

REPORT OF THE CONSTITUTION REVIEW WORKING GROUP No. 6/2009-10

COUNCIL 22 FEBRUARY 2010

In the Chair:
Councillor Reith

INTRODUCTION

- 1.1 This report to full Council follows two reports considered by the Constitution Review Working Group at our meeting on 17 February 2010. The first item for decision concerns amendments to the Council's Constitution that are necessary to implement the new executive leadership arrangements agreed by the extraordinary Council meeting on 14 December 2009. The second item for decision concerns amendments to the Council's Constitution that will embed sound treasury management policies and practices recommended to local authorities by CIPFA.

ITEMS FOR DECISION

2. AMENDING THE CONSTITUTION TO IMPLEMENT THE NEW EXECUTIVE LEADERSHIP ARRANGEMENTS

- 2.1 We noted that the extraordinary meeting of the full Council on 14 December 2009 had passed a resolution to change the executive leadership arrangements to the new Cabinet and Leader model provided for in the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). This followed an extensive two-stage public consultation exercise. The proposals agreed in principle by Council in December are set out in Appendix 1 to this report but without the Schedule of "Local Choice Functions" that will not change.
- 2.2 We were informed that the new leadership arrangements had to be implemented on the statutory changeover date which is Tuesday 11 May i.e. the third working day after the May 2010 Council Elections. All the text changes being recommended are set out in Appendices 2 to 11 to this report. We noted that many of the changes are repeated at several different places in the Constitution and it would not be useful to explain each of them individually. This report therefore draws attention to the main points underlying the new leadership model and to the details of the transitional arrangements after the May Elections. The opportunity has been taken to make a few minor corrections and clarifications to those Parts of the Constitution that have to be amended anyway but no changes of any substance are proposed in this way.

- 2.3 The principal effect of the reforms contained within the 2007 Act is to concentrate executive authority in the hands of the “senior executive member” whether this is the directly elected Mayor or the indirectly elected Leader as in Haringey and most other local authorities. The Leader will have the statutory powers which previously were only held by directly elected Mayors.
- 2.4 We noted that one key change is the power of the Leader at will to delegate or allocate all executive functions between the Cabinet meeting, Cabinet Committees, individual Cabinet Members and officers. The Leader will be empowered to reserve any matter for his/her personal decision and to revoke any delegation at any time either specifically or generally. This will result in changes to the Cabinet Terms of Reference (Appendix 7 to this report) and the Cabinet Procedure Rules (Appendix 11 to this report).
- 2.5 The other key change is the power of the Leader to appoint and remove each Cabinet Member and to determine their number and portfolios subject to there being no fewer than two or more than nine Cabinet Members. The Leader takes over these powers from the full Council and so the Council’s terms of reference will need to be amended at Article 4 (Appendix 3 to this report) and at Part 3, Section C (Appendix 6 to this report). These changes must be reflected in the Council Procedure Rules (Appendix 9 to this report) and in Article 7 on the Leader and Cabinet (Appendix 4 to this report).
- 2.6 We were advised that an important consequence of the Leader’s control over executive functions is that in future any amendments to The officer scheme of delegation with respect to executive functions must be agreed by the Leader, or the Leader and Cabinet, with the full Council simply noting the amendments and formally accepting them within the Constitution. The final arbiter of all executive delegations to officers and Cabinet Members will be the Leader not full Council. This needs to be reflected in the Ground Rules for the scheme of delegation (Appendix 8 to this report).
- 2.7 The new powers given to the Leader will affect the making of “joint arrangements” for the exercise of executive functions which are mainly joint Committees of the London Boroughs or partnership bodies within the Haringey Strategic Partnership. Powers to make appointments of Member representatives and to delegate authority to them, and to the joint bodies concerned, will continue to be exercised by the Cabinet but now with an express requirement for the Leader’s agreement. The changes are set out in Article 11 (Appendix 5 to this report).

