

Chair:  
Councillor Clare Kober

## **INTRODUCTION**

- 1.1 This report covers matters considered by the Constitution Review Working Group at our meeting on 19 February 2009.

## **ITEMS FOR DECISION**

### **2. AMENDING THE LOCAL CHOICE FUNCTIONS IN THE COUNCIL'S CONSTITUTION**

- 2.1 The "Local Choice Functions" set out in Part 3 Section A of the Council's Constitution are rarely considered and not well understood. Therefore some description of the legal background is necessary to explain the context and nature of the decisions Members are being asked to consider.
- 2.2 Members will be aware that all the Council's statutory functions are either "executive-side" or "non-executive-side" in character. The "executive" functions fall within the remit of the Cabinet, Cabinet Committees and individual Cabinet Members. The "non-executive" functions are the responsibility of the full Council and the Committees reporting directly to Council and their subordinate Sub-Committees and Panels.
- 2.3 The great majority of functions can be delegated to officers excluding only such important matters as setting the budget, adopting strategic plans and policies and taking "key decisions". Once delegated to officers, there is little difference in practice between an "executive" and a "non-executive" function although the relevant parent body can always recall the delegation and take any particular decision itself.
- 2.4 In most cases, the allocation of statutory functions between the "executive" and the "non-executive" has been prescribed in Regulations made by the Department of Communities and Local Government (DCLG). The first of these, known as "The Local Authorities (Functions and Responsibilities) (England) Regulations 2000" was made as a consequence of the Local Government Act 2000 which introduced the modern form of Council Constitution with its various types of "executive arrangements".
- 2.5 The idea behind these Regulations was to achieve broad uniformity in local authorities across England and Wales on the division of responsibilities between "executive" and "non-executive" functions. Those functions expressly specified in the Regulations are "non-executive". Those not mentioned, which constitute the great majority of Council powers, are executive by default. In the case of major plans and strategies, there is a prescribed division of responsibilities between the Executive/Cabinet which proposes the draft plan/strategy and the full Council which has discretion to ask for amendments or to adopt the plan/strategy as proposed.
- 2.6 In addition there is a very limited list of so called "Local Choice Functions" where each Council has the right to choose for itself whether each of the listed functions is to be categorised as an "executive" or a "non-executive" function in that Council's area. It is not

possible for a “Local Choice Function” to be exercised in the manner of many other major plans or strategies so as to be a proposal from the Cabinet to full Council. The choice for Members will be between an executive-side Cabinet decision or a non-executive-side full Council decision.

- 2.7 There are, in fact, only 18 such “Local Choice Functions” relevant to London Boroughs. Until last year there was nothing in the numerous amendments to the “Functions and Responsibilities Regulations” that had required a change to Haringey’s own long-standing arrangements for “Local Choice Functions”.
- 2.8 One problem with “Local Choice Functions” is that any addition to the national list by DCLG will require each Council to make a positive amendment to its own Constitution at a full Council meeting allocating the newly designated function as “executive” or “non-executive”. Unless this is done, the Council cannot validly exercise the statutory function itself.
- 2.9 The “Local Choice Functions” and their allocation in Haringey are shown in the Appendix to this report. This shows the current text of Part 3 Section A of the Council’s Constitution with the proposed additions and insertions underlined and in italics and with the proposed deletions struck through.
- 2.10 Last year DCLG decided to add certain functions relating to Local Area Agreements (LAA) to the national list of “Local Choice Functions”. These are functions under sections 106, 110, 111 and 113 of the Local Government and Public Involvement in Health Act 2007. They cover the duties of Councils to submit the initial draft LAA to the Secretary of State and the duties relating to the subsequent revision of the LAA and the making of changes to the local improvement targets. These are obviously decisions of importance for Member-level decision.
- 2.11 In addition there is the more routine duty under section 113 to publish information about any adopted changes to the LAA in the form of a publicly available memorandum. This too is a “Local Choice Function” but one more suitable for delegation to officers, in this case the Assistant Chief Executive, Policy, Performance, Partnerships and Communications as shown in item 18 of the Appendix.
- 2.12 Unfortunately, the process whereby the LAA function were prescribed as “Local Choice Functions” by DCLG caused some confusion. The first Regulations on this matter last year came into force so late that many Councils, including Haringey had already approved their initial draft LAAS for submission to the Secretary of State. This approval was validly given by Haringey’s Cabinet on 18 March 2008 at a time when it was still an executive decision by default. Inconsistencies in the first Regulations made it necessary to issue a second set of Regulations clarifying that this was, in fact, a “Local Choice Function”.
- 2.13 The LAA is now coming up for its first annual review. Following extensive consultation with local partners, the Assistant Chief Executive, PPC will soon put forward a report entitled “LAA Refresh” seeking Members approval for revised indicators and local targets. The draft revised LAA must then be submitted for confirmation to the Government Office for London (GOL) by 2 March. Therefore, the decision by Haringey Members needs to be

taken before the end of February.

