



Haringey Council

Agenda item:

Full Council on 31 March 2008

Report Title: **Revising the Scheme of Delegation to Officers**

Report of: **The Monitoring Officer and the Assistant Chief Executive, People Organisation and Development**

Wards(s) affected: **All**

Report for: **Decision by full Council**

1. Purpose (That is, the decision required)

1.1 To approve the main principles of, and key changes to, the revised officer scheme of delegation that will guide the detailed work of the Constitution Review Working Group pending the recommendation of the complete revised scheme of delegation to full Council.

2. Recommendations

2.1 That the following changes to the officer scheme of delegation be approved in principle for incorporation into a revised scheme which will be recommended in due course to full Council: -

- (i) (a) Delegations should be granted further down the structure to a broadly similar level in all Directorates.

(b) Each Director/Head of Service should be asked about the precise details of the delegations to specific officers which the he/she considers appropriate for their own Service.

(c) There would be a presumption that the majority of delegated powers would be granted at service manager or team leader level.
- (ii) The schedules of statutory delegated powers should be retained but in a much shorter form without a verbal description of every section in every Statute.
- (iii) The Chief Executive should be granted all "non-executive" powers to make changes to the staff establishment for any number of posts but subject to retaining the requirement that all changes above 20 posts, or subject to objection from the employees' side, must be authorised by the Cabinet Member or the full Cabinet.

- (iv) (a) The existing Protocol for taking delegated decisions should be retained but in a much simpler and clearer form.
- (b) For each decision there should be recorded: (1) the officer taking it, (2) the substantive facts, (3) the reasons for it, (4) the expenditure authorised, and (5) the date it was taken.
- (c) In addition, officers should always consider carefully whether there are any factors that make it advisable to consult their Cabinet Member(s) in advance.
- (d) There should be training for all decision-takers to ensure that these basic standards are met.
- (e) Each Directorate should continue to keep a comprehensive record of its decisions.
- (v) (a) Reporting to Members on the exercise of delegated powers should be improved and implemented more consistently.
- (b) To identify the decisions of “particular significance” that must be reported individually, the following criteria should be used: (1) any expenditure of £50,000 or more, (2) decisions with implications for policy development, and (3) any decisions that are potentially sensitive for other reasons.
- (c) In addition all decisions with a “local impact” should be reported to the relevant Ward Members.
- (d) A “local impact” decision would be one involving: (1) any enforcement action or prosecution affecting premises or residents in the Ward (2) any grant of a permission or licence (e.g. planning permission) affecting premises in the Ward (3) any initiative significantly affecting streets or open spaces in the Ward (e.g. a traffic calming scheme) and (4) any expenditure within the Ward of £50,000 or more.
- (e) There should be training to ensure that reports are made regularly to the Cabinet and the relevant Committees.

2.2 To note the process and timetable for completing the revision of the officer scheme of delegation as set out in paragraph 6.6.

Report Authorised by:

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and Monitoring Officer

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3. Chief Finance Officer's Comments

3.1 There are no specific financial implications.

4. Head of Legal Services Comments

4.1 The legal and constitutional implications have been incorporated into this report.

5. Local Government (Access to Information) Act 1985

5.1 The following background papers were used in the preparation of this report and can be inspected by contacting Terence Mitchison as shown above:

Extracts from the Constitutions of the Boroughs of Barnet, Bexley, Camden, Enfield, Haringey, Kensington & Chelsea, Newham, Richmond and Waltham Forest.

6. Background

6.1 The Review of the Council's Constitution completed its first stage at Annual Council on 21 May 2007. This did not include the scheme of delegation to officers which is still to be reviewed in detail by the Member/Officer Constitution Review Working Group (CRWG). The scheme is of vital importance to the effective operation of the Council's Services.

6.2 The purpose of this report is to obtain the approval of full Council to the main principles of, and key changes to, the revised officer scheme of delegation before it is reviewed in detail by the CRWG. In accordance with Article 15.03 in Part 2 of the Council's Constitution, the CRWG (instead of the General Purposes Committee) has the responsibility for recommending amendments to the Constitution to full Council.

