June 2008.

#### *Members Allowances – Independent Members*

- 3.15 The allowance for an independent member is £212 per annum for the 2008/9 municipal year. Officers consider that this allowance is far too low for the amount of work involved, particularly given the new increased role of the Standards Committee and the associated responsibility on the independent members.

- 3.16 By way of comparison the 2006 report of the Independent Panel on the Remuneration of Councillors in London recommended that members of the Standards Committee should receive an allowance of £117 per meeting and that the Chair should receive £240 per meeting. In general allowances in Brent are below the levels recommended by Independent Panel but a comparison with the other London Boroughs also showed that of the twenty boroughs that answered the survey and pay an allowance to the independent members of the Standards Committee only one borough's allowance was lower than Brent's. After considering the matter at their meeting on 26 March 2008 the Standards Committee recommended an increase in the allowance for an independent member to £400 per annum and £100 per sub-committee meeting they attend.
- 3.17 Officers consider that an allowance of £400 per annum for the preparation and attendance at 4 meetings a year is appropriate and in recognition of the extra work involved in attending either the initial assessment sub-committee or the review sub-committee a per meeting allowance of £100 is also appropriate. Members are asked to agree the change in the allowances for independent members subject to officers identifying appropriate budgetary provision.

### *Standing Orders and Financial Regulations*

#### *Sealing*

- 3.18 Standing Order 73(a)(iii) provides that contracts with an estimated value exceeding £500,000 must be executed as a deed under seal. However Standing Order 73(a)(ii) states that contracts for the provision of goods or services by the Council to another body or organisation must be sealed if valued in excess of £150,000. There is a further conflict in Financial Regulation 6.3.4 which requires this latter class of contracts to be sealed if their value exceeds £500,000. The proposed amendment to Standing Order 73(a) brings these provisions into line by requiring all contracts which have an estimated value exceeding £500,000 to be executed as a deed under seal, whether the Council is the purchaser or the provider of the goods, works or services.

#### *Framework Agreements*

- 3.19 Standing Order 86 exempts from formal tendering procedures any contracts called off from a Framework Agreement. However Chief Officers' delegated powers to award contracts are limited by paragraph 2.5 of Part 4 of the Constitution – where a contract is a High Value Contract (as defined by Standing Order 82), officers must seek prior approval to award the contract from the relevant committee, usually the Executive, in accordance with Standing Order 88(c). The new proviso proposed to be inserted in Standing Order 86(d) confirms that the award of a High Value Contract called off from a Framework Agreement still requires Executive approval. However, it is important to note that it still preserves complete exemption from the need for an Executive report for contracts awarded in urgent circumstances or contracts for individual personal services when these are awarded through calling off a framework.
- 3.20 Standing Order 86(d)(ii) states that no formal tendering procedures apply to contracts called off under a Framework Agreement established by another

contracting authority where advice from the Borough Solicitor and approval from the Director of Finance & Corporate Resources to use such Framework Agreement has first been obtained. As currently drafted it is not clear though whether such legal advice and finance approval must be obtained each time a Chief Officer recommends a call off under the same Framework Agreement. The proposed amendment of Standing Order 86(d)(ii) clarifies that such advice and approval must be sought and given each time.

#### *Provision of Goods, Services or Works by the Council*

- 3.21 There are currently detailed provisions in the Financial Regulation 6.3 outlining the steps to be taken before the Council becomes a supplier of goods or services to other bodies, e.g. Managers must ensure that they have written legal advice and that the Council has power to make such arrangements. At present Standing Order 87 and Standing Order 73(a)(ii) do not reflect the more detailed provisions of Financial Regulation 6.3. The proposed changes to these Standing Orders and this Financial Regulation are being made to impose consistent requirements that officers must comply with before committing the Council to such arrangements.
- 3.22 Officers recommend that Members agree to the proposed changes detailed in **appendix 1**.

#### *Terms of Reference for Joint Overview and Scrutiny Committee to review "Healthcare for London"*

- 3.23 On 29<sup>th</sup> October 2007 Council resolved to establish a Joint Health Overview and Scrutiny Committee and appointed the Chair and Vice Chair to the Joint Committee. Further, Council resolved that the Terms of Reference of the Joint Overview and Scrutiny Committee be the same as those that the Joint Overview and Scrutiny Committee agree to adopt. The Terms of Reference were reported back to Council on 21<sup>st</sup> January 2008 through the report of the Chair of the Overview and Scrutiny Committee but the Terms of Reference need to be included in the Constitution. Council is asked to formally agree the terms of reference.