- 2.14 Given that the report will deal with details of service delivery and partnership working that have always been within the remit of the Cabinet, and given that the Cabinet made approved the initial draft LAA last year, it is clearly appropriate that the LAA functions be allocated as “executive” side for the Cabinet to exercise. This is shown in the Appendix at item 18.
- 2.15 The other amendments being proposed to the Local Choice Functions in Haringey’s Constitution relate to the allocation or delegation of Local Choice Functions but are less urgent and are intended mainly to update Part 3 Section A and to avoid ambiguities and inconsistencies.
- 2.16 Appendix 1 to this report starts with a “Preamble” before the list of “Local Choice Functions” in the long Schedule with 18 items. In the second paragraph of the Preamble there are technical legal reasons for including the word “allocate” as well as “delegate” when referring to the division of responsibilities between the full Cabinet and individual Cabinet Members. The final sentence of the Preamble is intended to ensure that the allocation of “Local Choice Functions” remains valid in the event of name changes.
- 2.17 At item 1, the Local Act functions, it is desirable to include a reference to the remit of the Alexandra Palace and Park Board and its General Manager. At item 2 there is a similar clarification to recognise the long-standing delegation to the senior officers of the Strategic and Community Housing Service to conduct internal reviews of homelessness decisions.
- 2.18 The repeal of the duty to conduct Best Value Reviews in England is shown at item 7 and the subsequent items are renumbered.
- 2.19 At items 8, 9, 11 and 12, the references are updated to specify the Assistant Director Planning & Regeneration and the Directorate of Urban Environment.
- 2.20 At item 15 a clarification is needed to explain that certain agreements to carry out highway works for the benefit of, and at the expense of, private land owners are allocated to the Planning Committee when those agreements are connected with planning applications for determination by the Committee. Other agreements which are generally of a minor character are recommended as appropriate for delegation to senior officers within Frontline Services.
- 2.21 At item 16, a correction is suggested to reflect the fact that appointments of Members to Outside Bodies are made by the full Council not the Cabinet. The exceptions will be appointments to certain joint Committees that exercise wholly “executive” functions and so require nominations of Cabinet Members but these are covered by the exceptions in item 16 at sub-paragraphs (b)(ii) and (c). The Chief Executive is responsible for authorising any office secondments outside the Council.

## **WE RECOMMEND**

That the proposed changes to the Local Choice Functions, as detailed in Appendix 1, be approved and that Part 3A of the Council's Constitution be duly amended. (This will enable the Cabinet to take the decision to approve the LAA Refresh report at its meeting on 24 February).

### **3. REVIEW OF CONTRACT STANDING ORDERS IN THE COUNCIL'S CONSTITUTION**

- 3.1 Section 135 of the Local Government Act 1972 requires local authorities to establish and maintain standing orders with respect to the making of contracts for the supply of goods works and services. It further sets out the expectation for securing contracts by way of competition.
- 3.2 Contract Procedure Rules commonly referred to as Contract Standing Orders are contained within Haringey's Constitution Part 4J and is the legal instrument by which the Council adheres to the duty cited above.
- 3.3 The Constitution allows the Cabinet Procurement Committee powers to consider amendments to Contract Standing Orders and to make recommendations to the Council via the Constitution Review Working Group to amend the Constitution accordingly.

#### **Proposed Amendments**

##### Statement of Principles

- 3.4 Principle 4 has been amended to include the public sector and to emphasise Council's commitment to collaboration.
- 3.5 Recent guidance from the Office of Government Commerce (OGC) suggests that Principle 11, which implies open contract arrangements without committed volumes and values of spend from other authorities, would be contrary to EC Directive principles. It is therefore proposed to delete Principle 11 in favour of amended Principle 4.

