



Constitution Working Party

Report title: Review of the Constitution

Date: 14th March 2023

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 was considered by Constitutional Working Party in October 2022 and agreed by Council in November 2023. Phase 2 of the Review covers the following elements: -

1. Petition Scheme;
2. Amalgamation of Committees;
3. Planning Committee;
4. Overview & Scrutiny Arrangements.

Recommendations

The Constitution Working Party is asked to: -

1. note the contents of this report;
2. 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;
3. consider the contents of this report and to make any recommendations it sees fit for further consideration by a meeting of the Council on 29th March 2023.

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. Phase 2 of the Review covers the following elements: -

1. Petition Scheme;
2. Amalgamation of Committees;
3. Planning Committee;
4. Overview & Scrutiny Arrangements.

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 views and any recommendations of the CWP will be included in the report taken to the Council.

2.4. The purpose of this report is to allow the CWP to consider the effectiveness of the current constitutional provisions listed above. The report will consider each provision in turn and give examples from other councils. At the CWP meeting when the report is considered, the Monitoring Officer will be in attendance to clarify legal requirements, where members do and do not have options and, if and when required, give a professional view on effectiveness of each provision in terms of good governance.

2.5. At the meeting the Monitoring Officer will also give feedback from the informal discussions that have taken place with senior members of the administration during and after the preparation of this report.

3. Petition Scheme

3.1. The Council's current petition scheme appears incomplete and lacks clarity and detail regarding how the Council deals with petitions. Petition Schemes should provide the public, councillors and officers with sufficient details to understand how petitions will be dealt with and processed.

Petition Scheme Recommendations

1. **That the Council adopts the revised petition scheme set out below with immediate effect.**

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Petitions Scheme for the London Borough of Lewisham

The Council will consider all petitions that fall within the scope of this scheme. A petition template and signature sheet is attached at Appendix 1. This sets out the information we need to consider your petition. If you need any advice, please contact the Governance & Committee Services team at committee@lewisham.gov.uk.

We accept both paper and e-petitions. The requirements of the Council's petition scheme apply to both paper and e-petitions. E-Petitions should use the council's system which can be found on the council's website.

Paper petitions can be sent to: Governance and Committee Services, 1st Floor, Laurence House, Catford Road, SE6 4RU.

To submit an e-petition you will need to register on the Council's petition page. Registration is simple requiring a few details in case we need to contact you. On the e-petition page, select 'submit a new petition' and follow the prompts from there. Your online form will be submitted to the Governance & Committee Services Team. You must let us know when you would like your e-Petition to go live on the website, and a date for when your e-petition will stop collecting signatures. The Council accepts no liability for the petitions on these web pages. The views expressed in the petitions do not necessarily reflect those of the Council. When the e-petition reaches its closing date, you will no longer be able to sign it online. The petition will then be dealt with in line with the scheme.

We do not accept hybrid petitions.

The Council will acknowledge receipt of a petition within ten working days. In all cases the relevant Cabinet member and senior officer (at Director level) will be informed, if the petition relates to a particular part of the Borough, then we will also notify the local ward councillors.

Who can submit a petition?

Any person who lives, works or studies in Lewisham can organise a petition, including those under the age of 18. The address provided must be an address within the borough of Lewisham: it may be the home, work or study address.

Who can sign a petition?

Any individual can sign a petition and may be any age and should provide an address which shows that they live, work or study in Lewisham. There may be occasions where it is appropriate for signatories from outside the borough to sign a petition, for example where the matter significantly affects the community in a neighbouring borough. You can only sign a petition once.

What are the guidelines for submitting a petition?

Petitions submitted to the council must:

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- Contain the name, a valid address with postcode, and the signature of any person supporting the petition. A valid address is within the Borough of Lewisham and can be a home, work or study address.
- Include a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the council to take.
- have the petition organisers contact address. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the website. If no lead petitioner is identified, we will consider the first decipherable name on the petition to be the lead contact.
- relate to a matter for which the authority has responsibility, and which affects the authority or its area.

Are there petitions the Council cannot accept?

