

**Report for:** Standards Committee

**Title:** Changes to the Council Constitution 7<sup>th</sup> March 2017

**Report**

**authorised by :** Bernie Ryan, Assistant Director of Corporate Governance

**Lead Officer:** Michael Kay – Democratic Services and Scrutiny Manager x2920,  
Alison Vydulinska – Principal Corporate Lawyer, x2751  
Victoria Barman, Senior Corporate Lawyer x4636

**Ward(s) affected:** Not applicable

**Report for Key/**

**Non Key Decision:** Non Key

**1. Describe the issue under consideration**

- 1.1 The Council Constitution governs the organisation of Council decision making. It is kept under review and when necessary, amendments are proposed to Standards Committee for consideration and recommendation on to full Council, in accordance with Article 14.03 (Changes to the Constitution).
- 1.2 This report proposes changes to the Constitution as follows:
- a) To note the establishment of a joint sub-committee of the Health and Wellbeing Board (HWB) with Islington Council, and consequent changes to the terms of reference of the HWB at Part 3 Section B together with clarifications within the Articles
  - b) Removing the Council and Employees Joint Consultative sub-committee from the Constitution (to be replaced by an informal body by Staffing and Remuneration Committee) at Part 3 Section B
  - c) Review of Statutory, Proper and Specified Officer functions within the Officer Scheme of Delegation at Part 3 Section E
  - d) Other minor amendments to the Constitution for clarification purposes
- 1.3 This report also ask members to note further work to be carried out and brought back to the Committee and Council at a later date.

**2. Cabinet Member Introduction**

Not applicable

**3. Recommendations**

- 3.1 That the Standards Committee recommend full Council:

- a) Note the establishment of a joint sub-committee of the Health and Wellbeing Board with Islington Council and consequently, agree the following amendments to the Constitution:
  - (i) Part 2, 'Articles' at paragraph 4.02 (v) and 10.09 (Appendix 6);
  - (ii) Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Section 1 paragraph 1(v) and Section 2 paragraph 8.1 (Appendix 1)
- b) Approve the removal of the Council and Employees Joint Consultative Committee at Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Section 3 paragraph 1 (Appendix 1); and associated amendment at Part 4, Section B 'Committee Procedure Rules' rule 58 (Appendix 7);
- c) Approve changes to Statutory, Proper and Specified Officer functions within the Officer Scheme of Delegation together with minor amendments, for clarification purposes, as set out at:
  - (i) Part 3, Section E Officer Scheme of Delegation at Section 3 'Delegations to the Chief Executive and Statutory Officers' (Appendix 2);
  - (ii) Part 3, Section E Officer Scheme of Delegation at Section 4 'Proper Officer and Specified Officer Functions' (Appendix 3);
- d) Approve minor amendments to the Constitution for clarification purposes, as set out at:
  - (i) Part 2, 'Articles' (Appendix 6);
  - (ii) Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Section 1 paragraph 1(g) and Section 3 (Appendix 1);
  - (iii) Part 3, Section D 'Responsibility for functions: Local Choice Functions' at point 16 (Appendix 4);
  - (iv) Part 3, New Section DA 'Responsibility for functions: Joint Committees and arrangements', to record such arrangements entered into by the Council where these joint committees carry out functions on behalf of the authority (Appendix 5);
  - (v) Part 4, Section B 'Committee Procedure Rules' (Appendix 7)
- e) Approve the following work streams to be taken forward to update and maintain the Constitution:
  - (i) Following the departure of the AD for Corporate Property and Major projects, there will need to be further amendments to the Officer Scheme of Delegation. Council is asked to authorise appropriate amendments to be made to the Constitution by the Monitoring Officer.

Until the reallocation of responsibilities has been determined by the Chief Executive, the existing rules identifying the relevant officer(s) to make decisions in the absence of the AD Corporate Property and Major Projects will pertain;

- (ii) A review of the Procedure Rules in Part 4 of the Constitution in order to reduce duplication and inconsistencies, and make them easier to follow. It is proposed that these changes are reported to Standards Committee in June 2017 for confirmation by full Council thereafter;
- (iii) A review of the Planning Protocol (currently outside the Constitution) to be carried out by Planning Sub-Committee and Regulatory Committee and reported to the Standards Committee in June 2017 for approval as part of the Constitution, and for confirmation by full Council thereafter;
- (iv) A wholesale review of the Member – Officer Protocol, to reflect changes to the Council structure, governance, and officer powers, and bring the document up-to-date with current practices. These changes will be reported to Standards Committee in due course and on to full Council thereafter

#### **4. Reasons for decision**

4.1 The proposed changes to the Council Constitution seek to ensure that:

- a) procedures enable efficient, open, accountable and lawful decision-making;
- b) officers authorised to make decisions are properly authorised by the full Council; and
- c) the Constitution reflects the current structures and requirements of the Council.