The Deputy Leader and Default Provisions

- 2.8 We noted that the new leadership model prescribes an enhanced role for the Deputy Leader who is appointed by the Leader. Whenever the

Leader is “unable to act” or the office of Leader is vacant for any reason, then under the 2007 Act the Deputy Leader personally takes on all the powers of the Leader pending the Leader recovering capacity to act or the election by full Council of a new Leader should that be necessary. Provision for the Deputy Leader is made in Article 7.05 (Appendix 4 to this report) and the Cabinet Terms of Reference (Appendix 7 to this report).

- 2.9 The legislation sets out default provisions for the unlikely situation where both Leader and Deputy Leader are “unable to act” or their offices are vacant. In that case the remaining Cabinet Members act collectively in place of the Leader until the situation is resolved by a recovery of capacity or a fresh election. This is in Article 7.07 (i) (Appendix 4 to this report).
- 2.10 In the still more unlikely event that no Cabinet Members remain in office or able to act, then executive powers are delegated to the Chief Executive in consultation with the Mayor or Deputy Mayor. This is in Article 7.07 (ii) (Appendix 4 to this report) and it is non-statutory but it replaces a similar existing provision within Article 7.05 of the Constitution.

Appointment and Removal of the Leader

- 2.11 We considered the powers and term of office of the Leader which are set out in the proposed revision to Article 7 of the Constitution (Appendix 4 to this report). The Leader will be elected by the full Council for a 4 year term which in normal circumstances will end at the Annual Council meeting in May 2014. The Leader will cease to hold office as Leader if he/she resigns or is no longer a councillor. The Leader may be temporarily suspended from office as a result of a finding of breach of the Members’ Code of Conduct by the Standards Committee in which case the Deputy Leader would act until the period of suspension ended.
- 2.12 The proposals agreed by the December extraordinary Council will continue the existing provision in Article 7.05 for removal of the Leader by a “vote of no confidence” at full Council passed by a simple majority of the councillors present. This procedure is permitted under the 2007 Act with respect to the “Leader and Cabinet” model but would not be available to remove a directly elected Mayor in mid-term.
- 2.13 We noted that the “vote of no confidence” procedure at full Council will cease to apply to other Cabinet Members who in future could only be removed by the Leader. The Chairs of non-executive Committees will still be potentially subject to a “vote of no confidence” at full Council. This is set out in Council Procedure Rule 31 as proposed for amendment (Appendix 9 to this report).

The Transitional Arrangements

- 2.14 We were advised that the 2007 Act requires London Boroughs to bring the new leadership arrangements into force on 11 May 2010. This date falls just after the Council Elections on 6 May but before the Annual Council meeting scheduled for 24 May when the election of the Leader for the forthcoming 4 years is likely to be held. Consequently, the legislation allows for transitional arrangements until the Leader has been elected to office.
- 2.15 The proposals agreed by the December extraordinary Council are set out at Appendix 1 to this report at paragraph 8. The consequential Constitution amendments are shown in greater detail at Appendix 4 i.e. within the revised Article 7.02 which makes specific provision for any executive decision-making needed during the transition period in May 2010.
- 2.16 There are two possible outcomes from the Elections. The first is that the Leader in office immediately before the Elections is re-elected as a councillor within the party having a majority of seats post-Election. In that event the Leader continues in office until the Annual Council meeting or the completion of the first leadership election at another full Council if that occurs later than Annual Council for any reason. In the transition period it is proposed that the Leader could appoint an Interim Deputy Leader but no other Cabinet Members.
- 2.17 The second possible outcome is that the Leader in office immediately before the Elections ceases to be a councillor or ceases to be within the majority party post-Election. In that event all executive authority would be delegated to the Chief Executive acting in consultation with the representative of the largest political group (or groups in the case of parity between the parties).
- 2.18 We understood that in the transition period decisions would only be taken if there was a genuine urgent need to do so. But it would be essential for the Borough to keep in place a capacity for taking all decisions so as to ensure continuity of service provision in case of emergencies or unforeseen events.

