



Council

Report title: Review of the Constitution

Date: 23 October 2022

Key decision: N/A

Class: Part 1

Ward(s) affected: N/A

Contributors: Jeremy Chambers, Monitoring Officer

Outline and recommendations

The Council's Monitoring Officer, is required to keep the Constitution under periodic review. Given the size of the Constitution (470 pages), the current review will be broken down into three phases. The first phase covering the following elements, with phases two and three coming at later dates: -

1. Proper Officer designations;
2. Council questions;
3. Cabinet appointments;
4. Key Decision definition

The first phase amendments were considered by the Constitution Working Party on 11th October 2022 and the recommendations in this report were unanimously agreed for recommendation to Council at that meeting.

Recommendations

Council is asked to: -

1. Note the contents of this report;
2. Agree that the recommendations detailed at paragraphs 3.5, 4.3, 5.4 & 6.4 and that such amendments to the Constitution come into effect immediately.
3. Note that the Monitoring Officer will ensure the terminology used in the Constitution is appropriate and also 'tidy up' any minor spelling, grammatical and formatting errors;

1. Executive Summary

1.1. The Constitution is the document that governs how the Council makes decisions, how

scrutiny operates, how the public engages with the Council and how the Council operates. The Council is required to keep the Constitution under review and the Council's Monitoring Officer is the custodian of the Constitution.

2. Introduction

2.1. The Constitution aims to:-

- i) lead to effective and efficient Council decision making;
- ii) make it clear to local people who is making decisions on their behalf;
- iii) give Councillors and local people greater opportunity to engage directly;
- iv) set out clearly the arrangements for local political governance;
- v) separate decision making from scrutiny of those decisions to create greater accountability.

2.2. The Council's Monitoring Officer, is required to keep the Constitution under periodic review. Given the size of the Constitution (470 pages), the current review will be broken down into three phases. The first phase covering the following elements, with phases two and three coming at later dates: -

1. Proper Officer designations
2. Council questions
3. Cabinet appointments
4. Key Decision definition

2.3. The Constitution Working Party (CWP) has, as part of its Terms of Reference, responsibility for making proposals to the Council for any changes to the Council's Constitution it considers necessary. With limited exceptions only a meeting of the Council can make amendments to the Constitution. The recommendations in this report were unanimously agreed by the CWP.

2.4. The report will consider each provision in turn and give examples from other councils. At the CWP meeting when the report was considered, the Monitoring Officer was in attendance to clarify legal requirements, where members do and do not have options and, when required, gave a professional view on effectiveness of each provision in terms of good governance.

3. Proper Officer

3.1. The term 'proper officer' is used 117 times in the Constitution. A proper officer has a defined role in the Constitution, e.g. the Monitoring Officer is the proper officer for the purposes of access to information.

3.2. Currently, the proper officer is defined as: -

References in this Constitution to the proper officer shall be to the Chief Executive or such person as he shall nominate in writing to all members of the Council to be the proper officer for any purpose.

3.3. There are some exceptions to this, namely, that the Director of Law *has authority to act as the proper officer for certain purposes as set out below:* -

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<i>1. The certification of photographic and other copies of documents held in the custody of the Council and byelaws (Section 229 and 238 Local Government Act 1972)</i>
<i>2. To receive and retain documents deposited with the Council. This provision is without prejudice to the powers of any other person so authorised for this purpose. (Section 225 Local Government Act 1972)</i>
<i>3. To sign DS1 relating to the discharge of advances made pursuant to the Housing (Financial Provisions) Act 1958, the Housing Purchase and Housing Act 1959 and the Housing Act 1985</i>
<i>4. To sign on behalf of the Council any contract, deed or document including those for the purchase or sale of land, in accordance with the Council's procedure rules for the signing of contracts, as set out in Part IV I of the Constitution</i>
<i>5. To issue Notices pursuant to the making of any compulsory purchase order under statutory powers available to the Council; and Notices to Treat and Notices of Entry under any compulsory purchase order which has been approved by the appropriate government department.</i>
<i>6. Without prejudice to any powers delegated to other officers of the Council, to issue on behalf of the council all Notices, orders and/or similar documents pursuant to legislation in force from time to time</i>
<i>7 To determine applications in relations to Town Greens</i>