6.3 This report has drawn on the officer schemes of delegation in the Constitutions of eight other London Boroughs which are Barnet, Bexley, Camden, Enfield, Kensington & Chelsea, Newham, Richmond and Waltham Forest. These eight "benchmark Councils" have been chosen as a reasonable sample of several different types of Local Authority. The report has aimed to distil best practice, in so far as it can be ascertained, from the Constitutions of the benchmark Councils.

6.4 Earlier versions of this report were considered by Chief Executive's Management Board and Cabinet Advisory Board (CAB). CAB approved the report's recommendations but asked for a definition of those "local impact" decisions which would be reported to Ward Members after being taken under delegated powers.

- 6.5 The report was then considered by the CRWG at its meeting on 28 February. CRWG noted the need to improve the reporting of officer delegated decisions to Member bodies which is covered in section 12 of this report. CRWG proposed that the financial limit for decisions of “particular significance” to be reported individually should be set at £50,000 or more (see recommendation 2.1 (v) (b) (1)) which would accord with the limit for “local impact” decisions to be reported to Ward Councillors (see recommendation 2.1 (v) (d) (4)). With this amendment, CRWG agreed to recommend the report’s proposals to full Council for approval.
- 6.6 The timetable for the review process is not yet defined. The Legal Service propose to review the appropriate delegations in each Service with the responsible Cabinet Member(s) and the Director/Assistant Directors. The revised delegations for each Service would then be considered by CRWG. While this will be a substantial and time consuming exercise, it should be possible to complete the review of the officer scheme of delegation by the end of 2008. It would be preferable to report to full Council once with a complete revised scheme of officer delegation rather than attempting to replace the existing scheme piecemeal with reports to different meetings.
- 6.7 In the meantime, the old scheme of delegation remains in force supplemented by a short “Council Reshaping Schedule” to reflect the reshaping of the top Management Structure at the start of 2007.

7. Comparing the Scope of the Officer Scheme of Delegation with other Councils

- 7.1 The officer schemes of delegation of all the benchmark Councils give broad functional delegated powers to their Directors or first tier officers subject to defined exceptions i.e. matters expressly reserved to the Executive/Cabinet or to full Council or to Committees. This is also the case with Haringey’s current scheme of delegation. Granting broad functional delegated powers in this context means delegating all local authority powers within certain wide categories. For example, “all education services functions of the Council and all social services functions of the Council relating to children” are delegated to Haringey’s Director of Children and Young People’s Services.
- 7.2 The matters expressly reserved to their full Councils by the benchmark Councils are either (i) decisions which must by law be taken by Members at full Council such as the appointment of the Mayor and Leader, the determination of the budget and Council Tax and the adoption of the major policies in the Policy Framework or (ii) matters that almost all local authorities reserve to their full Council such as adopting byelaws and appointing the Head of Paid Service. The matters reserved to Haringey’s full Council are clearly set out in Part 3, Section C of the Constitution.
- 7.3 All the benchmark Councils reserve certain matters for decision by Members through non-executive Committees. The more significant planning applications invariably go to Committee although there is some variation in the precise extent of the delegated powers of planning officers. The division between Members and officers in licensing

matters is far more uniform. All decisions on contested applications requiring a hearing must by law be taken by a Member Licensing Committee or Sub-Committee. All other routine and administrative matters, including enforcement, are delegated to officers.

- 7.4 There is more variation between the benchmark Councils in the extent of the delegation of executive functions and, particularly, the power of Directors to award contracts. Appendix 1 to this report shows the different financial limits for the award of contracts by senior officers. The lowest limit of £60,000 is at Kensington & Chelsea with the highest limits of £500,000 at Newham and Camden. Half the Councils (4 out of 8) have lower limits than Haringey where the current limit for awards by Directors in Contract Procedure Rules is £250,000 (Council Constitution at Part 4, Section J, paragraph 11.02).
- 7.5 All the benchmark Councils reserve “key decisions” to their Cabinet/Executive either expressly in their Constitutions or as a matter of practice. Two other Councils have provisions, as Haringey does, to permit the Chief Executive to take “key decisions” in an emergency. But the Councils have different financial limits as part of their definitions of what constitutes a “key decision” i.e. a decision to spend above the limit will be a key decision. In Appendix 1 the lowest limit of £60,000 is again at Kensington & Chelsea with the highest general limits of £500,000 at Newham and Barnet. 5 out of 8 Councils have a lower limit than Haringey’s revised limit of £500,000 which took effect from 31 October 2007 in Part 5, Section C of the Constitution.
- 7.6 The general principles of delegation to officers are the same in all the benchmark Councils. In all cases there are broad functional delegations to first and second tier officers subject to exceptions for matters reserved to full Council, to the Cabinet/Executive and to non-executive Committees. The main differences between the Councils are the quite variable financial limits for key decisions and for allowing officers to take decisions on contract matters.