Non-Executive Functions

- 2.19 It was explained to us that it is only the “executive” functions that will be directly affected by the new leadership arrangements. We recognise that, of course, “executive” functions include much the greater part of Council’s service provision and expenditure decisions.
- 2.20 The “non-executive” functions of the Council will not be directly affected by the new leadership arrangements. The “non-executive” side encompasses the remit of the Planning, Licensing, Pensions, Remuneration and General Purposes Committees and the Alexandra Palace & Park Board. It also includes the activities of “regulatory” and

“scrutiny” bodies such as the Standards, Audit and Overview & Scrutiny Committees and the powers of the full Council which determines the policy and budget framework. All these “non-executive” bodies will continue to operate as before and the officer scheme of delegation with respect to “non-executive” functions will continue to be determined by the full Council.

2.21 We were advised that the only recommended change to the provisions of the Constitution dealing with non-executive functions, apart from those affecting the terms of reference and procedure rules of full Council, is a new paragraph on “default provisions”.

2.22 In Part 3, Section C at section 6 (Appendix 6 to this report at page 3) there is already provision for “Emergency Procedures In Election Year” which enable the Chief Executive to take urgent non-executive decisions in consultation with the Mayor in the period between the Elections and Annual Council. We agreed that it would be prudent, in the interests of maintaining a continuous decision-making capacity, to guard against the possibility, albeit remote, that Annual Council proved unable to agree on Member appointments to non-executive bodies or that, at any other time, all Members of a non-executive body or bodies were removed or resigned without agreed replacements. For this reason a new section 7 is being recommended, headed “Default Provisions”, to grant delegated powers in these circumstances to the Chief Executive to take urgent non-executive decisions in consultation with the Mayor, or Deputy Mayor if the Mayor was unable to act.

Key Decisions, the Forward Plan and Public Access to Information

2.23 We noted that another significant continuing aspect of the arrangements for discharging executive functions is the maintenance unchanged of the rules on key decisions. These will still be advertised publicly on the Council’s Forward Plan and copies of agendas, reports and background papers will continue to be available to the public at least 5 clear days in advance of a meeting. These statutory rules will apply to decisions made by the Leader alone and the decision itself must be taken at a public meeting. There are exceptions where reports contain exempt information. The “special urgency” procedure, which requires the signed consent of the Chair of Overview and Scrutiny Committee before a key decision can be taken with less than 5 clear days public notice, continues to apply to urgent decisions taken by the Leader alone.

2.24 Consequently, there is only a minor amendment to the Access to Information Procedure Rules (Appendix 10 to this report) to clarify that these rules apply to key decisions taken by the Leader or an individual Cabinet Member.

2.25 We agreed a further change to Article 16 of the Constitution in recognition of our Greenest Borough Strategy whereby we will no longer automatically supply all Members of the Council with a paper copy of the

Constitution, except on demand (Appendix 12).

WE RECOMMEND

That Members agree the proposed changes as set out in Appendices 2 to 12 to this report and resolve to adopt them as amendments to the following Parts of the Council's Constitution:

Part 1 - the "Summary and Explanation" of the whole Constitution (Appendix 2 to this report),

Part 2, Article 4 concerning the Full Council (Appendix 3 to this report),

Part 2, Article 7 concerning the Leader and Cabinet (Appendix 4 to this report),

Part 2, Article 11 concerning Joint Arrangements (Appendix 5 to this report),

Part 3, Section C – the terms of reference of the full Council and non-executive bodies (Appendix 6 to this report),

Part 3, Section D – the terms of reference of the Cabinet and its subordinate bodies (Appendix 7 to this report),

Part 3, Section E – the Introduction and Ground Rules of the Officer Scheme of Delegation (Appendix 8 to this report),

Part 4, Section A – the Council Procedure Rules (Appendix 9 to this report),

Part 4, Section D – the Access to Information Procedure Rules (Appendix 10 to this report),

Part 4, Section F – the Cabinet Procedure Rules (Appendix 11 to this report).