3.4. Provisions relating to Proper Officer functions are not to be confused with the Scheme of Delegation. The arrangements in other councils can be summarised as follows: -

Council	Proper Officer
Lambeth	The Chief Executive, all Strategic Directors and Directors are designated Proper Officers for different purposes.
Hackney	The Chief Executive, Monitoring Officer, Director of Finance and Corporate Resources and all group Directors are designated proper officers.
Enfield	The Monitoring Officer is the Proper Officer for access to information.
Tower Hamlets	The Chief Executive, Corporate Directors and Directors are designated as proper officers.
Southwark	The Chief Executive, Strategic Directors and Directors are designated Proper Officers. The Monitoring Officer is the Proper Officer for freedom of information.

3.5. As can be seen, there is no uniform approach to dealing with Proper Officer designations. The following is recommended to give effect to the arrangements as they operate in practice at the Council.

Proper Officer Recommendations

- 1. The Chief Executive remains the defined Proper Officer as currently defined in the Constitution with the exception of the following: -**
 - a. Any matters currently designated to other officers in the current Constitution;**

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- b. All Proper Officer designations that relate to procedural or administrative matters regarding formal meetings of the Council are amended to be the responsibility of the Monitoring Officer;
2. The Monitoring Officer retains an up to date record of all Proper Officer designations, including any delegations by the named Proper Officer and the up to date record is published on the Council's website.

4. Council Questions

- 4.1. There is no legal requirement for councils to allow for questions to be permitted, either from councillors or members of the public. It is a local choice matter and a wide variety of approaches are adopted by councils. Lewisham's current provisions for public questions are set out in the Council Procedure Rules (Rules 13 refers) as follows: -

13 Questions by the Public at Council Meetings

13.1 General

Questions may be asked by the public at ordinary Council meetings. They may be addressed to the Mayor, any member of the Executive or any relevant committee or sub committee chair.

13.2 Order of questions

Questions will be asked in the order in which notice of them was received except that the Speaker may group together similar questions.

13.3 Notice of questions

Written notice of questions must be received by the proper officer by midnight on the fifteenth day before the meeting. Each question must state the name and address of the sender. Copies of the questions will be sent to the Speaker, the Mayor, every member of the Executive, the Chair of the Overview and Scrutiny Committee, the Chair of the relevant Business Panel and the Chair of any relevant committee. Written responses to questions will be sent to the sender by 5 p.m. on the working day prior to the meeting.

On receipt of a question from a member of the public, officers shall acknowledge the question promptly and explain the process for response, and that the questioner may attend the Council meeting to ask a supplementary question.

13.4 Scope of questions

- The proper officer may reject a question if:-*
- It does not relate to a matter for which the Council has powers or duties, unless it is a matter which affects the interests of local people.*
- It is defamatory, frivolous or offensive; or*
- It is substantially the same as a question which has been put and answered at a Council meeting within the last three months; or*
- It requires the disclosure of confidential or exempt information; or*
- That responding to the question would entail disproportionate labour or cost; or*
- That the question relates to the circumstances of an individual case; or*
- It relates to any investigation by the Monitoring Officer or Standards Committee.*
- The proper officer may put questions into an appropriate form without affecting the substance of the question and redirect them if necessary.*

13.5 Disallowing questions

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If any question is disallowed, the proper officer will write to the questioner explaining the reasons for that decision

13.6 Record of questions

So far as possible, printed copies of all questions and answers will be published at the relevant meeting and a copy supplied to the Mayor and all councillors and made available to the public at the meeting. A copy of questions asked and replies given will be filed together and kept as an annex to the Council minutes.

13.7 At the meeting

The Speaker will announce that public questions are to be taken. He or she will state the name and address of the questioner and the name of the Mayor or the Councillor who has supplied a written answer.

