



Full Council
24 June 2013

**Report from Director of Legal and
Procurement**

For Action

Wards Affected:
ALL

Review of and changes to the Constitution

1.0 Summary

- 1.1 This report is in two parts; the first part sets out changes recommended following a detailed review of certain parts of the Constitution; most particularly delegations to officers, operation of Full Council, and call in arrangements. The second part addresses recommended changes of a more administrative nature and those arising from changes in the law.

2.0 Recommendations

2.1 That Members

- (i) Agree the recommended changes to the Constitution shown as track changes in **Appendix 1** which reflect the changes recommended under the review and such changes to come into immediate effect save for those in recommendation (ii) below;
- (ii) Agree the recommended changes in paragraphs 3.3.6 and 3.3.7 in respect of changes to the thresholds for officer decisions in respect of contracts and property to come into effect from 1 October 2013;
- (iii) Agree the recommended changes to the Constitution shown as track changes in **Appendix 2** which reflect the changes recommended to accord with administrative or legal changes.

3.0 Detail

- 3.1 An independent review of the Council's constitution was commissioned at the end of 2012. The consultant was satisfied that the Constitution is regularly updated and is consistent with those used by other councils (subject to local variation). The aspects of the Constitution the subject of the review were therefore those which do pose some local difficulties, or which it is considered could be improved. The recommended changes set out in Part 1 below have

been discussed in detail at a meeting of the Constitutional Working Group which included the Leaders of each political group, the Chief Executive and senior officers. The amendments in Part 2 are more routine matters which have arisen as a result of changes in the law or other procedural or administrative matters which require or warrant changes to the Constitution.

PART 1

3.2 The specific areas considered by the review are delegations to officers, council meetings, and call in arrangements.

3.3 *Delegations to officers*

3.3.1 The Council has a scheme of delegation to Directors and specific senior officers. There are no notable difficulties in its day to day operation and continuation of the present style of delegation therefore seems appropriate. However, for the sake of clarity it is proposed to make it clear in the Constitution that the Council's delegation of powers includes delegation to those appointed to a named post on an acting, interim, or temporary basis.

3.3.2 Under the present constitutional arrangements the appointment of Directors, Assistant Directors and other specified senior officers on an interim or fixed term appointment are a matter for the Chief Executive or a Chief Officer appointed by him or her. It is proposed that the arrangements be more specifically detailed in the Constitution for the purposes of clarity and that in relation to the interim appointment of Directors, and some statutory officer appointments that General Purposes Committee be informed of such appointments, and of any extensions of such arrangements beyond a year. Interim Chief Executive arrangements are also clarified.

3.3.3 For historical reasons the Constitution includes very wide powers to the Chief Executive, these are no longer required and it is recommended that delegation to the Chief Executive be amended accordingly.

3.3.4 In Brent, officers have been delegated powers and functions subject to exemptions and restrictions which, when they arise, require member decisions through the Executive or another committee body. The criteria or threshold for determining which decisions should be made by members, or involve members, and which could be taken by officers was part of the review.

3.3.5 A review and comparison of financial thresholds used to limit delegated authority to officers in relation to property and contract matters shows that the limits in Brent allow greater officer decision making than is available in a number of the other Councils surveyed. When deciding any new thresholds for Brent some caution should also be exercised in the comparison with other councils, since it is not clear how recently these limits were reviewed in other boroughs, and there may be other local factors which have some bearing on the limits, for example local land and property prices are relevant in deciding the limit to be set on officer delegation to obtain or dispose of land.

- 3.3.6 While there are some other conditions and terms attached to some financial limits, broadly speaking, of those surveyed (Barnet, Ealing, Hammersmith and Fulham, Hounslow, Kensington and Chelsea and Tower Hamlets), the limit for officer decision on supply and service contracts ranges from up to £500k (which includes Brent), to up to £100k, with many in the middle at £250k as the limit for officer decision making. In relation to works contracts the Brent Constitution requires member approval for works contracts of over £1 Million. It is recommended that the contract value for Executive approval in relation to works be reduced to £500K and supplies and services be reduced to £250K thus enabling significantly greater Member involvement in the decision making process regarding contracts.
- 3.3.7 Changes are also recommended in relation to land transactions delegated to officers. The powers given to Directors are very restricted but those given to the Assistant Director of Property and Assets are much wider; Executive approval is required for grant or disposal of an easement, licence, or leasehold where the value of the interest in the land exceeds £100K p/a rental or, if acquired, disposed of, or granted at a premium exceeds £300k in value. Most of the Councils surveyed provide for Executive decision making on disposal or acquisition of property in excess of £250k. Some require Executive agreement to leases of over 25 years, and some provide for consultation with lead member for lower value transactions. It is recommended that disposal or acquisition of an interest in land or buildings at a premium exceeding £250k in value be a matter for the Executive. With regards to such disposals or acquisitions over £150K and below £250K the Lead Member be consulted. Property transactions are now reserved to the Assistant Director of Property and Assets and the powers of Directors are removed. The detail of the proposed changes is shown at **Appendix 1**.
- 3.3.8 It is proposed that the changes in relation to the process for decision making on property and contract matters should be introduced on 1 October 2013 to allow those matters which are already being decided under the current regime to be completed. The change in process proposed may also affect time scales and planning for such matters and the immediate introduction of new rules with no transitional period may have a negative impact on council business.

