

Constitution Working Party			
Report Title	CONSTITUTIONAL CHANGES		
Key Decision		Item No.	
Ward			
Contributors	Kath Nicholson		
Class		Date	29 October 2019

Reason for Lateness and Urgency

This report needs to be considered to meet the timescales for consideration by full Council at its November meeting which will be asked to address changes in Council structures which are already in place.

1. Summary:

This report proposes that changes to the Constitution be recommended to Council to keep it up to date.

2. Purpose:

It is a statutory requirement by virtue of Section 9P Local Government Act 2000, as amended, that the Council have and keep up to date a Constitution, the contents of which must comply with legal requirements set out by Direction. Changes are proposed now to reflect the reorganisation of the Council's Directorates, some of the recommendations of the recent Local Democracy Review and to provide clarity on other issues where necessary.

3. Recommendation:

- 3.1 That CWP consider whether any amendment ought to be made in relation to limit on chairing committees as set out in paragraph 10 of this report and;
- 3.2 Subject to their decision in relation to 3.1 above, to recommend the proposed amended Constitution appearing at Appendix 1 to Council for adoption.

4. Background:

- 4.1 The Council first adopted a Constitution in 2002 on the introduction of the mayor and cabinet model of political governance. Over the years there have been many changes agreed by the Council to reflect the changing legislative context and local circumstances. The Constitution is a living document and needs constantly to be refreshed to be up to date.

- 4.2 Further change is now suggested, the main features of which are set out below in order to ensure that the Constitution remains fit for purpose.

5. A Speaker

The Local Democracy Review, the recommendations of which were approved by Mayor and Cabinet on 27 March 2019, recommended that the Chair of Council should be known as the Speaker. To reflect that recommendation, in Appendix 1 all references to the Chair of Council and to the Vice Chair of Council have been changed to Speaker and Deputy Speaker respectively. Schedule 2 of the Local Government Act 1972 requires that a London borough operating a mayor and cabinet form of executive arrangements must appoint a chairman and vice chairman. The current Constitution provides that these statutory roles be carried out by the Chair and Vice Chair. Appendix 1 proposes that the statutory roles of chairman and vice chairman be carried out by the Speaker and Deputy Speaker. In short, it simply amounts to a name change. (see Article 5 of Appendix 1)

6. Approved Duties

- 6.1 Currently the Scheme of Members' Allowances which was approved by full Council on 3 October 2019, provides for travel and subsistence allowances to be paid in respect of approved duties when meetings take place outside the borough. Schedule 2 to the Scheme of Allowances contains a long list of bodies attendance at meetings of which would qualify for these allowances. However that list is historic and some of the bodies on it no longer exist. It is proposed that instead of a long particularised list, Schedule 2 is replaced with the list below which reflects the more succinct definition used by the Local Government Association:-

- a meeting of the authority;
- a meeting of a committee or sub-committee of the authority;
- a meeting of Cabinet;
- a meeting of a committee of Cabinet;
- a meeting of any other body to which the authority makes appointments or nominations;
- a meeting of a committee or sub-committee of any other body to which the authority makes appointments or nominations;
- a meeting which has both been authorised by the authority, a committee or sub-committee of the authority or a joint committee of the authority and one or more other authorities, or a subcommittee of a joint committee and to which representatives of more than one political group have been invited (if the authority is divided into several political groups) or to which two or more councillors have been invited (if the authority is not divided into political groups);

- a meeting of a local authority association of which the authority is a member;
- duties undertaken on behalf of the authority in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a member or members to be present while tender documents are opened;
- duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises;
- duties undertaken on behalf of the authority in connection with arrangements made by the authority for the attendance of pupils at a school approved for the purposes of section 342 of the Education Act 1996;
- a meeting of a Local Assembly.

6.2 Currently approved duties are listed in the Scheme of Members' Allowances and it is a legal requirement that in considering allowances to be paid to members that regard must be had to the advice of an independent panel. In Lewisham, the relevant Panel is the one established by London Councils. When the current Scheme was approved, Sir Rodney Brooke who sits on the London Councils Panel advised the Council on how the London Scheme might be applied in our local circumstances. If members are minded to amend the Scheme of Members' allowances now, they must first have regard to the London Councils scheme and Sir Rodney Brooke's report which appear at Appendix 2 and 3 respectively. (see Part V1 - Schedule 2 in Appendix 1).