13.8 Supplementary questions

If the Speaker agrees, a questioner who has put a question may put one supplementary question to the member who has replied. A supplementary question must arise directly out of the original question or the reply given to it.

13.9 Members of the public asking more than one question must number the questions they submit in order of preference (1st question, 2nd question, 3rd question etc).

At the meeting, the Speaker will deal with questions by asking the questioners if they wish to ask a supplementary question in the following order:-

- All 1st preference questions in the order in which they were received by the proper officer, then*
- All 2nd preference questions in the order in which they were received by the proper officer, then*
- All 3rd preference questions in the order in which they were received by the proper officer,*

and so on until either all of the questions put have been dealt with or 30 minutes has expired, whichever is the earlier.

13.10 Absence of the questioner

If the questioner is not present or represented at the meeting, the Mayor/Member to whom the question was addressed will not be required to speak in response to the question, provided a written response has been given.

13.11 Time limit on questions

The total time for answering public questions at any Council meeting shall not exceed 30 minutes. If there is not enough time to answer all questions, the proper officer will reply in writing to those questions not dealt with after 30 minutes.

13.12 No debate on questions

There will not be any debate on any question save that a member may ask that a matter raised by a question be referred to a committee or to the Executive or to an officer to be dealt with.

- 4.2. With regard to questions from members, the Council Procedure Rules (Rule 14 refers) include similar provisions to those set out above for public questions. A summary of the arrangements regarding the number and limitations on council questions in other

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authorities is set out below: -

Council	Allowed?	Deadline for submission	Time allowed	Limitations
Lambeth	Yes, both	Questions to be submitted by 12pm, 20 days prior to meeting.	25 minutes	1 question only for Public
Hackney	Yes, both	Deadline is 12pm, 4 working days before the meeting. For Member questions it is 8 working days before the meeting.	30 minutes	Public get 1 question only. 50 word limit. Members can ask 2 questions
Enfield	Member only	Member questions deadline is 12pm 9 calendar days before the meeting.	20 minutes	
Tower Hamlets	Member only		30 minutes	
Southwark	Yes, both	Public, 3 working days before the meeting. Member questions, deadline is midnight 9 working days before the meeting.	15 minutes for public. 30 minutes for Members	Public get 1 question only. 50 word limit. Members also 1 question only

4.3. As can be seen, the approaches vary from council to council. All councils that allow public questions have provisions that restrict the number of questions to one question per member of the public. This restriction undoubtedly helps councils manage resources in the run-up to council meetings. Simplifying the Council's approach to align with the approach taken by other councils will assist members, officers and the public in asking and responding to questions, e.g. the removal of 1st, 2nd, 3rd, etc. preference questions. For effective management of resources and Council meetings, the following is recommended.

Council Questions Recommendations

1. **Public and member questions remain in the Council Procedure Rules;**
2. **Public questions are limited to two questions per member of the public and each question limited to 100 words;**
3. **The time limit for public questions remains at 30 minutes;**
4. **Member questions are limited to two questions per member and each question limited to 100 words;**
5. **The time limit for member questions remains at 30 minutes;**
6. **The provisions relating to order of questions, notice of questions, scope of questions, disallowing questions, record of questions, supplementary questions and the absence of the questioner remain as currently provided.**

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5. Cabinet Appointments

- 5.1. The legal power to appoint, remove and allocate portfolios rest entirely with the Mayor. This is reflected in the Council Procedure Rules for the Annual General Meeting (Council Procedure Rule 2.2 refers), which states that the Council is: -

to receive written notification from the Mayor of the constitution and composition of the Executive including the names of the Deputy Mayor and the other councillors chosen to serve on the executive for the coming year.

- 5.2. The Executive Procedure Rules, make provision for 'confirmatory hearings' (Rule 2(b) refers). The provisions are as follows: -

When the Mayor proposes to appoint a councillor to the Executive, he/she will be invited to inform all councillors of his/her proposal/s for appointment, by requesting the proper officer to serve notice on them to that effect. If so requested, and provided the Mayor consents in writing, the proper officer will comply.