Most petitions we receive will be accepted but there are some circumstances where we will not be able to deal with your petition under this scheme. To avoid contempt of court or prejudice to the Council's position, and duplicating procedures where established processes already exist, some matters are excluded from this scheme:

- petitions which in the opinion of the Monitoring Officer are considered vexatious, defamatory, offensive, frivolous or abusive or otherwise inappropriate will not be accepted.
- any matter that does not engage the council's responsibilities including, matters which relate to the proceedings of a political party, and matters that are the subject of electoral law.
- petitions which relate to any matter that is, or is likely to be, the subject of legal proceedings. This includes petitions which the Monitoring Officer considers would put the Council at risk of constituting a contempt of court, or any petition which is asking the Council to do anything unlawful.
- in the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case, we will explain the reasons and discuss the revised timescale which will apply
- if a petition does not follow the guidelines set out above, the council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.
- any matter where there is already an existing way of making representation and a process for right of appeal such as Planning, Licensing, council tax banding and non-domestic rates, where the existing procedures will be used.
- requesting a statutory petition (for example requesting a referendum on having an elected mayor)
- names or clearly identifies an employee of the authority or any matter relating to an individual
- petitions which are substantially the same as a petition which has been considered under the petition scheme within the last 12 months as agreed by the Monitoring Officer.
- involve the disclosure of confidential or exempt information as defined under Schedule 12A to the Local Government Act 1972 (as amended)

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by the Local Authorities (Access to Information (Exempt Information))(England) order 2006)

What will the Council do when it receives my petition?

An acknowledgement will be sent to the petition organiser within ten working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again.

The Council will normally send its substantive response within 4 weeks of receipt, however there may be occasions where this is not possible, for example, over the summer holidays, in the period immediately prior to an election or referendum, where a petition relates to a matter yet to be considered.

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. Where the subject matter of the petition relates to a matter which is or will shortly be the subject of statutory or non-statutory consultation by the authority, the Monitoring Officer may elect to include the petition in the consultation process. You will be informed if this is the route that has been taken.

If the petition has enough signatures to trigger a debate at a meeting of full Council or at an Overview and Scrutiny Select Committee then the acknowledgment will confirm this and tell you when and where the meeting will take place.

If the petition needs more investigation, we will tell you the steps we plan to take.

The Council reserves the right to verify signatures as required. Please ensure each signatory has given a valid address and postcode. These signatures will be taken into account when identifying if a debate at an Overview and Scrutiny Select Committee, or full Council has been triggered. Any signature without a valid address, or duplicates will be discounted.

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following: -

- a) taking the action requested in the petition*
- b) considering the petition at a council meeting*
- c) holding an inquiry into the matter*
- d) undertaking research into the matter*
- e) holding a public meeting*
- f) holding a consultation*
- g) holding a meeting with petitioners*
- h) referring the petition for consideration by an Overview and Scrutiny Select Committee*
- i) writing to the petition organiser setting out our views about the request in the petition*
- j) referring the petition for consideration to the Standards Committee.*

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If your petition is about something that a different authority is responsible for, for example a local railway or hospital, we will consider the best method for responding; this may consist of simply forwarding your petition to that body, or the council may consider making representations on behalf of the community to the relevant body.

This may depend on whether the petition conflicts with Council policy. In any event, we will always inform you of the action taken.

Full Council debates

If the petition contains at least 1% of the assessed population figure from the 2021 Census (insert number) as published by the Office of National Statistics it will be debated by the full Council unless it is a petition asking for a senior council officer to give evidence at a public meeting.

This means that the issue raised in the petition will be discussed at a meeting which all councillors can attend. The council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be advised of the date for full Council and the time allowed for presentation of the petition. The petition organiser will be contacted by the Governance & Committee Services Team to clarify what remedy is being sought and to advise of the option of having their Councillor present their petition. The Governance & Committee Services Manager will prepare a report detailing the subject of the petition and what action the Council and/or partners is being asked to take and arrange for this issue to be placed on the appropriate Council agenda to suit all parties.

The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by councillors for a maximum of fifteen minutes. The council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee.

Where the issue is one on which the Mayor & Cabinet are required to make the final decision, the Council will decide whether to make recommendations to inform that decision. The petition organiser will receive written confirmation of the Council's decision. This confirmation will also be published on our website.

What can I do if I feel my petition has not been dealt with properly?

If you feel that we have not dealt with your petition properly, the petition organiser has the right to request a review of the steps that the Council has taken in response to your petition. If your petition was considered and a response given by officers, then please send your concerns via the council's corporate complaints system which can be accessed via the council's website. If you remain dissatisfied, you can submit a complaint to the Local Government and Social Care Ombudsman.