4.2 Councils are required to have and maintain a Constitution. Failure to make changes to keep the Constitution up to date could lead to confusion around the processes and authority for Council decisions and those decisions being challenged in court. The Monitoring Officer is responsible for the operation of the Council's Constitution. This includes monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect, and matters of interpretation of the Constitution's Rules and Procedures as necessary.

4.3 Health and Wellbeing Board (HWB):

At their meeting on 31<sup>st</sup> January 2017, Haringey and Islington councils agreed the establishment of a joint sub-committee of the two HWBs to commence from the start of the 2017/18 municipal year. The terms of reference of the HWB require updating to reflect this and to enable the HWB to delegate functions to the joint sub-committee with Islington, as it sees fit. There are other consequential amendments required to the Articles of the Constitution as a result of this change.

4.4 Council and Employees Joint Consultative sub-committee:

This is currently a sub-committee of the Staffing and Remuneration Committee. However it does not fully comply with the legislative requirements relating to Council sub-committees and operates in most other London authorities outside of the formal committee structure. Abolition of the sub-committee and the establishment of an informal meeting will correct this position.

4.5 Officer Scheme of delegation:

The changes to the statutory and proper/specified officer functions are designed to ensure the function is routed to the correct officer, that the functions listed are up to date, and that it is clear which officer is responsible for each function.

4.6 Other minor amendments to the Constitution:

These relate to the need to update the Constitution generally to ensure it is effective, clear and reflects the current legal position.

**5. Alternative options considered**

5.1 The option of making no changes was not considered, since it is important that the governance and processes of the Council are transparent and understood by those making the decisions and those impacted by them.

5.2 Amendments to the functions delegated to statutory, proper and specified officers will ensure officers are properly authorised by the Council to carry out statutory functions. The alternative option was not considered appropriate.

5.3 As to the minor changes to the Constitution, no other alternative options were considered as the changes are required to either provide clarity or to reflect the changes to Council governance over time.

**6. Background information**

**6.1 Creation of a joint sub-committee of the Heath and Wellbeing Board with Islington Council**

Amendments to:

- Part 2 Articles at paragraph 4.02 (v) and 10.09 (Appendix 6)
- Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Section 1 paragraph 1(v) and Section 2 paragraph 8.1 (Appendix 1)

6.2 The London Boroughs of Islington and Haringey have developed a joint health and social care initiative known as the Islington and Haringey Wellbeing Partnership. The Wellbeing Partnership is the coming together of NHS organisations and local authorities in Haringey and Islington. It is driven by a shared recognition that major changes are needed to ensure that health and care services are of the right quality and capable of meeting the future needs of our local communities.

6.3 At the 3rd October 2016 meetings of the Haringey and Islington Health and Wellbeing Boards, it was considered that more formal joint arrangements would strengthen the governance of the wellbeing partnership and provide a platform

for joint working and oversight and decision-making in the future. It was agreed that further work be undertaken with a view to potentially establishing a joint committee, with three or four joint meetings a year considered to be appropriate. That further work led to a proposal for the establishment of a joint sub-committee of the Health and Wellbeing Board (HWB) with Islington. Section 198 of the Health and Social Care Act 2012 allows for two or more Health and Wellbeing Boards to make arrangements for any of their functions to be exercised by a joint sub-committee of the Boards.

- 6.4 The HWB (in common with Islington HWB) proposes to delegate functions to the new joint sub-committee on a gradual basis as and when the time and context is right. Currently, Article 4.02 (v) of the Constitution requires full Council or Cabinet (depending on the function) to establish joint arrangements, a provision pre-dating the Health and Social Care Act 2012. Section 198 of that Act, together with s101 of the Local Government Act 1972 as amended, permits a Health and Wellbeing Board to establish its own joint sub-committees with other authorities.
- 6.5 The report therefore only asks full Council to note the establishment of the joint sub-committee of the HWB which was agreed by the Health and Wellbeing Board on 31<sup>st</sup> January 2017, and for Council to approve the consequential amendments to the Constitution, namely:
- (a) to amend Article 4.02 and insert new 10.09.
  - (b) to amend the terms of reference of the Health and Wellbeing Board at Part 3 Section B Section 2, to make clear that it can delegate functions to the joint sub-committee as it sees fit and without reference back to full Council. The HWB will also be able to agree the membership of the joint sub-committee and appointments to it. The Terms of Reference of the joint sub-committee are also included in Section 5 of this part. Minor amendments are also proposed at paragraph 8.1(ii) and to the membership of the HWB and at paragraph 8.4.
- 6.6 **Removal of the Council and Employees Joint Consultative Committee**