The notice will set out details of the Mayor's proposals for the Executive membership, including the names of any councillors proposed for appointment to it, the portfolio for which they will take the lead, and the nature of any proposed delegation to them.

The notice will also contain details of a meeting, to take place at least five clear days after the date of the notice, when each of those proposed for membership will attend to address and answer questions from councillors generally. At these meetings, the Speaker, or in his/her absence the Deputy Speaker, will preside. If neither is present, the meeting will nominate a person from amongst those not proposed for membership of the Executive to preside.

The Mayor may address the meeting in respect of each proposed appointment for a period of no more than 2 minutes, though this may be waived by the Mayor. Each proposed appointee to the Executive will address the meeting for a period of no more than 5 minutes.

Immediately after each proposed appointee has spoken, questions may then be put by councillors to the proposed appointee. After questions have been asked of each proposed appointee, the meeting will be asked to register by show of hands whether they support the appointment of that particular member to the Executive as proposed by the Mayor. The choice will be a simple yes or no.

The Speaker will keep a written record of the results and communicate them to each member of the Council, and the proper officer in writing. Should he/she wish, the Mayor will take account of the outcome of this process before making appointments to the Executive. However, by law, the choice about appointments to the Executive is a choice entirely at the Mayor's discretion.

- 5.3. A summary of the arrangement in other councils is set out below: -

Council	Model	Cabinet appointments
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Lambeth	Leader	Only Leader has power to appoint or remove
Hackney	Mayor	Only Mayor has power to appoint or remove
Enfield	Leader	Only Leader has power to appoint or remove
Tower Hamlets	Mayor	Only Mayor has power to appoint or remove
Southwark	Leader	Only Leader has power to appoint or remove

5.4. As can be seen, the sample councils' provisions reflect the legal position, i.e. the elected mayor (or leader) has absolute authority to amend cabinet members and their portfolios at will. The 'confirmatory hearing' provisions in the Constitution concludes *However, by law, the choice about appointments to the Executive is a choice entirely at the Mayor's discretion.* This clear reflection of the correct legal provisions brings into question the relevance of the confirmatory hearings. On this basis the following is recommended.

Cabinet Appointments Recommendations

- 1. The provisions relating to confirmatory hearings in the Executive Procedure Rules (Rule 2(b) refers) are removed.**

6. Key Decision Definition

6.1. The Council is required to define what a key decision is. Councils take a wide variety of approaches in defining key decisions. The Council's Constitution currently defines the following executive decisions as key decisions: -

- a) Decisions which will be likely to result in Council expenditure or savings of £500,000 or more (save treasury management transactions taken in accordance with the Council's Treasury Management Strategy as approved by the Council);*
- b) Any decision likely to be significant in terms of its effect on communities living or working in an area comprising two or more wards, whether the impact is direct (e.g. where the decision relates to a road which crosses a ward boundary) or indirect (e.g. where the decision relates to the provision or withdrawal of a service which is or would be used by people from two or more wards) Decisions will still be deemed to affect more than one ward even if one or more of the wards affected is outside the borough;*
- c) The Council will also define all executive decisions which relate to matters within the categories listed below as key decisions whatever their financial impact, and irrespective of the number of wards affected by them:-*
 - i. Consideration of any report prepared by an external organisation (e.g. OFSTED) into the performance of the Council whether in general or in relation to a particular case, including the Council's response to it;*
 - ii. The closure or significant change in the character of a school or other educational facility;*
 - iii. Consideration of any report relating to the possibility of the withdrawal of delegation of budget from a school;*
 - iv. The giving of any statutory notice to a school or other educational establishment;*
 - v. Directions relating to the use and occupation of school premises;*
 - vi. Decisions relating to schools admission policy and standard numbers for schools (vii) the making of instruments of government for schools;*
 - vii. Policies relating to special needs, attendance and exclusion, awards, charging and remission;*
 - viii. The Council's scheme for the financing of maintained schools;*