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If your petition was considered and debated at either an Overview & Scrutiny meeting, or Full Council, then please request a referral to the Chair of OSC who will consider how best to respond, depending on the nature of the concerns, please email scrutiny@lewisham.gov.uk.

Privacy policy

The details you give us are needed to validate your support and your details will not be published on the website. This is generally the same information required for a paper petition. The Council may contact you in relation to any petitions you have signed, unless you have requested not to be contacted when signing the e-Petition. London Borough of Lewisham is the data controller for personal information collected in respect of both the Council's E-petition facility and for paper petitions.

4. Amalgamation of Committees

- 4.1. The Council currently has an Audit Panel, Health & Safety Committee, Elections Committee and Constitutional Working Party.
- 4.2. As part of ensuring the Council's meeting structure is fit for purpose and as efficient as possible, a review of the Council's formal meeting structure has been undertaken, including a steer from the administration and several roundtable informal discussions with councillors. The following recommendations are as result of these discussions.

Amalgamation of Committees Recommendations

- 1. The Audit Panel be renamed the Audit & Risk Management Committee;**
- 2. The Chair of the Audit & Risk Management Committee be paid Special Responsibility Allowance of £7151 in recognition of the remit of the committee;**
- 3. That the Audit & Risk Management Committee meets six times a year;**
- 4. That there are no changes to the Health & Safety Committee at present but the matter is kept under review following the transfer of the housing stock to the Council from Lewisham Homes;**
- 5. That the Elections Committee and Constitutional Working Party are merged into a Governance Committee that meets as and when required as determined by the Monitoring Officer in consultation with the Chair of the committee.**
- 6. A Special Responsibility Allowance of £7151 be paid to the Chair of Pensions Investments Committee.**

5. Planning Committee

- 5.1. Feedback through the Local Democracy Review programme suggested that there was a need for improved and earlier engagement with Members who are on Planning Committees and increased training. This feedback recognised that this will require greater time commitment from Members and officers who support committees so changes would be needed to the number of meetings and types of applications that are taken to Planning Committee to support that type of

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change.

- 5.2. The rationale for the planning proposals is to give a greater sense of fairness in terms of the type of cases that come to committee and the process of how decisions are made, enable better decision making by ensuring that sufficient time is available for those Members who are on committees for training and ensure that Members still have the opportunity to appropriately advocate for all their communities and effectively fulfil the wider range of responsibilities members have.
- 5.3. Most planning decisions are made by officers using their delegated powers. However, for applications where there are three or more objections, those involving the loss of a pub or departures from the development plan, decisions are made by a planning committee. Schemes where an objection is received from an amenity society or residents' association are also automatically referred to planning committee.
- 5.4. Lewisham has one of the highest numbers of planning committees in London (three committees and strategic planning committee). Lewisham's current threshold for Planning Committee is 3 objections, or a single amenity society objection and is the lowest in London. The most common threshold is between 5 and 10 objections and officers are currently unaware of any other authority who gives an automatic call-in right to amenity societies.
- 5.5. As a consequence of the low objection threshold, Lewisham has 4 planning committees (A, B & C and Strategic Planning Committee) to address the committee case pipeline. The committee threshold is the second highest in London. Lewisham has 37 planning committee councillors in order to run the 4 committees, and is the highest in London by some margin. The majority of boroughs have between 7-10 Councillors with a number of boroughs have a core group of councillors with a reserve or pool list for flexibility. This includes Enfield, Lambeth, Southwark and Richmond.
- 5.6. The majority of boroughs have a single planning committee, and a large number have a dual set up for planning committee (planning committee and a strategic committee).
- 5.7. Temporary changes to the scheme of delegation during the Covid-19 pandemic increased officer delegations. Cases with 3-4 objections were decided by planning officers under delegated powers. Schemes with 5-9 objections or an amenity society objection were taken to a Chair's Review meeting where a decision was made by a planning committee chair on whether a scheme would be decided by committee or under delegated powers. Member training and briefings were undertaken virtually with high levels of attendance and engagement and protocols and standard scripts prepared for committees and chairs to assist with virtual committees.
- 5.8. It is proposed to increase the threshold of objections that would trigger a committee referral to 10 objections. This would bring Lewisham in line with other authorities in London.