Part 2, Article 16 concerning publication of the Constitution (Appendix 12 to this report),

3. AMENDING THE CONSTITUTION WITH RESPECT TO TREASURY MANAGEMENT FUNCTIONS

- 3.1 We were advised that CIPFA had amended its Code of Practice on Local Authority Treasury Management with a third edition produced in 2009. This followed a review of the lessons learnt from the crisis in the financial markets in 2008/09. CIPFA is now strongly recommending that all Councils embed practices to ensure sound treasury

management and effective risk management by making clearer and more detailed provision in their Constitutions for the process of adopting Treasury Management Strategies and for related scrutiny and reporting requirements.

- 3.2 We noted the clauses that CIPFA is recommending to all Councils for adoption in their Financial Regulations. These clauses relate to the contents of the Council's Treasury Management Strategy Statement and the control of treasury management practices. These matters are to conform to CIPFA Code of Practice with amendments that reflect local circumstances but do not deviate materially from the Code's key principles. The recommended clauses are set out in Appendix 17 to this report at paragraph 7.13 in Financial Regulations (Part 4, Section I of the Council's Constitution).
- 3.3 The report before us explained that, as part of the same process of complying with CIPFA's guidance, Members were being asked to agree changes to the terms of reference of the full Council, General Purposes Committee and Audit Committee and changes to the related paragraphs in Financial Regulations. Together these describe the procedure for formulating, scrutinising and adopting the Treasury Management Strategy Statement (TMSS).
- 3.4 We noted that General Purposes Committee has over-sight of the arrangements made for the proper administration of the Council's financial affairs under section 151 of the Local Government Act 1972 since this is a "non-executive" function. The direct responsibility for the actual management of the Council's investment, borrowing and treasury functions must, by law, be delegated to the Council's Chief Financial Officer or "Section 151 Officer". The Chief Financial Officer reports primarily to the General Purposes Committee in respect of these functions but must also report to the Cabinet because of the implications which treasury management has for budget setting and monitoring.
- 3.5 We approved proposals to set out the process for adopting the TMSS more fully and accurately in the amended paragraph 7.14 of Financial Regulations as shown at Appendix 17 to this report. This states that the General Purposes Committee formulates the annual TMSS and any amendments to it. The role of the Audit Committee in scrutinising the draft TMSS is expressly acknowledged. It is then explained that the draft TMSS is referred to the Cabinet meeting for consideration because of the budget implications. Cabinet finally recommends the draft TMSS to the full Council for formal adoption.

- 3.6 We noted that this process is also to be expressly included for the first time in the terms of reference of the full Council (Appendices 13 and 14), the General Purposes Committee (Appendix 15) and the Audit Committee (Appendix 16).
- 3.7 We considered amendments with respect to arrangements for interim monitoring that are being recommended for inclusion in the terms of reference of the General Purposes Committee (Appendix 15) and to Financial Regulations at paragraph 7.16 (Appendix 17). This is in order to make express provision for the existing practice whereby the Chief Financial Officer submits quarterly monitoring reports to the Committee on treasury management polices and practices.
- 3.8 To complete the process, we approved amendments which are proposed to the terms of reference of the full Council to include Members' consideration of a mid-year monitoring report on treasury management operations and an annual report on the past year following closure of the Council's accounts (Appendices 13 and 14).
- 3.9 We noted that versions of this report, explaining the principles but without the detailed constitutional amendments, had been considered and approved by the General Purposes Committee on 12 January, the Cabinet on 26 January and the Audit Committee on 1 February.

WE RECOMMEND

That Members agree the proposed changes as set out in Appendices 13 to 17 to this report and resolve to adopt them as amendments to the following Parts of the Council's Constitution:

Part 2, Article 4 concerning the Full Council (Appendix 13 to this report),

Part 3, Section C – the terms of reference of the full Council (Appendix 14 to this report),

Part 3, Section C – the terms of reference of the General Purposes Committee (Appendix 15 to this report),

Part 3, Section C – the terms of reference of the Audit Committee (Appendix 16 to this report),

Part 4, Section I – Financial Regulations – Treasury Management Section (Appendix 17 to this report).