

**REPORT OF THE CONSTITUTION REVIEW WORKING GROUP
No. 2/2008-09**

COUNCIL 30 MARCH 2009

Acting Chair:
Councillor Matt Cooke

INTRODUCTION

- 1.1 This report covers three reports considered by the Constitution Review Working Group at our meeting on 17 March 2009.

ITEMS FOR DECISION

2. MAKING THE MEMBERS' ALLOWANCES SCHEME FOR 2009/10

- 2.1 We were advised that the Council must make its Members' Allowances Scheme afresh before the start of each municipal year in order that Members can be paid their allowances. This means that a report must be considered by full Council before the end of March even if no substantive changes are being proposed to the Scheme. There is nothing to prevent full Council from amending the Scheme later in the year should Members wish to do so.
- 2.2 We noted that the Council meeting on 13 November 2006 had decided that the main allowances should be increased from 1 April 2007 in line with the rate of increase agreed in the national pay settlement for Council officers for 2007/08. At that time it was agreed in principle that allowances should be increased according to the same formula in subsequent years. This policy has been applied for 2007/08 and 2008/09 and it was recommended to us that the policy continue to be applied with the same formula for 2009/10.
- 2.3 Once the percentage rate for the officer settlement in 2009/10 is known later in 2009, that rate of increase would be applied to the current allowances and back-dated payments from 1 April 2009 would be paid to Members as soon as possible. We noted that the allowances now shown in the Scheme would be increased automatically without the need for any further report to Members
- 2.4 The figures shown in Appendix 1 to this report for the Basic Allowance, the Mayoral Allowances, the Special Responsibility Allowances and the Co-optees' Allowances are all current and reflect the percentage increase for officers already in place for 2008/09. We were advised that the figures include the recent 0.3% arbitration award finalising the officer pay settlement for 2008/09.

- 2.5 The only changes in Appendix 1 are to dates or years so as to accord with the coming municipal year 2009/10. They are shown in italics and underlined.
- 2.6 We were advised that Members must have regard to the report of the Independent Panel on the Remuneration of Councillors in London when making their decision on the Scheme. Last year (2008/09) the allowances agreed were well within those recommended in the Panel's report and they accorded with the principles recommended by the Panel. The Scheme for 2009/10 simply continues the same principles. There have been no fresh reports or recommendations from the Panel since Members considered the Scheme last March.

WE RECOMMEND

That Members make the Members' Allowances Scheme for 2009/10 as set out in Appendix 1 to this report and adopt this as the replacement for part 6 of the Council's Constitution.

3. REVISING THE SCHEME OF DELEGATION TO OFFICERS

- 3.1 We were advised that the revision of the Scheme of Delegation to Officers was part of the long-running review of the entire Council Constitution. There had been a report to full Council on 31 March 2008 which agreed certain principles for the revised Scheme of Delegation. A substantial amount of work had been needed to apply these principles to the detailed Sections of the Scheme for each Directorate and to update the Scheme to reflect recent legislation.
- 3.2 We noted that an obvious problem with Haringey's current scheme is the excessive amount of detail contained in the schedules of statutory powers for each Service. Generally, there is a separate entry or "box", sometimes several lines or several paragraphs long, purporting to summarise the effect of every section in every Statute where power is delegated. The result is a document 170 pages long which is not written in user-friendly language and which does not meet the original aim of keeping Members informed about officer delegated powers. By listing in detail a vast number of powers that are exercised very rarely, or never, the current schedules are more confusing than informative.
- 3.3 We were advised that it would be perfectly sufficient, legally, to have a much shorter Scheme which expressly delegated the whole of the local authority functions (whether expressed as powers or duties) under the relevant section numbers or Parts of the relevant Statute. This is achieved in a standard paragraph under the heading "statutory delegations" in each of Sections 2 to 6 of the Scheme as shown in Appendix 4 to this report.
- 3.4 The presumption that the whole of the statutory function was being

delegated would not change the general limitations on the exercise of officers' delegated powers which are set out at paragraphs 4.01 and 4.02 in Part 3, Section E of the Constitution. These paragraphs prevent officers taking delegated decisions outside agreed budget limits or Council policies or in specific cases such as compulsory purchase.