#### *Edward Harvist Trust*

- 3.24 The Edward Harvist Trust dates back to 1610 when it was first established to maintain the Edgware Road. Five Boroughs (Brent, Barnet, Camden, Harrow and the City of Westminster) receive income from the Trust proportionate to the length of the Edgware Road passing through their respective areas. The London Borough of Harrow acts as Administrator of the Trust and is responsible for distributing the income to the other participating boroughs. All 5 boroughs receive income from the fund twice a year. Brent Council receives approximately £40,000 each year from the fund, but this amount will vary depending on the amount for allocation by the Fund.
- 3.25 The object of the charity is to further 'relief of aged and poor inhabitants, relief of distress and sickness, provision and support of education and recreation and other leisure time activities.' The Council is required to spend the funding received for the purposes of achieving this objective, but subject to that can determine the criteria for making grants from it. Over the years the grant has mainly been

awarded for one-off capital expenditure such as the purchase of equipment or other non-recurring expenditure such as summer playschemes, outings, faith and cultural events organised by local voluntary organisations throughout the year.

- 3.26 Although the grant is widely advertised, the number of applications received from voluntary organisations has fallen over the last few years, and as a result the Council has built up a large surplus in the Edward Harvist Trust budget.
- 3.27 As a result of this a report will be submitted to the executive shortly seeking to amend the grant criteria and this report asks members to amend Part 4 of the constitution to increase the delegation to officers so that they maximum grant that officers can make is increased to £7,000. The increase will only apply to grants from the Edward Harvist Trust as the £5,000 limit for all other grants is considered sufficient.
- 3.28 Officers consider that if the criteria for grants from the Edward Harvist Trust is amended and the maximum grant increased from £5,000 per annum to £7,000 this will encourage new applications to utilise the current surplus of funds and increase the funding opportunities in the borough.
- 3.29 Members should note that any surplus accumulated by the Council cannot be utilised for Council purposes and is restricted to the aims specified by the Trust.

#### **4.0 Financial Implications**

- 4.1 There is a small increase to the overall allowances budget associated with the appointment of a further independent member and with the proposed increase to the allowance for the independent members to £400 per annum plus an allowance of £100 per sub-committee meeting attended.
- 4.2 The increase would be £776 per annum plus any allowances paid for attendance at a sub-committee. Officers are unable to estimate how many sub-committee meetings there will be because this is dependent on how many complaints about members' conduct the Council receives. However as only one independent member will attend each sub-committee meeting the total increase in cost is likely to remain small and officers will look to identify appropriate budgetary provision for the increase.
- 4.3 There is currently £101,869.83 in the Edward Harvist Trust budget and this does not include monies the Council will receive for the final distribution for 2007/08. It is estimated that the annual income to Brent Council from this Trust is approximately £40,000 per year and during 2007/8 £48,405 was paid out in grants from the Trust. Increasing the maximum grant that officers can make is intended to help reduce the surplus of funds in the Trust.

#### **5.0 Legal Implications**

- 5.1 The legal issues relating to the composition of the Standards Committee are dealt with in the body of the report.

5.2 The Council is required to have regard to the recommendations made by the Independent Panel on the Remuneration of Councillors in London before making any amendment to the allowances scheme by the Local Authorities (Members' Allowances) (England) regulations 2003. This report includes the relevant recommendation from the Independent Panel.

## **6.0 Diversity Implications**

6.1 Each organisation which is recommended to receive Edward Harvist Trust funds are required to provide a copy of the Equal Opportunities policy to council officers before funding is released.

## **7.0 Staffing Implications**

7.1 Officers are unable to estimate how many complaints will be referred for investigation but if a lot of complaints are referred for investigation then the Monitoring Officer may have to appoint an external investigator as neither the Borough Solicitor's officer nor the Council's Audit and Investigation team are resourced to carry out investigations into members conduct.

### **Background Papers**

*Brent Constitution*

*Independent Panel on Remuneration of Councillors in London Report 2006*

*Local Authorities (Members' Allowances) (England) Regulations 2003*

### **Contact Officer:**

Should any person require any further information about the issues addressed in this report, please contact Dan Bonifant, on telephone number 020 8937 1368.

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