3.4 *Procedure for Council Meetings*

- 3.4.1 There are several matters relating to the arrangements for the procedures at meetings of Full Council which it is suggested be amended:
- i) *Motions. Standing Order 45.* The present arrangement is for advance notice of the motions 3 days before the meeting and the motions are circulated to members at least 1 day before the meeting. It is proposed that it be made clear that this be written notice of the wording of the motion to the Democratic Services Manager and that the notice be extended to 5 clear working days in advance of the meeting, with motions being circulated to all members at least 2 clear working days before the meeting. Currently only 3 motions are debated, but a further 7 motions may be presented. It is proposed that only the 3 motions to

be debated may be presented, with the continued arrangement that there be one from each group.

- ii) *Debate on key issues affecting the borough (Standing Order 40)*. The present arrangements allow for a themed debate to take place on issues affecting the Borough. This has been useful for specific issues such as the civic centre build and the Olympics. However, going forward, it is agreed that this provision will only be used with the agreement of all group leaders.
- iii) *Council tax setting (Standing Order 34)*. As part of this process the Leader of the Council presents a report to the budget meeting setting out the Executive's proposals for the budget and the Chair of the Budget and Finance Overview and Scrutiny Committee is allowed 10 minutes speaking time. It is proposed that the Standing Order be modified to make it clear that a procedural motion should address the speaking rights of key members in the budget debate.
- iv) *Rules of Debate for Meetings of Full Council (Standing Order 46)*. It is proposed that paragraph 46(d) is amended so that where a motion or an amendment to a motion, which has not been circulated in advance, is to be debated, the Mayor may require that the motion or amendment is written down and handed to him/her.
- v) *Removal or exclusion of members of the public (Standing Order 50)*. For the sake of clarity it is proposed that specific powers of exclusion be included.

3.5 *Call in*

- 3.5.1 Finding the balance between call in for proper scrutiny purposes on major issues that affect the borough, and avoiding use of that process on matters which are not appropriate for call in or could be resolved by alternative means is a complex matter. Having reviewed the provisions it is recommended that the criteria be relaxed, but that call in should only apply to key decisions as defined in the legislation, and not all decisions made by the Executive (the Council currently defines all decisions of the Executive as 'Key Decisions' and has a more 'generous' definition for officer key decisions requiring in the second limb of the statutory test that only one ward be affected). Furthermore, that call in should not apply to decisions which are being referred to Full Council, nor operational decisions by officers. The detail of the change to the call in arrangements is set out in **Appendix 1**.

Part 2

Area and Service User Consultative Forums

Following a review of area and service user forums, chairs and lead managers recommended the adoption of a programme of improvements to the management and content of area and user forums under the new general banner 'Brent Connects'. The Brent Connects programme is essentially about

improving the internal management of and stakeholder experience at all the consultative forums.

BME Service User Forum

Chairs and lead managers recommended that the remit of the current Black and Minority Ethnic service user consultative forum be widened to cover a more general equalities brief, that this forum is renamed the Equality Forum, and its terms of reference be amended accordingly. It was recognised that the variety of stakeholder groups who potentially fall within the remit of the Black and Minority Ethnic Service User Consultative Forum is so wide and diverse, they could not be adequately represented under the current structure. Furthermore this forum had suffered from chronically low attendances over the last two years. The group felt that a re-focusing of this forum with a more general equalities brief should be recommended and that this change would more accurately reflect new equalities legislation and the Council's commitment to equalities. Some limited consultation has taken place on the proposed changes; with chairs and lead managers in their joint meetings; at area and user forums and specifically with members of the Black and Minority Ethnic Service User Forum. The proposals have been generally welcomed. The recommended changes to the consultative forums is shown in **Appendix 2**.

Changes to the Adoption Panel

Prior to 1 September 2012, local authority adoption panels were legally required to consider the suitability of a child for adoption for cases that were subject to court proceedings. Under the Adoption Agencies Amendment Regulations 2012, this requirement has been removed and for those cases that are subject to court proceedings, adoption agencies are now prohibited from referring these to the Adoption Panel before a decision has been made by the agency on whether to place a child for adoption. The Adoption Panel retains responsibility for considering the approval of adopters and the suitability of matches between prospective adopters and a child.

School Exclusions

The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 which came into effect in September 2012 replaced School Exclusions Appeal Panels with Independent Review Panels. The obligations of the Local Authority in convening these panels for cases relating to schools maintained by the LEA remain largely unchanged.

Schools Admissions Forum

The new Schools Admissions Code introduced in February 2012 no longer contains a requirement to have a Schools Admissions Forum and accordingly these no longer take place.

The suggested amendments brought about by the changes in the law are shown at **Appendix 2**.

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 include 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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