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- ix. *Closure of, or significant reduction in provision of, any Council service;*
- x. *Where the decision is one which will involve a significant change in the manner of Council service provision;*
- xi. *The fixing of fees and charges for Council services;*
- xii. *Granting or withdrawing financial support to any voluntary sector organisation in excess of £10,000 (excluding financial support to any organisation which is funded by government initiatives e.g. European Funding);*
- xiii. *Writing off any bad debt in excess of £50,000, unless the Council has within the last 3 years already written off debts for the person/organisation concerned totalling that amount in which case any further write off would be a key decision;*
- xiv. *The disposal of any Council property for less than best consideration;*
- xv. *The disposal of any interest in Council property with a value of £500,000 or more;*
- xvi. *The taking by the Council of an interest in land worth £500,000 or more;*
- xvii. *The granting of any interest in land where the interest is valued at £500,000 or more;*
- xviii. *The exercise of the Council's compulsory purchase powers;*
- xix. *Applications for funding from any external body which if successful would also require Council match funding of £500,000 or more, or entail a revenue commitment of at least £500,000 in total by the Council;*
- xx. *Consideration of any matter which is to be the subject of a recommendation to full Council;*
- xxi. *Consideration of any matter in which, to the decision-maker's knowledge, the decision-maker (or any member of a committee or sub committee making the decision) has an interest which ought to be declared;*
- xxii. *The award of a contract with a total value of £200,000 or more;*
- xxiii. *Where at least 5 members of the Council request that it be treated as a key decision, provided that in the opinion of the Monitoring Officer, they do so at least 6 weeks before a decision is likely to be taken;*
- xxiv. *Where there is evidence of significant local opposition to proposals made by the Council;*
- xxv. *Where the Speaker on advice from the Head of Paid Service and/or Monitoring Officer and/or Chief Finance Officer is of the view that the matter is one which ought properly to be treated as a key decision, and informs the proper officer to that effect at least 6 weeks before the decision is in the opinion of the Monitoring Officer likely to be taken.*

6.2. This is an extensive definition and goes beyond what other councils ordinarily include. Below are some examples: -

Lambeth

The legal definition of a key decision is "an executive decision, which is likely to:

A. result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or,

B. be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority."

These decisions can be made by the Cabinet collectively or individually, or by an officer. At Lambeth, we have chosen to go beyond the legal requirement, as set out above, by defining a key decision as an executive decision that either:

A. Requires an amendment to the Community Plan Outcomes Framework or requires

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- a recommendation to Council to amend the Budget and Policy Framework; or
- B. Financial: Results in the local authority incurring expenditure, raising income or the making of savings in excess of £500,000; or
- C. Community Impact: has a significant impact on:
- i. Communities living or working in an area comprising two or more wards in Lambeth;
 - ii. The wellbeing of the community or the quality of service provided to a significant number of people living or working in an area; or,
 - iii. Communities of interest.

Hackney

A key decision is a Cabinet decision which is likely to:

- i) Result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decisions relates, or
- ii) Be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council.

Enfield

A proposal which:

- (1) Involves expenditure/savings of £500,000 or above - this includes proposals phased over more than one year and match/grant aided funding, with a total of £500,000 or above; or
- (2) Has significant impact on the local community in two or more wards.

Tower Hamlets

A "key decision" is an executive decision which is likely to:

- A. result in the local authority incurring expenditure or the making of savings of:
- Savings: Where the proposal is expected to result in savings of above £1 Million;
- Revenue expenditure: Where the proposal involves revenue expenditure of above £1 Million;
- Capital expenditure: Where the proposal involves capital expenditure of above £5 Million; or
- B. be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions.