7. Change to Schemes of Delegation

The Council's Scheme of Delegation is in 2 parts. The first relates to non executive functions where the power to delegate lies with the full Council to committees, sub committees and officers. The second part relates to decisions which are for the Mayor to make and by law it is the Mayor who is entitled to delegate these decisions. There has been a recent redistribution of responsibilities between directorates, with in particular, the regeneration function passing to a new Directorate of Housing, Regeneration and Environment. Also Heads of Service have been retitled Directors and some reporting lines changed. The proposed Council scheme of delegation at Appendix 1 reflects those changes. The proposed Mayoral Scheme of Delegation is subject to his agreement, but a draft appears in Appendix 1, in Part V111.

8. The issuing of contracts for services to vulnerable individuals

It is not unusual for the Council to let individual contracts for personal services, usually to vulnerable clients, sometimes under call off contracts. These individual arrangements, particularly for the most vulnerable clients,

can sometimes be above the limit which would mean that there is a key decision to be made, for example where they are for long term residential care or special school provisions which may last several years. However circumstances usually dictate that it is not feasible for the procedure for key decisions to be followed. It is therefore proposed that where such services are commissioned for an individual, such a decision should not be deemed to be a key decision. All the usual safeguards regarding written decisions must still be adhered to. The Mayoral scheme of delegation is also proposed for amendment to make it very clear that it is for officers to make such decisions. (see Part V111 – Annex 2 – Directorate Schemes of Delegation in Appendix 1).

9. Urgency Sub Committee

The Council has a long established Urgency Committee which may make urgent decisions where it is not feasible to convene a quorate meeting of the Council to deal with a matter which cannot be delayed. There has been some confusion about who chairs the Urgency Committee. As it sits in the capacity of the full Council it is proposed that the Constitution state explicitly that the Chair of the Urgency Committee is the Speaker. This accords with the Council's practice since the inception of the mayoral form of political governance in Lewisham. This change has been incorporated into the proposed amended Constitution at Appendix 1. (Part IV, C, paragraph 7.2).

10. Limits on chairing Sub Committees

- 10.1 Part J of the Constitution currently states that executive members may not chair standing committees or sub committees. Also, subject to exceptions, it states that the Chair and Vice Chair of a standing committee or sub-committee may not chair another committee of sub-committee, though there are exceptions as follows:-

This rule does not prevent the chair of any committee chairing a sub-committee of a committee they chair, or the Strategic Planning Committee. The Chair of the Constitution Working Party, the Chair of the Audit Panel, the Chair of an Appointments Committee and the Chair of the Standards Committee shall not be precluded from chairing any other committee or sub-committee of the Council.

- 10.2 Members are asked to consider whether any change to this provision would be appropriate or not. (see Part IV – J – para 4 of Appendix 1)

11. Young Mayor

- 11.1 For the last 17 years the young people of Lewisham have elected a young Mayor to represent the views of young people in the borough and to encourage participation by young people in civic life, Though this has been a very successful initiative with much good work done by the incumbent and previous Young Mayors, there is currently no formal recognition of the position in the Council's Constitution. It is therefore proposed that the Articles set out

in our Constitution acknowledge the position and the Council's commitment to it. The proposed amended Constitution reflects this – see new Article 21.

11.2 In addition, it is proposed that the Constitution be amended to allow the Young Mayor

- (i) to present an annual report to the Mayor and Cabinet; and
- (ii) to have the right at any Council meeting to ask a question of the Mayor, any member of the Cabinet or any committee or sub committee chair; and
- (iii) to make a written submission relevant to a matter under consideration by a time limited task and finish group established by the Overview and Scrutiny Committee. (see Article 21 of Appendix 1).

12. Audit Panel

The Audit Panel currently has the right to make referrals to Council on a range of matters within its remit. However the current Constitution is not clear about the avenue through which such a referral should be made. In practice the route for any referral by the Audit Panel would depend on the issue being referred. To ensure that the referral is made to the appropriate decision maker it is proposed that the Audit Panel initially make their referral to the Chief Executive and/or the Executive Director for Corporate Services who should then arrange for the matter to be referred on as appropriate without delay with a requirement that they report to the next meeting of the Audit Panel about the referral made and any action taken in respect of the referral. There is a proposed amendment to this effect in Appendix 1 (Article 9 – para 9.3)

13. Correction of error in terms of reference of Safer Stronger Select Committee

This select committee has responsibility for making proposals to promote equality of opportunity. These are set out currently in the terms of reference at (c) to (i), however the words “in relation to equalities issues have been omitted from paragraph (d). In the proposed amended Constitution appearing at Appendix 1, these words have been inserted. This simply corrects an error of omission. (See Article 6, para 6.7 (b) of Appendix 1).