Amendments to:

- Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Section 3 paragraph 1 (Appendix 1)
  - Part 4, Section B 'Committee Procedure Rules' rule 58 (Appendix 7)
- 6.7 The Staffing and Remuneration Committee has a sub-committee ('Haringey Council and Employees and Joint Consultative sub-committee') which includes the trades unions who have voting rights. It is not permissible to include voting non elected members on committees (other than where the law allows or requires it, namely, Health and Wellbeing Board, Combined Pensions Committee and Board and Overview and Scrutiny), and so it is proposed that this sub-committee is abolished and reconstituted as an informal joint body. The name/terms of reference for the new body will be approved by Staffing and Remuneration Committee in March 2017 and will sit outside of the Constitution. The unions have been consulted on this proposal and are content with it. This

proposal will also require deletion of the reference to that sub-committee from Committee Procedure Rule 58.

- 6.8 The alternative would be to retain the sub-committee and remove all non elected members (i.e. union representatives) from it. However this is not acceptable to the Council or unions who wish to continue with a mechanism for engagement.
- 6.9 **Changes to Statutory, Proper and Specified Officer functions within the Officer Scheme of Delegation together with minor amendments, for clarification purposes**

Amendments to:

- Part 3, Section E Officer Scheme of Delegation at Section 3 'Delegations to the Chief Executive and Statutory Officers' (Appendix 2);
  - Part 3, Section E Officer Scheme of Delegation at Section 4 'Proper Officer and Specified Officer Functions' (Appendix 3)
- 6.10 Part 3, Section E of the Constitution sets out the functions delegated to officers. Section 3 of sets out the functions delegated to the Statutory Chief Officers, and section 4 sets out the Proper and Specified Officers approved by the authority. Whilst much of Section E is relatively new, section 4 setting out the Proper Officer and Specified Officer functions has not been the subject of a recent thorough review, and, given changes to officer structures, a complete refresh has been carried out.

Part 3, Section E Officer Scheme of Delegation at Section 3: (Appendix 2)

- 6.11 Part 3, Section E Section 3 sets out the functions delegated to the Chief Executive and Statutory Chief Officers. The key changes are designed to make clear which council officer has been designated as the council's statutory officer in respect of each statutory function, and a table has been added for clarification. The Chief Inspector of Weights and Measures (previously included as a Proper Officer but whom is in fact a statutory officer) is included in this table. The Senior Trading Standards Officer (STSO) is designated as Chief Inspector of Weights and Measures, since the role requires a suitably qualified person. If the STSO role falls vacant, an alternative suitably qualified Trading Standards Officer will carry out the role until a replacement suitably qualified STSO is recruited. The role of the Statutory Scrutiny Officer is also included.
- 6.12 The amendments to this part do not alter the designations to the roles of Statutory Officer previously agreed by the authority. Some other minor amendments have been made to the text within the section, to correct inaccuracies, and to move functions wrongly listed as Proper Officer functions into the correct section.
- 6.13 Consequential minor amendments are also proposed to Article 11 of the Constitution to eliminate duplication in relation to the appointment of Statutory Officers.

Part 3, Section E Officer Scheme of Delegation at Section 4: (Appendix 3)



- 6.14 As advised, Section 4 setting out the Proper Officer and Specified Officer functions has not recently been the subject of a thorough review. This part has, over time, confused some Statutory and Proper/Specified Officer functions. The amendments to Section 4 attempt to make a clearer distinction between Statutory and Proper/Specified Officer functions and so there has been some movement of provisions between Sections 3 and 4.
- 6.15 Section 4 has been completely refreshed, with the Proper/Specified Officer functions checked and updated. A new introduction has been added to this part which makes clear that Proper and Specified Officers can act in the event that there are changes to legislation in respect of their current functions.
- 6.16 The previous version of the Constitution included the relevant legal powers for each Proper or Specified Officer set out in paragraphs, along with other functions. Some of these other functions do not emanate directly from law and are simply functions the Council has given to particular officers. This made it difficult to identify the legal provisions that Proper Officers could use in law. The refreshed version tabulates the specific legal provisions under each officer authorised to use them, so that they are easier to find, and then lists other functions (functions not requiring a proper officer but given to the particular officer by the Council) in paragraphs following the tables setting out the legal powers.
- 6.17 The refresh of the Proper Officer functions has resulted in some new functions and officers being listed. Some of these functions have been allocated a Proper Officer since the last refresh of the Constitution using the provisions in paragraphs 6.03 (urgent amendments to the Scheme of Delegation by the Chief Executive in respect of non executive functions) or 6.04 (amendments to the scheme of delegation by the Leader or Cabinet in respect of Executive functions) of Section E, Section 1, and so the proposed amendments formalise that position in the Constitution.
- 6.18 **Other minor amendments to the Constitution for clarification purposes**