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- 5.9. It is also considered that Chairs' Review meetings for those schemes with an amenity society objection should become a permanent feature of the scheme of delegation to recognise the value of our Amenity Societies and their commentary on planning applications, whilst ensuring that planning committees are used for the most complex cases only. The temporary changes during Covid-19 demonstrated that good decision was safeguarded despite a higher committee threshold and ensured that only the most complex and sensitive schemes are referred to planning committee.
- 5.10. The proposed changes are likely to reduce the Planning Committee backlog from the current 67 cases to around 20-30. It is therefore also proposed to alter the structure, frequency and resourcing of planning committees. This would enable the Planning Service to refocus resource to support the increased early engagement activities promoted via a refreshed Statement of Community Involvement and enable a smaller pool of Members to have more focus on planning matters to help improve decision making.
- 5.11. It is proposed that the number of planning committees is reduced to 2 main committees of equal standing ensuring that cases are spread equally. Along side the two main committees there will be a Strategic Planning Committee, which will sit only when required. The Strategic Planning Committee will be made up as follows: -
- Chairs of the two Planning Committees;
 - Vice-Chairs of the two Planning Committees;
 - Two Cabinet Members nominated by the Mayor;
 - One other member from each of the two Planning Committees.
- 5.12. A meeting of the Strategic Planning Committee will only be triggered if the application falls within ***Parts 1-4 of the Schedule to The Town and Country Planning (Mayor of London) Order 2008.***
- 5.13. Alongside the changes to thresholds and the committee structure, it is proposed to introduce greater clarity to the constitution to define what a planning application is to avoid any uncertainty regarding submission types that are not a planning application (such as a certificate of lawful development, prior approval or approval of details).
- 5.14. The proposals can be summarised as follows: -

Planning Committee

- Replace the existing committee structure made of up 4 committees, with 2 committees of equal status.
- *Planning Committee* – meeting monthly this covers all referable committee application.
- Planning Committee Members to comprise a core group and a reserve list (for further exploration with other boroughs that have this arrangement – Southwark, Lambeth, Enfield and Richmond)
- Councillor call-in to be retained, a reason must be provided in writing and limited to the ward in which the development is located or adjacent ward.
- Public speaking arrangements at committee to be retained – 5 minutes.

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Scheme of Delegation/ Committee threshold

- Increase the current threshold from 3 to 10 objections.

Amenity Societies

- Formal recognition of amenity societies – they will need to be constituted, representative and meet the terms of the London Forum for Amenity and Civic Societies.
- They will have a defined area of one conservation area (not multiple conservation areas). This would ensure each group has an identifiable area and avoid current issues of different amenity groups covering the same area.
- Amenity groups would retain a form of call-in power for their defined area but this would refer cases to a Chairs' Review Panel rather than automatically to committee. Other groups would be free to make representations but would not have call in powers.

Planning Committee Arrangements Recommendations: -

1. **The deletion of the current four committees and the establishment of two main planning committees of equal standing;**
2. **The creation of a new Strategic Planning Committee, which only meets when an application falls within Parts 1-4 of the Schedule to The Town and Country Planning (Mayor of London) Order 2008.**
3. **That the new Strategic Planning Committee be constituted as follows: -**
 - a. **Chairs of the two Planning Committees;**
 - b. **Vice-Chairs of the two Planning Committees;**
 - c. **Two Cabinet Members nominated by the Mayor;**
 - d. **One other member from each of the two Planning Committees.**
4. **That the Chairs of both committees be paid a Special Responsibility Allowance of £10,216 (an amount equal to the current SRA payable to the Chair of Strategic Planning Committee) and the Chair of Strategic Planning Committee does not get a Special Responsibility Allowance;**
5. **That each main committee has a membership of 8 councillors;**
6. **That each main committee meets bi-monthly;**
7. **That the threshold for referral to a main Committee be increased from 3 objections to 10 objections;**
8. **That amenity societies must be formally constituted and meet the terms of the London Forum for Amenity and Civic Societies;**
9. **That any objection from an amenity society is not automatically referred to a main committee but suitability for referral to committee is determined by the Director of Planning in consultation with the Chairs of both committees (or Vice-Chairs in their absence) in a Chairs' Briefing.**