- 3.5 Legally, a "shorter form" scheme of this kind would be safer and less vulnerable to challenge. The danger of a lengthy description is the opportunity it affords for those in dispute with the Council to claim that, in the specific instance where a power was exercised, it fell outside the precise scope of the delegation to the officer concerned.
- 3.6 We were informed that there were some areas requiring special treatment. For example, the power to determine planning applications has been divided according to the long-established practice of the Planning Committee. Applications above certain physical limits, for example, more than 5 new dwellings, are referred to the Planning Committee while the more numerous and more routine applications below these limits are delegated to senior Planning Officers.
- 3.7 In these special cases, there is a note in bold type stating that this is a "Limited Delegation". The effect is that the scope of the delegation is determined by the verbal description in the middle column which will contain some reservation about, or qualification to, the power delegated to officers. This can be seen in the case of planning applications under the heading "Town & Country Planning Act 1990" at section 70.
- 3.8 We noted that in the revised Scheme the great majority of powers will be delegated at Service Manager and Team Leader level in every Service. This will bring the Scheme into line with best practice in decision-making to a greater extent.
- 3.9 All Services have identified the powers that should be restricted to Director or Deputy Chief Officer level and not delegated further. These are generally powers to appoint other officers to fulfil particular functions or powers to take sensitive or exceptional action such as a decision to authorise covert surveillance under the Regulation of Investigatory Powers Act 2000. Such powers are marked in the right hand column as delegated to the Director or Assistant Director "only".
- 3.10 We accepted that there is an important distinction to be made between the extension of delegated powers down the structure and the question of senior management control over the exercise of those powers. The extension of delegated powers is necessary to protect the Council legally because it will help ensure that managers throughout the Council have authority to take speedy and effective decisions. It should not undermine proper management control because senior managers can always require supervision or impose

conditions before less senior officers take decisions on matters that are sensitive or complex. We noted that the extension of delegation is a quite separate issue from ensuring the “quality control” of junior officers’ work by management.

- 3.11 We were reminded that the current scheme pre-dates the Council-wide “Reshaping” of Directorates that was implemented at the start of 2007. A “Reshaping Schedule” was then added to the beginning of the scheme to make the necessary changes, legally, as an interim solution. The whole of the scheme has now been brought up-to-date so that Directorates and officers have their new names and the result should be far easier to understand. Consequently the “Reshaping Schedule” is no longer needed and has been omitted from the revised Scheme.
- 3.12 Before Appendix E at the end of the Constitution, there is an Appendix D which is called the “Senior Management Structure Schedule”. This too is being brought up-to-date with the current post titles and descriptions of the responsibilities of Chief Officers and Deputy Chief Officers. The revised version of Appendix D is at Appendix 3 to this report. Appendix D is important to the Scheme of delegation because the scope of the general management and operational powers granted to senior officers in Section 8 is linked to the descriptions in Appendix D.
- 3.13 We were advised that the revised scheme is not intended to change the existing balance of responsibilities between Members and officers but only to protect the Council from possible challenge and to make the format shorter and more accessible. It was explained to us that the large amount of re-drafting was mainly the consequence of condensing the scheme into a shorter format, setting out the effect of the “Limited Delegations”, deleting repeals and adding new legislation. We were assured that Members would not find that the revised Scheme made a significant change to the matters coming to them for decision or to their powers to call senior officers to account for their exercise of delegated powers.
- 3.14 We noted that the opening paragraph of each Section defines the matters excluded from officer delegation more clearly than before. Members will continue to take all “key decisions” and matters expressly within the terms of reference of the Full Council, Cabinet or Committees. Decisions on the budget and all other Council policies and strategies will remain with Members. Officers will keep responsibility for the very large volume of routine operational and case work decisions which, as a matter of practicality, have to be delegated in all local authorities.
- 3.15 Appendix 2 to this report shows Section 1 of the Scheme (also known

as Part 3, Section E of the Constitution) which contains the Introduction and Ground Rules. We noted the addition of a new paragraph 3.06 which is intended to help define the long-standing requirement in paragraph 3.05 to report monthly to the Cabinet or the relevant Committee on recent decisions already taken under delegated powers. The duty is to report decisions of “particular significance” individually rather than grouped by number and type under a general description in a schedule. Until now there has been no definition of a decision of “particular significance”.