8. Extending Delegated Powers Down the Management Structure

- 8.1 In the current scheme of delegation, the majority of the delegations are to first and second tier officers. Only in relatively few cases, mainly in the Urban Environment Directorate, do the delegations in the scheme go down to the level of team leaders. It is possible that many decisions are actually being taken below the level of the officers who have express delegated powers in the published scheme.
- 8.2 This could give rise to quite significant risks for the Council. For example, if a team leader at third or fourth tier level took a decision without any express authority, and that decision was later challenged in Court, it could be struck down as invalid. The risk is greatest in those cases that the Courts have described as “threshold” decisions i.e. those which directly affect the rights of individual citizens, such as enforcement action and prosecutions, as distinct from the more routine “administrative” decisions.

8.3 The situation is less serious than it might appear for two reasons:

- (a) some Directorates have made use of the “nominations” procedure in the Constitution (Part 3, Section E, paragraph 5.02) which permits senior officers with express delegated powers to nominate other officers to exercise them, and
- (b) some types of decision will subsequently be confirmed by Court Orders. For example, a decision to seek a Care Order, if successful, would then have the authority of the Family Court.

8.4 The Constitutions of most of the benchmark Councils are similar in that they restrict express delegated powers to first and second tier officers. The exceptions are Newham which has many specific delegations to officers below second tier level and Waltham Forest which has a general delegation to all staff of “all those powers necessary to carry out the functions specified in their respective job descriptions.” The problem with copying the Waltham Forest approach would be that very precise job descriptions would be essential before there was clarity about the extent of any officer's delegated powers.

8.5 All the benchmark Councils, like Haringey, have a procedure that permits officers with express delegated powers to “nominate” or “sub-delegate” their powers to other/junior officers. These “nominations” must always be recorded in writing and there is sometimes provision for full or partial/conditional exercise of the power by the junior officer.

8.6 The problem with “nomination” procedures is that it is difficult for the public and those outside the Council to know whether there have been any sub-delegations to junior officers. It is hard to discover how far the benchmark Councils have used their “nomination” procedures. Where nomination procedures have been used, this may be on a piecemeal basis rather than as part of a carefully considered scheme for an entire Directorate. It would be best practice, in terms of transparency and accountability, to use the “nomination” procedure only to make temporary extensions to the scheme of delegation. But all the necessary delegations to officers further down the management structure should be included in the permanent scheme which should be published and kept up to date.

8.7 There is an important distinction 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. It need not undermine proper management control because senior managers can always require supervision or impose conditions before less senior officers take decisions.

Recommendations

8.8 (a) Delegations should be granted further down the structure to a broadly similar level in all Directorates.

(b) Each Director/Head of Service should be asked about the precise details of the delegations to specific officers which the he/she considers appropriate for their own Service.

(c) There would be a presumption that the majority of delegated powers would be granted at service manager or team leader level.