14. SACRE

14.1 In response to an application to the Lewisham SACRE for membership to it to include a representative from the African-Caribbean Churches and a representative from the Pentecostal Church, Lewisham SACRE, agreed to recommend to the Council that Lewisham SACRE's Constitution be amended and to include an additional representative into Group A.

14.2 The current membership also permits under Group C - Teachers' Professional Associations; one representative from the Association of Teachers and Lecturers (ATL) and two representatives from the National Union of Teachers

(NUT). Due to the amalgamation of those professional associations on the 1st September 2017 to form the National Education Union (NEU) the current Lewisham SACRE Constitution requires to be amended to reflect that change. It is proposed that the Lewisham SACRE Constitution be amended to reflect the incorporation of the NEU and retains the same number of representatives from the new union as there were previously shared between the two predecessors to that union.

- 14.3 The Constitution of the Lewisham SACRE currently appears at Article 19 of the Constitution. The proposed Constitution and membership of the Lewisham SACRE is included in the proposed amended Constitution appearing as Appendix 1 to this report

15. Legal Implications

- 15.1 The requirement for a Constitution, and to keep it up to date is set out in Section 9P Local Government Act 2000 as amended. This legal requirement is reflected in the Council's Constitution. Government Directive sets out the minimum contents for a Constitution and these are reflected both in the current Constitution and the proposed amendments.
- 15.2 Approval of, and amendments to, the Constitution are reserved to full Council by law. The Council has established the Constitution Working Party with powers to make recommendations to Council for changes.
- 15.3 The Constitution has to be published and available for public inspection. These provisions will apply to any amended Constitution agreed by the Council.
- 15.4 It is acknowledged in this report that because of reorganisation of the Council's directorates, delegations to officers must be amended to ensure that decisions are made by those with authority to do so. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended some functions are the responsibility of the Mayor and others are non-executive functions. The amendments to the schemes of delegation in relation to non-executive functions are for the Council to agree. Those for executive functions are for the Mayor to agree himself and to report to full Council. A proposed non executive scheme of delegation appears in Appendix 1. The position on the Mayoral Scheme of Delegation will be reported to the full Council in November 2019 and then included in the Constitution documents which will be published.
- 15.5 The report proposes changes to the Scheme of Members' Allowances by simplifying the definition of approved duties for which members may receive travel and subsistence allowance if they take place outside the borough. As the body of the report states, in considering any change to the Scheme of Allowances regard must be had to the report of the London Councils Independent Remuneration Panel now appearing as Appendix 2 to this report. Members' attention is also drawn to the report of Sir Rodney Brooke, also appended to the report at Appendix 3.

- 15.6 Normally members may not vote on matters in which they have a pecuniary interest. By definition all members have a pecuniary interest in members' allowances. However, voting on members' allowances is an exception to this general principle and members are entitled to vote on this matter.
- 15.7 If members approve changes to the Members Scheme of Allowances, there is a legal requirement to publish the amended scheme in a newspaper circulating in the area.
- 15.8 Under Section 17 Crime and Disorder Act 1998 the Council is under a duty in the exercise of its functions to have due regard to the likely effect of the exercise of those functions on the need to do all it reasonably can to prevent crime and disorder. The contents of the Constitution are designed to ensure that decisions are made properly and lawfully, and that there are provisions to deal with any instance of disorder in Council meetings. It also contains Codes of Conduct for members and employees which promote the highest standards of behaviour.
- 15.9 The Council is under a duty by virtue of Section 3 Local Government Act 1999 to secure continuous improvement in the way in which their functions are exercised having regard to a combination of economy, efficiency and effectiveness. The amendments proposed are designed to fulfil this duty and to ensure transparency in the Council's decision making process.
- 15.10 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 15.11 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 15.12 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.
- 15.13 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The

extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

- 15.14 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

- 15.15 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

- 15.16 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

- 15.17 In 2018, CIPFA introduced fresh guidance on Audit Committees. Assurances have been given to the Audit Panel that the performance of the audit function will be the subject of review in the implementation of the Local Democracy Review recommendations. A full report on constitutional changes required as a result of the Democracy Review will be brought forward at the earliest opportunity and this will include reference to the performance of the audit function in Lewisham.

16. Financial Implications

There are no financial arising from this report implications.

Background documents – there are none.

Enquiries about this report should be made to Kath Nicholson, Director of Law,
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