- 3.16 The new paragraph 3.06 sets out the two alternative criteria for decisions of “particular significance”. At 3.06 (a) there is spending or saving £100,000 or more. At 3.06 (b) there is a decision that is significant or sensitive for any other reason which the Director and Cabinet Member have agreed should be reported. The adoption of these two new criteria should improve the consistency of reporting while keeping the reporting requirements within a sensible length. It would not prejudice Members’ right to call for more information in any specific case causing concern.
- 3.17 At the end of the current paragraph 3.05 the final sentence refers to significant delegated decisions being reported up from Cabinet/Committee to Full Council. This has rarely happened, in practice, and therefore, the final sentence is recommended for deletion.
- 3.18 The report to Full Council in March 2008 considered the increased reporting of local impact decisions to all Councillors and this was agreed in principle. We were advised that officers subsequently looked in greater detail at the practicality of encapsulating this as a formal requirement in the Constitution and have concluded that it would be very difficult to produce a sensible definition of the matters to be reported.
- 3.19 As an alternative, we welcomed the proposal to take action by expanding the monthly Members’ Briefing so that it includes more items of local and topical interest from all Council Services. This could include recent enforcement action or the outcomes of prosecutions as well as details of traffic schemes or Park improvements.
- 3.20 At the end of Section 1, there is a sub-section entitled the “Protocol for Officers Taking Decisions under Delegated Powers”. As already agreed in principle, this Protocol has been simplified to make it shorter and easier to implement comprehensively. We noted the list of obligatory details that must be recorded, whenever an officer takes any delegated decision, has been reduced to five: (i) the name/post of the officer taking the decision, (ii) the substantive facts, (iii) the reasons for the decision, (iv) the expenditure authorised and (v) the date of the decision.

- 3.21 Sections 2 to 6 contain the revised delegations for the Chief Executive's Service, Corporate Resources, Urban Environment, Children & Young People's Service and Adult, Culture & Community Services. They are set out in Appendix 4 to this report. There are a very great number of changes being recommended, most of them quite minor.
- 3.22 The report before us explained that a "comparison version" had been prepared to show the revised scheme in substance but as it would be if in the longer format used currently. The comparison version, so far as possible, shows all the statutory powers being added to, or deleted from the scheme. The deletions are usually the result of statutory repeals or the transfer of powers from one Directorate to another as a result of the restructuring or reshaping of Services. We were informed that a hard copies of the comparison version have been placed in lever arch files in the Cabinet Members' Room and the other Members' Rooms at River Park House where they can be inspected.
- 3.23 Because the revised scheme aims to condense the scheme into a much shorter form, we were advised that it was not practicable to show the precise text changes between the current and the revised scheme in Appendix 4 to this report while at the same time showing the substantive additions and deletions of powers. In contrast, it has been practicable to show the text changes in Appendix 2 to this report where the format will not be changed
- 3.24 We were informed that a report was being submitted to the special Planning Committee later the same evening in order to consult that Committee on specific proposed amendments to Planning delegations. We were subsequently advised outside our meeting about the views expressed by the Planning Committee and our Chair has agreed to recommend the changes requested by Planning Committee Members.
- 3.25 The Planning Committee discussed the officer proposal to increase the threshold for objections to a policy compliant application which would be required for an automatic referral to Planning Committee. The Committee agreed that an objection from a single Ward Councillor or a local community body or a local residents association would trigger referral to the Committee. The reference in the original officer proposal to objections from "at least 10 individual local residents" has been deleted at Planning Committee's request. But whenever there are objections from local residents, whatever the number, the Chair of Planning Committee can still ask the Assistant Director Planning to refer the application to Committee.
- 3.26 We were advised that the Planning Committee had approved the proposed delegation, as drafted, to Planning Officers with respect to highway stopping up and diversions consequent on the grant of planning permission. The officer proposals in the report before us to

extend delegated powers with respect to section 106 planning agreements had been withdrawn, and so the current delegation will remain.