9. Reducing the Amount of Detail in the Scheme of Delegation

- 9.1 One 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, 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.
- 9.2 It would be perfectly sufficient, legally, to have a much shorter scheme that either delegated all local authority powers under a list of Statutes, or which just listed the relevant section numbers where appropriate (e.g. sections 1 to 23), without a lengthy description. At Appendix 2 to this report, by way of example, there is a comparison between the existing "long form" of schedule of statutory powers under the Housing Act 1996 and a proposed much shorter form on the second page.
- 9.3 There would be no change in the general limitations on the exercise of officers' delegated powers which are set out in paragraphs 4.01 and 4.02 in Part 3 Section E of the Constitution.
- 9.4 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.
- 9.5 There are some areas requiring special treatment. For example, the power to determine planning applications has been allocated according to the long-established practice of the Planning Committee. Applications above certain limits (e.g. more than 5 new dwellings or changes of use affecting more 500 square metres of property) are referred to the Planning Committee while the more numerous and more routine applications below these limits are delegated to senior Planning Officers.
- 9.6 There are no legal restraints to prevent Members from reconsidering the precise limits for Planning delegations but the current balance seems to work well.

Any significant restrictions on the scope of delegated powers would be likely to cause delays in processing applications and thus put at risk the high level of Government funding which depends on the continued delivery of the current rapid decision times by the Planning Service.

- 9.7 Among the benchmark Councils there is quite a variety of practice. Half (4 of the 8) do not use schedules of statutory powers but rely instead on relatively short and general functional delegations. The other half employ a mixture of functional delegations and schedules of statutory powers. No other Council, apart from Bexley, has such a long and comprehensive list of statutory powers. Two other Councils make use of “short form” statutory delegations i.e. just specifying the Statute or a group of Statutes and delegating all powers.
- 9.8 The logical option would be to rely primarily on broad functional delegations, as Haringey’s current scheme does anyway. But the inclusion of specific references to statutory powers would have the merit of avoiding doubt which explains why many Councils still retain the practice. It would be advisable to state clearly that the inclusion of the statutory powers is an addition “for the avoidance of doubt” and “without prejudice to the generality of the broad functional delegations”.
- 9.9 The advantages of moving to “short form” schedules of statutory delegations are (i) that it would be safer from legal challenge, as explained in paragraph 9.4 above, (ii) that it would be much easier and less resource intensive to keep up to date, and (iii) that it would be more user-friendly for Members, officers and the public.
- 9.10 If Members were concerned that they did not have adequate information about new statutory powers being added to the scheme from time to time, then officers could provide a fuller description of the effect of the new powers to be included in the initial report on the changes. But the material actually added to the Constitution, i.e. in the formal scheme of delegation to officers, could be kept in the short form.

Recommendation

- 9.11 The schedules of statutory delegated powers should be retained but in a much shorter form without a verbal description of every section in every Statute.

10. Service Restructuring

- 10.1 At present there is a power delegated to the Chief Executive and all Chief Officers to make “changes to the establishment” affecting 20 or fewer posts where the employees’ side have agreed or have not raised objections within the agreed timetable. This delegation excludes the closure of service units within the Education Service. Consultation is expected with the appropriate Cabinet Member. These provisions are set out in the revised Constitution at Appendix E, Part F.7, Section 8 under the heading “Personnel Matters”.

- 10.2 In the case of a service restructuring that affects more than 20 posts, there is a problem in so far as there is usually a split of responsibilities between the Cabinet and the General Purposes Committee (GPC). The Cabinet's remit is the service delivery aspects while GPC's remit is the appointment of the staff necessary for the proper discharge of Council functions and their terms and conditions of employment. The matters within GPC's remit are statutory "non-executive" functions which must be decided by a non-executive body, such as GPC, if they go to Members.
- 10.3 This division of responsibilities between the Cabinet and GPC tends to obscure accountability and often has the effect of delaying a very important decisions at a critical time. The process of achieving service restructuring would benefit from a more focussed approach.
- 10.4 There would be no obstacle, legally, to an expansion of the current delegation which would give the Chief Executive power to make decisions on the "non-executive" aspects of any restructuring covering any number of posts.
- 10.5 But any restructuring affecting more than 20 posts, or subject to objection from the employees' side, would still require the authorisation of the Cabinet Member or the full Cabinet for its service delivery aspects. The Chief Executive would then have delegated power to make decisions on the appointment of staff and their terms and conditions of service without requiring a further report to GPC. This would only apply to staff below the level of Deputy Chief Officer.
- 10.6 With respect to Chief Officers and Deputy Chief Officers, any new appointments in the course of a restructuring would remain with the ad-hoc Appointments Panels (Part 4, Section K). Any changes to terms and conditions, including pay, in the course of a restructuring would remain within the remit of the Remuneration Committee.
- 10.7 As noted in paragraph 10.1 above, the current delegation to officers operates only when there is no objection from the employees' side. Any change to the arrangements for restructuring would keep in place the existing mechanisms for consultation with Trade Unions through Directorate Consultative Committees and The Council and Employees Joint Consultative Sub-Committee.
- 10.8 Half of the benchmark Councils give no express delegated powers to their Chief Executive or Directors for restructuring or changes to establishment. Three of the 8 Councils restrict Directors' delegated powers to "minor" restructuring that affects only one team or where there are no compulsory redundancies. Camden has the same delegation (copied by Haringey) that gives first tier officers power to decide on any restructuring affecting 20 posts or less.
- 10.9 Five of the 8 Councils refer all restructuring, above any delegated limits, to their Cabinet/Executive without involving any non-executive Committee. This suggests