Amendments to:

- Part 2, 'Articles' (Appendix 6);
- Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Section 1 paragraph 1(g) and Section 3 (Appendix 1);
- Part 3, Section D 'Responsibility for functions: Local Choice Functions' at point 16 (Appendix 4);
- Part 3, New Section DA 'Responsibility for functions: Joint Committees and arrangements', to record such arrangements entered into by the Council where these joint committees carry out functions on behalf of the authority (Appendix 5);
- Part 4, Section B 'Committee Procedure Rules' (Appendix 7)

Part 2 – The Articles (Appendix 6):

- 6.19 In Article 2.06 it is proposed that for clarity, the legal definition of what constitutes a 'political group' is included in the Constitution.
- 6.20 Article 4.02(g) and Part 3, Responsibility for Functions, Section B of the Constitution lists the Statement of Community Involvement as a function of the Council. In fact this is an Executive function in law and is proposed for deletion from the Article and the responsibility for Functions (at Part Three, Section B, Section 1, paragraph 1(g)).
- 6.21 Article 4.02(k) states that full Council appoint the Leader, but Article 7.01 describes it as an election. In fact the law requires the Leader to be elected and so 4.02(k) will be amended.
- 6.22 Article 10.02 refers to joint arrangements, where functions are delegated to, or managed in conjunction with, another body or authority. Given that these bodies are delegated to make decisions on behalf of the authority, it is proposed to ensure any joint committees and arrangements are listed both in the Articles and the terms of reference included in the new section of Part 3 of the Constitution (Section DA, see below) dealing with Responsibility for Functions. It is proposed at this point that the joint arrangements with Camden and Islington relating to the Council's ICT functions and the Health and Wellbeing Board joint sub-committee with Islington are included, and that others are included in the Constitution by the Monitoring Officer as and when they are approved by the authority. These are listed at paragraph 10.09.
- 6.23 Minor additions are proposed in relation to Article 11.01(a) to clarify that officers enabled to carry out Council functions include agency workers, consultants and secondees. Deletions to 11.01(c) are proposed where the provisions are replicated in Part 3 Section E, Section 3 (Statutory Officers). A minor amendment is also made to the Heading at 11.04.
- 6.24 An amendment to Article 14.03 provides some additional flexibility for the Monitoring Officer to make amendments to the Constitution without recommending them first to Standards Committee and then approval by full Council. This is limited to situations where there is ambiguity in and between provisions, where minor variations are needed (for example typographical errors, inaccurate cross references and so on) or to give effect to a decision of Council or Cabinet. Changes made by the Monitoring Officer under this provision will be reported to the next available Council meeting.

Part 3, Section B 'Responsibility for functions: Full Council and Non-Executive Bodies' at Sections 1 and 3 (Appendix 1)

- 6.25 Part Three, Section B, Section 1, paragraph 1(g) states that the Council is responsible for the Statement of Community Involvement. In law this is a



function of the Executive and so is removed from Section B and the Articles at 4.02.

- 6.26 Section 3 highlights amendments to the Planning sub-committee terms of reference. The Regulatory Committee on 17<sup>th</sup> January 2017 proposed minor amendments to the terms of reference of the Planning sub-committee (these were recommended to them by Planning sub-committee) and are included for confirmation by the full Council.

Part 3: Section D Local Choice functions (Appendix 4)

- 6.27 Appendix 4 is Part Three, Section D and sets out the responsibility for 'local choice' functions; those that the Council can choose to be the responsibility of either the Executive, or non executive. Function 16 in the table of local choice functions allocates the function of appointing members to outside bodies to the full Council. This is not permitted in relation to Executive functions (and Part Three, Section B Section 1 paragraph (p) correctly identifies that), and so the relevant paragraph in Section D is amended to make clear that the Cabinet makes appointments of members to outside bodies covering Executive functions and Council make them in relation to non executive functions.

Part 3, Section DA: Joint Committees and arrangements (Appendix 5)

- 6.28 Appendix 5 sets out a new Part Three, Section DA which lists all functions of the authority delegated to joint committees and/or arrangements. Currently it includes the ICT shared service with Camden and Islington and the Health and Wellbeing Board joint sub-committee with Islington.