In addition to the above, officers will also consider the following guidance when determining if an issue should be treated as a Key Decision:

- i) A decision to approve, update or amend a policy, strategy, plan, scheme (or similar) will only be a key decision if criteria (A) or (B) above would apply to the implementation of the document once approved, updated or amended.
- ii) Documents listed in Section 7 under the Budget and Policy Framework, are non-executive decisions reserved to Full Council and therefore cannot be key decisions. However, they are required to be prepared and developed by Cabinet in accordance with the Budget and Policy Framework Procedure Rules at Part B Section 28 of the Constitution.
- iii) A decision or report in relation to preparation and development of an issue, for example to begin a public consultation exercise, will not normally be a key decision unless criteria (A) or (B) above would also apply to that specific action. Even if the final determination of that issue would result in a Key Decision.
- iv) A decision not fulfilling the criteria at (A) or (B) above may follow the same process as a key decision if, in the professional opinion of the Chief Executive or the appropriate Corporate Director, it is a matter of particular political sensitivity.
- v) A decision which is the same or similar to one taken in the past (for example, the approval of a previous iteration of a plan or strategy), and does not fulfil criteria (A) or (B) above, is not a Key Decision even if the comparable previous decision was identified as a Key Decision.

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Southwark

There are two types of key decision:

1. Those which are above a general financial threshold - Key decisions are those which result in the authority incurring expenditure or savings of £500,000 or more.

Examples include:

- disposal of any council property with a value of £500,000 or more
- taking by the council of any interest in land with a value of £500,000 or more
- the granting of any interest in land worth £500,000 or more
- applications for funding from any external body which if successful would require match funding of £500,000 or more, or require revenue commitment of £500,000 or more
- The award of a contract worth £500,000 or more in any one year.
- 2. Those which have a significant impact on communities
- 3. Decisions which should always be treated as key decisions
- the setting of fees and charges
- the granting or withdrawing financial support to any external community or voluntary organisation in excess of £10,000 (this would not apply to those organisations from which the council commissions services)
- the writing off any bad debt in excess of £50,000 per case
- the disposal of any council property for less than best consideration
- the exercise of the council's compulsory purchase order powers
- the consideration of an inspection or reports by the Social Services Inspectorate or Office for Standards in Education, Children's Services and Skills (Ofsted), public interest reports or advisory notices from local auditors, and the council's response to any such report
- the strategic procurement strategy approval decisions (Gateway 1 reports)
- reports on corporate budget monitoring and performance
- The pre-procurement strategic assessment approval decisions in respect of services over £10,000,000 or for other strategically important contracts where requested by the relevant cabinet member.

6.3. As can be seen from the examples above, a variety of approaches are taken. However, the detail and scale of the Council's definition is extensive and beyond the norm. What is the norm is for a key decision definition to include a) a financial threshold, and b) decisions that have a significant impact on the communities in two or more wards.

6.4. Following discussions with the Director of Inclusive Regeneration and the Head of Strategic Finance, Planning & Commercial Finance, the following definition of Key Decision is recommended.

Key Decision Recommendations:

1. That the definition of Key Decision is simplified as follows: -

- a. Any decision with a total value, expenditure or savings, including any grant and/or matched funding, with a total value in excess of: -
 - i. £700,000 in revenue; or
 - ii. £1.5m in capital; or
 - iii. A property transaction, disposal or acquisition, in excess of £1.5m.
- b. Any decision that, in the opinion of the Monitoring Officer, has a significant impact on the communities in two or more wards;
- c. Where the Speaker on advice from the Head of Paid Service and/or Monitoring Officer and/or Chief Finance Officer is of the view that the matter is one which ought properly to be treated as a key decision, and informs the proper officer to that effect at least 6 weeks before the decision is in the opinion of the Monitoring Officer likely to be taken.

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2. That the financial thresholds are adjusted annually, on 1st April to reflect any movement in the Consumer Prices Index.

7. Financial implications

7.1. Not Applicable

8. Legal implications

- 8.1. The report has been prepared by the Council's Monitoring Officer and all legal matters have been addressed in the body of the report.

9. Background papers

- 9.1. A copy of the Council's constitution is available at the following link:

[Lewisham Council - Our constitution](#)

10. Report author and contact

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