that the option set out in paragraphs 10.4 and 10.5 above would be consistent with practice in a majority of other Boroughs.

Recommendation

- 10.10 The Chief Executive should be granted all “non-executive” powers to make changes to the staff establishment for any number of posts but subject to retaining the requirement that all changes above 20 posts, or subject to objection from the employees’ side, must be authorised by the Cabinet Member or the full Cabinet.

11. Revising the Protocol for Officers Taking Decisions under Delegated Powers

- 11.1 The introductory section in Part 3, Section E contains a “Protocol for Officers Taking Decisions under Delegated Powers” at paragraphs 7.01 to 7.07. This Protocol applies to decisions having a significant effect on Borough residents, service users and partners but not to routine management decisions. An example of the former category would be the implementation of an unopposed road hump scheme while the latter might be a small-scale reorganisation of team duties without a noticeable effect on service delivery.
- 11.2 The Protocol sets out certain “mandatory” requirements in paragraph 7.03 such as a written report, identification of the report author and the decision-maker, stating the Wards affected and the delegated power relied upon, a clear recommendation for each element of the decision, stating the dates of the report and the decision itself and including any financial or legal implications. There are several other “discretionary” matters which only need to be included where appropriate. The full Protocol is attached in Appendix 3 to this report.
- 11.3 There have been concerns expressed by officers that the Protocol imposes a substantial burden on those front-line services which make large numbers of delegated decisions. There is also a risk that a decision which failed to comply with all the mandatory requirements in some respect, for example by omitting a material date, could be challenged as legally invalid.
- 11.4 Although there are mandatory requirements, there is no “prescribed form” of report so different services are able to make use of their own standard forms and procedures. Attempting to impose a prescribed form across the Council for functions as diverse as Planning, Property, Procurement and Personnel would be very burdensome and hard to achieve, so this is not recommended. However, there are good reasons for keeping specified minimum standards for recording all significant decisions taken by officers.
- 11.5 It is recommended that the Protocol should be made simpler and clearer. The basic information must always be set down in writing. For each decision there should

be recorded: (a) the officer taking it, (b) the substantive facts, (c) the reasons for it, (d) the expenditure authorised, and (e) the date it was taken.

- 11.6 In addition, officers should always consider carefully whether there are any factors that make it advisable to consult their Cabinet Member in advance. There should be training for all decision-takers to ensure that these basic standards are met. Each Directorate should continue to keep a comprehensive record of its decisions.
- 11.7 None of the other benchmark Councils have any requirements for officers taking delegated decisions that match the level of detail in Haringey's current Protocol. Half of the Councils expressly demand a record, or written record, of decisions and the others impose no express requirements in their Constitutions.

Recommendations

- 11.8 (a) The existing Protocol for taking delegated decisions should be retained but in a much simpler and clearer form.
- (b) For each decision there should be recorded: (1) the officer taking it, (2) the substantive facts, (3) the reasons for it, (4) the expenditure authorised, and (5) the date it was taken.
- (c) In addition, officers should always consider carefully whether there are any factors that make it advisable to consult their Cabinet Member(s) in advance.
- (d) There should be training for all decision-takers to ensure that these basic standards are met.
- (e) Each Directorate should continue to keep a comprehensive record of its decisions.