##### Contract Standing Orders

- 3.6 For consistency throughout the document such cross reference terms as "paragraphs" and "Contract Standing Orders" have been standardised to that of simply CSO.
- 3.6 For consistency, procurement related references to "EU Regulations", "Public Contract Regulations 2006", "EU or UK Law" have been standardised.
- 3.7 CSO 2.02 is deleted in favour of full explanation within the body of CSOs where the term "Cabinet" was used previously. This is to avoid any confusion between Cabinet and Cabinet Procurement Committee.
- 3.8 CSO 3.01 and 3.01(n) is amended to reflect that contracts are no longer let on a Directorate basis but are awarded Council wide under the Category Management Strategy. Directors therefore have a responsibility to effectively manage contracts under

their control rather than restricted to within their directorate area.

- 3.9 CSO 5.02 makes clear that contract values must include any anticipated extension periods.
- 3.10 CSO 6.12. In accordance with the requirements of the Council's Scheme for Financing Schools, and the Financial Regulations for Schools, where a school acts as an agent for the Council, these Contract Standing Orders apply to all schools within the London Borough of Haringey with the exception of Academy and Trust schools. A school's governing body shall have the powers of and duties of a Director specified in these Contract Standing Orders, except in relation to waiver (CSO 7.02).
- 3.11 A new CSO 6.15 is proposed to include powers already being exercised by the Councils Pensions Committee and allowed within the constitution.
- 3.12 A new CSO 6.16 is proposed for Proprietary products, software and support.
- 3.13 CSO 8.02 has been amended to include a sub-paragraph limiting the duration of Framework Agreements as allowed for within EC Directives and the existing sub-paragraph has been renumbered.
- 3.14 A new CSO 8.03 – justifies use of the negotiated procedure without publication of a contract notice as allowed for within EC Directives.
- 3.15 A new sub-paragraph (f) is proposed to renumbered 8.04 to allow for single tenders where there is genuinely no competition.
- 3.16 CSO 13.01 is amended to include a link to CSO 11.02 and the financial powers of Directors.
- 3.17 CSOs are currently silent on any powers to terminate contracts. For this reason, a new CSO 15 is proposed with existing CSOs 15 and 16 being renumbered accordingly.
- 3.18 CSO 16.01 is amended to exclude buildings.
- 3.19 NOTE: with regards the new CSO 6.16:  
There are cases where it is necessary to purchase products, software licences and/or support of a proprietary nature. This has meant requesting a waiver of Contract Standing Orders, usually requested and approved under CSO 7.03(a) whereby the justification is that the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Standing Orders is justifiable – in such cases the market investigations shows that no other supplier can provide the goods or services so we have to depart from CSOs as no competition is available.

In the past, Legal has advised that officers should try to include a caveat in the original order that would allow us to seek alternative third party support after the expiry of the initial support agreement but, in the cases of proprietary products, there may not be other authorised maintenance providers. Another suggestion from Legal has been to let shorter

support agreements then re-tender the whole requirement but some of these requirements involve significant investments in strategic programmes where the return on investment period is longer than two or three years so, even where this is an alternative output solution, to change product/supplier every three years would not be cost-effective for the Council and would not provide value for money.

Examples of such cases are:

- Strategic programmes with significant investment and long-term return where a short-term change of supplier would not provide overall value for money - iWorld (supplier is Northgate Solutions, aggregate value is approx £90k per year); Microsoft Support Agreement (with Microsoft, estimated value is £50k per year).
- Low value requirements where a proprietary product/solution has been chosen but even though the value is minimal, we need a waiver approval from Procurement Committee for subsequent support renewals – e.g. public-i meeting webcasting (approx £5k per year), maintenance of data centres Uninterrupted Power Supply (UPS) systems, (proprietary equipment, annual renewal approx £23k per year, equipment has 5 years life expectancy remaining).

For reasons stated above, it is proposed to amend CSOs to take account of proprietary products/solutions, to cover such circumstances from being part of a strategic, long-term investment programme to a low-value support product/solution only available on an annual basis.

Existing Council CSOs require some minor cosmetic changes but also need to be explicit in regards the decision making powers of the Pensions Committee, Contract Termination and Proprietary Products and Services. The proposed amendments in Appendix 2 will address these issues and will ensure CSOs continued good governance

## **WE RECOMMEND**

That the revisions to Contract Procedure Rule as detailed in Appendix 2 be approved and that Part 4J on the Council's Constitution be duly amended.