

 Brent	Audit and Standards Advisory Committee 7 December 2021
	Report from the Director of Legal HR Audit and Investigations
Review of Role and operation of the Constitution Working Group	

Wards Affected:	All
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One Appendix 1 CWG Terms of Reference
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Debra Norman, Director of Legal, HR, Audit & Investigations Tel: 020 8937 1578 Debra.Norman@brent.gov.uk

1. Purpose of Report

- 1.1. In response to a recommendation from the Resources and Public Realm Scrutiny Committee, this report provides a review of the current role and operation of the Constitutional Working Group (CWG). It provides some information about practices elsewhere, highlights steps taken already in response to the Scrutiny Committee recommendation and proposes that a further review be undertaken following the Local Elections in May 2022.

2. Recommendations

- 2.1. To note the contents of this report and agree to receive a further report following the Local Elections in May 2022.

3. Detail

- 3.1 At its meeting on 14 September 2021, the Resources and Public Realm Scrutiny Committee agreed the following recommendation:

To increase democratic overview and transparency within the Constitutional

Working Group, ensuring member involvement in decision-making.

- 3.2 The CWG is not a committee of the council, it is an officer/member working group chaired by the Chief Executive and it therefore meets in private, with the papers presented to the group and discussed without being published. It has been in existence since before 2015. Its primary purpose is to seek cross party agreement to potential changes to the Constitution before they are formally taken forward for decision by Full Council. Its meetings take place in the period leading up to Full Council meetings if it is anticipated that changes will be recommended at the forthcoming meeting. The CWG does not take any decisions about the Constitution itself.
- 3.3 The terms of reference of the CWG are attached as Appendix 1. The CWG does also on occasion discuss matters not directly to do with the Constitution but which relate to items going to Full Council, such as the annual calendar of meetings and allocation of committee membership in line with political balance rules.
- 3.4 It should also be noted that the CWG includes in its discussions changes which relate to the exercise of executive powers. These are matters for the Leader not Full Council to decide and are referred to Full Council for noting or as technical changes to the Constitution rather than to be agreed in substance by Full Council.
- 3.5 Democratic overview and transparency are currently provided through the referring of any significant changes to the Constitution supported by the CWG to Full Council for discussion and approval. At those Full Council meetings, papers and discussion are public and all council members are able to contribute and challenge if they so wish.
- 3.6 Should it be considered appropriate in respect of any proposed changes, if for example proposed changes to the terms of reference of a committee were considered particularly contentious, those changes could be referred to the Audit and Standards Advisory Committee (ASAC) for a detailed discussion before recommendation to Full Council. The Constitution provides power for the ASAC monitor and review the operation of the Constitution and to make recommendations for change.
- 3.7 Democratic accountability is also provided through the involvement of cross party membership in the CWG. Political members of CWG determine the extent of discussion in their party groups about matters due to be considered at the CWG.
- 3.8 As part of this review details have been sought from a number of other London Boroughs on the arrangements they have in place for considering constitutional matters. Whilst only a limited number of responses were received, a range of practices were identified, which include:
 - Use of a Member Working Group to consider any constitutional changes prior to their referral onto Full Council for approval.
 - Establishment of a formal Committee to consider any constitutional matters in advance of their referral onto Full Council.

- Use of the General Purpose Committee to consider and agree constitutional changes or (if felt to be significant enough) to refer them on to Full Council for consideration and approval.
- Reference of issues direct to Full Council (having been identified by Leader of Council or other bodies such as Audit Committee).
- Delegation of power to the Monitoring Officer to deal with minor changes to the Constitution with any more significant issues referred direct to Full Council.

3.9 Although only a small sample, as can be seen from the above there are a variety of arrangements in place for undertaking initial consideration of constitutional matters among other London Boroughs. In addition to the CWG Brent does have in place some elements of these other mechanisms. As mentioned already, the ASAC is able to receive reports in relation to Constitution changes. In addition, the Constitution provides for minor changes to be made by the Monitoring Officer:

“The Constitution may be varied by the Director of Legal, HR, Audit & Investigations if in his or her reasonable opinion a variation is a minor variation (which includes legal, factual, administrative and other technical changes) or is required to be made to remove any other inconsistency or ambiguity or is required to be made so as to comply with any statutory provision.”

3.10 Were a decision made that proposals to change the Constitution should be considered by a committee before recommendation to Council, there would still be the need for an informal discussion mechanism as part of preparing proposals. In addition, the flexibility of the informal approach prior to council would be lost and some sort of urgency arrangement would need to be in place where changes need to be made quickly, for example due to legislative change.

3.11 The effectiveness of the current arrangements were discussed at the CWG meeting on 3 November 2021 as part of this review. The CWG considered the current operation of the group and the alternative practices elsewhere. The view of the CWG was that the arrangements currently work well, although it was thought that inviting other members to meetings where particularly relevant would be an improvement, for example, the Chair of Planning if there was a discussion about Planning Committee terms of reference. Aside from that improvement, the CWG considered it would be more appropriate to undertake a further review following the election. This would enable the new administration can make a decision as to the future mechanism for discussing constitutional changes, including whether there should be more use of the existing role of the ASAC or another committee instead of, or in addition to, the CWG.

3.12 In addition to the review of the CWG, members may be interested to know that since the recommendation from the Scrutiny Committee the following steps have been taken or are underway:

- a. A recent Members Bulletin reminded all Members of the existence and role of the CWG and invited them to put forward to their group whip or the Monitoring Officer their thoughts as to potential improvements to the Constitution that could be considered by the CWG.

- b. In response to a related recommendation from the Scrutiny Committee a record of all changes to the Constitution since a fundamental review which began in 2017 is being compiled to be published alongside the Constitution.

4. Financial Implications

The report is for noting and so there are no direct financial implications

5. Legal Implications

The report is for noting and so there are no direct legal implications

6. Equality Implications

None

7. Consultation with Ward Members and Stakeholders

The existing members of the Constitutional Working Group were consulted concerning this review as set out in the body of the report.

Report sign off:

Debra Norman, Director of Legal HR Audit and Investigations

Appendix

TERMS OF REFERENCE

Scope

To monitor, review and advise the Council on the efficiency of the Council's Constitution.

Make recommendations to the Council on ways that the Constitution or any procedures or protocols relating to it could be amended in order to achieve the Constitution's purpose.

Authority

No statutory decision-making authority

Membership

Chief Executive (Chair) Monitoring Officer
Head of Executive and Member Services

The Leader and Deputy Leader of the Council
The Leader of the Conservative Group
One majority group member.