12. Reporting to Members on the Recent Exercise of Delegated Powers

- 12.1 There are requirements for the monthly reporting of decisions already taken by officers under delegated powers to the Cabinet (executive side) and to the relevant Committee (non-executive side). These requirements are set out in paragraph 3.05 of Part 3 Section E of the Council's Constitution. Decisions of "particular significance" must be reported individually while other more routine matters are to be reported by "number and type". The standard form used for this purpose is set out at Appendix 4 to this report.
- 12.2 Since this requirement was introduced in November 2005 compliance has been uneven with some Services providing a monthly report to the Cabinet more regularly

than others. The solution to this is more of a management matter rather than just amending the Constitution.

- 12.3 Most of the benchmark Councils (6 out of 8) have no formal requirements in their Constitutions for reporting to Members on delegated decisions which have been taken by officers. Barnet tells officers to make summaries of delegated decisions available on the Council website or to include them as part of performance indicator reports to the Overview & Scrutiny Committee. Newham requires delegated decisions with local impact to be reported to Ward Councillors. The fact that reporting requirements are not specified in other Councils' Constitutions does not exclude regular reporting of delegated decisions to their Members as a matter of practice.
- 12.4 Cabinet Members in Haringey have expressed concerns over the uneven nature of reporting recent delegated decisions to the Cabinet Councils. It is proposed to address these concerns by (i) including clearer criteria to define decisions of "particular significance" which are to be reported individually and (ii) introducing training for officers taking delegated decisions to ensure that they understand the reporting requirements.
- 12.5 The criteria for decisions of "particular significance" now recommended are: (a) any expenditure of £50,000 or more, (b) decisions with implications for policy development, and (c) any decisions that are potentially sensitive for other reasons.
- 12.7 In view of the increasing emphasis on the local role of Ward Councillors, the Newham practice of reporting significant "local impact" matters in each Ward to the Ward Councillors could usefully be adopted in Haringey. This would be in addition to the other general reporting requirements to the Cabinet and Committees.
- 12.8 The recommended definition for a "local impact" decision would be one involving: (a) any enforcement action or prosecution affecting premises or residents in the Ward (b) any grant of a permission or licence (e.g. planning permission) affecting premises in the Ward (c) any initiative significantly affecting streets or open spaces in the Ward (e.g. a traffic calming scheme) and (d) any expenditure within the Ward of £50,000 or more.

Recommendations

- 12.9 (a) Reporting to Members on the exercise of delegated powers should be improved and implemented more consistently.
- (b) To identify the decisions of "particular significance" that must be reported individually, the following criteria should be used: (1) any expenditure of £50,000 or more, (2) decisions with implications for policy development, and (3) any decisions that are potentially sensitive for other reasons.
- (c) In addition all decisions with a "local impact" should be reported to the relevant

Ward Members.

(d) a “local impact” decision would be one involving: (1) any enforcement action or prosecution affecting premises or residents in the Ward (2) any grant of a permission or licence (e.g. planning permission) affecting premises in the Ward (3) any initiative significantly affecting streets or open spaces in the Ward (e.g. a traffic calming scheme) and (4) any expenditure within the Ward of £50,000 or more.

(e) There should be training to ensure that reports are made regularly to the Cabinet and the relevant Committees.

13. Financial Implications

13.1 There are no specific financial implications.

14. Legal Implications

14.1 The legal and constitutional implications have been incorporated into this report.

15. Equalities Implications

15.1 There are no specific equalities implications.

16. Appendices

16.1 Appendix 1 is a “benchmarking schedule” which compares Haringey’s current Constitution with those of 8 other London Boroughs in respect of matters covered in this report.

16.2 Appendix 2 is a comparison, by way of example, between the existing “long form” schedule of statutory powers under the Housing Act 1996 and a proposed much shorter form on the second page.

16.3 Appendix 3 is Haringey’s current “Protocol for Officers Taking Decisions under Delegated Powers” contained in Part 3 Section E of the Constitution.

16.4 Appendix 4 sets out Haringey’s current standard forms for the reporting of delegated decisions to Members each month.