- 3.27 It was explained in the report before us that the revised Scheme being recommended to us did not contain detailed delegations to the General Manager of the Alexandra Palace & Park charity and his senior staff. These are intended for Section 7 of the scheme within Appendix E. Because of the special status of the charity, the Alexandra Palace & Park Board of trustees will follow their own process for reviewing the powers they delegate to their own officers and this is part of a wider review of the charity's governance. Once formally agreed by the Alexandra Palace and Park Board, the delegations would be reported for adoption to a later Full Council.
- 3.28 We were advised that Section 8 in the current Scheme sets out certain general delegated powers that are granted to all Chief Officers including powers to take management and operational decisions on behalf of the Council. It is now being recommended that most of these powers be extended to Deputy Chief Officers except for the following which would remain at Chief Officer level: (i) requests for access to Council premises by the media (ii) power to waive charges in exceptional circumstances and (iii) decisions on the use/management of premises held for the operational requirements of the Directorate.
- 3.29 In the report before us there was a proposal to delegate to the Chief Executive powers to take decisions on the "non-executive" aspects of a Service Restructuring when more than 20 posts were affected. It was proposed that this delegation would be exercised in accordance with previous decisions of The Cabinet on the service delivery aspects which are "executive" side functions. The proposed delegation to the Chief Executive would remove powers currently within the remit of the General Purposes Committee.
- 3.30 We noted officers' argument that these new arrangements would improve focus and accountability when making decisions on a major Service Restructuring. However, we were concerned that the proposals would result in an inappropriate involvement of the Cabinet in non-executive functions. We agreed to ask for this proposal to be removed from the revised Scheme being recommended to full Council and it has now been deleted from Appendix 4 to this report.
- 3.31 The final Section 9 of the Scheme delegates the powers contained in local government legislation for exercise by the "proper officer" or a "specified officer". We noted that the main changes here will be the allocation to the Monitoring Officer of power to decide what constitutes "exempt information" in Cabinet/Committee reports and background papers under the "Access to Information Rules" and in relation to any information held by the Council in the case of requests under the Freedom of Information Act 2000. This will involve the application of

the respective “public interest tests” to assess whether the grounds for maintaining confidentiality are outweighed by the public interest in disclosure. Other appropriate “Access to Information” functions will continue to be delegated to the Head of Local Democracy and Member Services.

WE RECOMMEND

That Members agree the revision of the Scheme of Delegation to Officers set out in the following Appendices to this report and adopt them as amendments to the Council’s Constitution:

- (i) Appendix 2 – text changes to Section 1 of the Scheme “Introduction and Ground Rules” which is at Part 3, Section E.
- (ii) Appendix 3 – replacement for Appendix D, the Senior Management Structure Schedule
- (iii) Appendix 4 – replacement for Appendix E to constitute the “contents page” and Sections 2, 3, 4, 5, 6, 8 and 9 of the Scheme.

4. REVISING THE COUNCIL’S FINANCIAL REGULATIONS

- 4.1 We received a report on the revision of the Council’s Financial Regulations which is also part of the review of the Council’s Constitution. Financial Regulations were last updated comprehensively in 2002 although minor changes were made in 2007.
- 4.2 We noted that the recommended revision would support the Council’s duty to demonstrate sound corporate governance by putting in place robust Financial Regulations which set out detailed financial procedures reflecting changes in the Council’s circumstances.
- 4.3 There had been extensive consultation between the Chief Financial Officer and his staff and other Directors and Business Unit Heads about the proposed revision. Responses received had been considered and where appropriate reflected in the revised Financial Regulations which are attached as Appendix 5 to this report.
- 4.4 We were advised about the main changes to Financial Regulations. These include greater detail on the financial responsibilities of all Chief Officers and Directors. There is also a clearer statement of financial responsibilities below Chief Officer level, namely, for Business Unit Heads and budget holders.
- 4.5 Rules for the control and transfer of approved budgets, or “virements”, are recommended for revision. At present all revenue virements between business units, all changes in income above £50,000 and an addition or amendment to any capital scheme require approval by the Cabinet. The recommended revision to Financial Regulations would require all revenue budget changes in gross expenditure and /or

income or revenue budgets both within and between Business Units to be approved as follows. Changes up to £50,000 could be approved by the relevant Business Unit Head provided overall net expenditure remained unchanged. Changes between £50,000 and £100,000 could be approved by the Director. Changes above £100,000 would require approval from the Cabinet.

- 4.6 We were advised that any proposed virements which affected the achievement of agreed policy, or that produced a full year's budget impact, would require approval of the Chief Financial Officer as in the current Financial Regulations.
- 4.7 In the revised Financial Regulations an addition or amendment to any scheme in the capital programme above £100,000 would require Cabinet approval. Changes below that limit could be authorised by the Chief Financial Officer.
- 4.8 It was proposed to us that the authority of the Chief Financial Officer to write off debts be increased from the current level of under £1,000 to under £5,000. Above this level the Cabinet Member for Resources would approve write offs.
- 4.9 We noted that the external funding section of the revised Financial Regulations will incorporate reference to the Local Area Agreements.

WE RECOMMEND

That Members agree the revision of the Council's Financial Regulations set out in Appendix 5 to this report and adopt this as the replacement for Part 4, Section I of the Council's Constitution.