Part 4, Section B 'Committee Procedure Rules' (Appendix 7):

- 6.29 Committee Procedure Rule 9 is incorrect and amended to reflect the fact that only the Council (in respect of non executive committees) and the Leader (in respect of Cabinet), can make or terminate appointments to committees/Cabinet.
- 6.30 Committee Procedure Rule 52 requires all members attending a meeting to sign their name on an attendance sheet. This provision is not necessary, since the Democratic Services staff will take a note of all attendees at meetings. It is suggested that the attendance list is retained in respect of full Council, where the number of members in attendance and the arrangement of the room makes it slightly more difficult to ensure an accurate record of attendance.
- 6.31 Committee Procedure Rules 58 refers to the CEJCC which is removed as a result of its removal from the Constitution.

**6.32 Proposals for future work:**

- 6.33 Following the departure of the AD for Corporate Property and Major projects, there will need to be further amendments to the Officer Scheme of Delegation. It is proposed that the Monitoring Officer is authorised to make the relevant amendments to the Constitution to reallocate these responsibilities. In the meantime, the existing rules identifying the relevant officer(s) to make decisions in the absence of the AD Corporate Property and Major Projects will pertain.
- 6.34 In reviewing the Constitution it is clear that there are duplications and inconsistencies in the various procedure rules at Part 4. They are also not easy to follow intuitively. It is suggested that a review of all the procedure rules is carried out over the next three months, and that proposals for change are proposed to Standards Committee in June 2017 and Full Council thereafter.
- 6.35 It is also proposed that the Planning Protocol should be included within the Constitution. It is recommended that the current protocol is reviewed and updated by Planning sub-committee and Regulatory Committee and then proposed to the Standards Committee in June 2017 and Full Council thereafter.
- 6.36 The Member Officer Protocol has not been updated for many years. A wholesale review of the protocol, to reflect changes to the Council structure, governance, and officer powers, and bring the document up-to-date with current practices, is proposed. These changes will reported to Standards Committee in due course and on to full Council thereafter,
- 6.37 Consideration should also be given to the preparation of a glossary and slightly more detailed index for the Constitution to assist people in using it.

## **7. Contribution to strategic outcomes**

- 7.1 The Council Constitution supports the governance of the Council and its decision making thereby assisting the Council to meet its strategic outcomes.

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **8.1 Finance and Procurement**

- 8.2 No financial implications arise from this report.

### **8.3 Legal**

- 8.4 The Assistant Director of Corporate Governance has prepared this report with assistance from officers in departments. Legal comments are included in the body of the report where appropriate.

8.5 As to the other changes to the Constitution the Assistant Director of Corporate Governance confirms that the other changes are required to comply with the law and to ensure that the rules and process by which decisions are made are clearly set out.

8.6 By virtue of section 5 of the Local Government and Housing Act 1989 as amended by schedule 5, paragraph 24 of the Local Government Act 2000, the Monitoring Officer is responsible for the operation of the Council's Constitution. This includes monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect, and matters of interpretation of the Constitution's Rules and Procedures as necessary.

## **8.7 Equality**

8.8 There are no equality matters in this report, given it relates to how the Constitution sets out the Council's structure and operations.

## **9. Use of Appendices**

9.1 The Appendices below set out the relevant sections of the Constitution, with proposed insertions shown as underlined and italicised text, and proposed deletions shown as struck through.

Appendix 1 – Amendments to Part 3, Section B Responsibility for Functions:  
Full Council and Non-Executive Bodies (page 17)

Appendix 2 – Amendments to Part 3, Section E Officer Scheme of Delegation at  
Section 3 'Delegations to the Chief Executive and Statutory Officers' (page 57)

Appendix 3 – Amendments to Part 3, Section E Officer Scheme of Delegation at  
Section 4 'Proper Officer and Specified Officer functions' (page 67)

Appendix 4 – Amendments to Part 3, Section D Responsibility for Functions:  
Local Choice functions (page 77)

Appendix 5 – Proposed new Part 3, Section DA Responsibility for Functions:  
Joint Committees and arrangements (page 81)

Appendix 6 – Amendments to Part 2, Articles of the Constitution (page 83)

Appendix 7 – Amendments to Part 4, Section B Committee Procedure Rules  
(page 115)

## **10. Local Government (Access to Information) Act 1985**

10.1 The Council Constitution which can be found at;  
<http://www.haringey.gov.uk/local-democracy/about-council/council-constitution>