6. Overview & Scrutiny Arrangements

- 6.1. Overview and scrutiny is a way in which non-executive councillors can hold the Mayor and Cabinet, officers and external organisations to account for the decisions that they make. The scrutiny process enables councillors to examine the functions of the Council; ask questions about how decisions have been made;

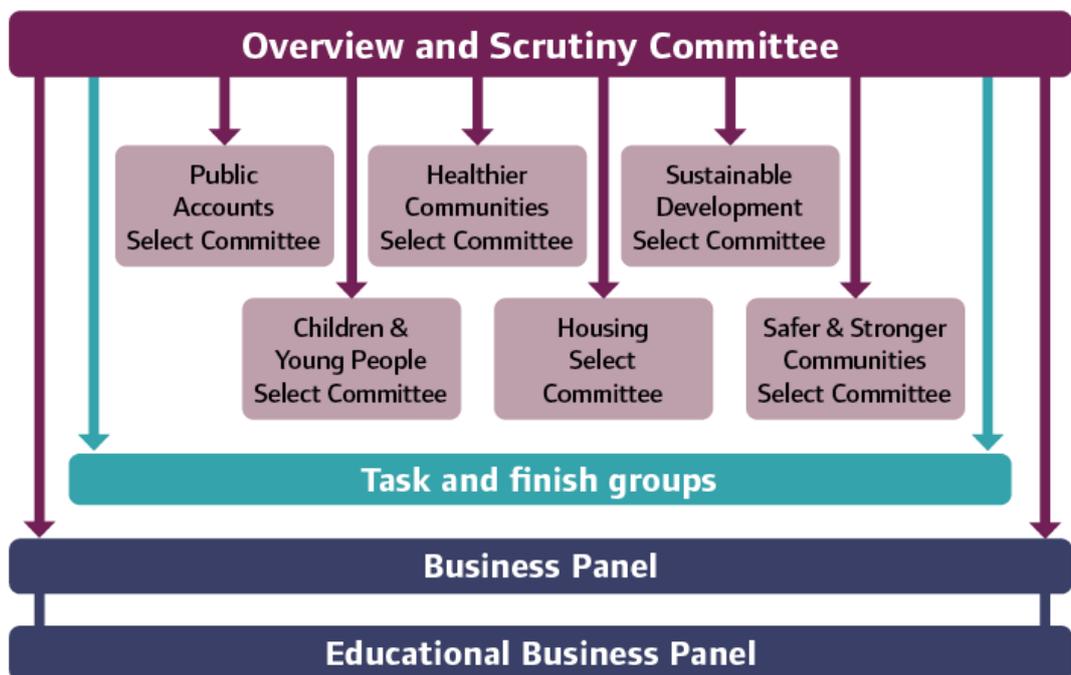
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and investigate issues of local concern to consider whether service improvements can be put in place. The main types of scrutiny are pre and post decision scrutiny; performance monitoring; and policy development.

- 6.2. All non-executive councillors (currently 44 Members) sit on the Overview and Scrutiny Committee (OSC). This body focuses on cross-cutting and strategic issues and can get involved in policy development, performance monitoring and pre-decision scrutiny.
- 6.3. There are currently 8 sub-committees: 6 select committees and 2 business panels. The 6 select committees have remits covering specific service areas and they focus on policy development, pre-decision scrutiny and performance monitoring. The 2 business panels agree the overall scrutiny work programme and handle post-decision scrutiny and call-in.
- 6.4. Time-limited sub-committees called Task and Finish Groups (TFGs) can also be established by OSC. TFGs consider topical issues of concern and focus on policy development. They gather evidence to develop recommendations to inform policy and make service improvements via methods such as desktop research, telephone conferences, site visits, good practice visits and a wide range of engagement activities.
- 6.5. The diagram below shows the current structure:



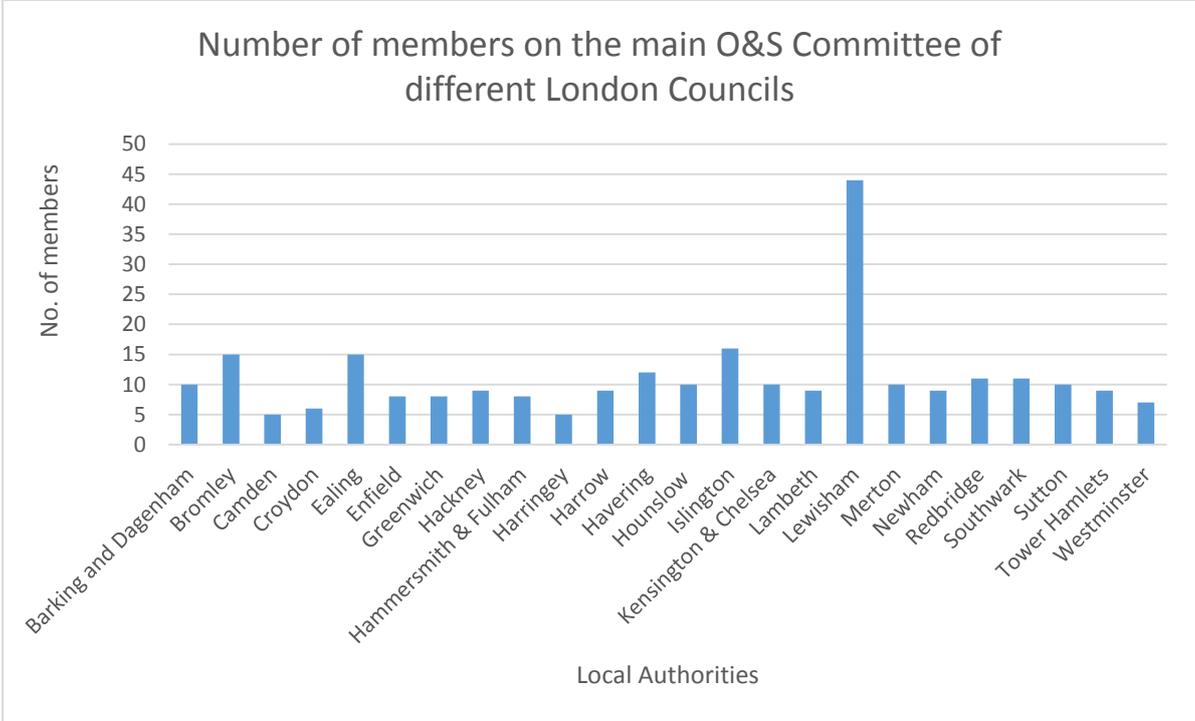
- 6.6. The steer from the administration is to ensure that the scrutiny arrangements for Lewisham are efficient in their use of member and officer time, avoid confusion and duplication, are simple to understand and allow scrutiny to really add value to the Council and wider community.

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- 6.7. In informal conversations with councillors, both in relation to scrutiny and wider committee structures, there has been a real appetite for change and simplification of the Council’s scrutiny arrangements. The following paragraphs deal with structure, number of councillors, project work, SRAs, and call-ins.
- 6.8. There has been significant support for the removal of the current three-tier scrutiny structure with a simpler two-tier structure instead, i.e., a “parent” Overview & Scrutiny Committee with a number of sub-committees under it. This simplification will remove the need for both business panels and in effect merge the current committee and two business panels into one committee.
- 6.9. As can be seen above, the current Overview & Scrutiny Committee contains all non-executive councillors. This is highly unusual. The table below demonstrates how far removed from other London Boroughs Lewisham is regarding the number of councillors that sit on Overview & Scrutiny Committee.



- 6.10. The preferred number of councillors on the committee in other London Boroughs that responded is 10 and that is what is recommended for Lewisham.
- 6.11. There had been a suggestion that the Council prohibits councillors that sit on a regulatory committee from sitting on the Overview & Scrutiny Committee or any sub-committee but our benchmarking has shown that no other London Borough that responded has that restriction so that is not recommended here.

Overview & Scrutiny Arrangements Recommendations: -

1. **The current three-tier scrutiny structure is replaced with a simplified two-tier structure made up of an Overview & Scrutiny Committee and the current select committees;**
2. **That the number of councillors on Overview & Scrutiny Committee be 10;**

3. That the Chair of each Select Committee must be a member of Overview & Scrutiny Committee but cannot be the Chair or Vice-Chair of Overview & Scrutiny Committee;
4. That councillors who sit on any of the Council's regulatory committees are able to also sit on Overview & Scrutiny Committee or any of its Select Committees;
5. That the Special Responsibility Allowance payable to the Chair of Overview & Scrutiny Committee is £13,281;
6. That the Special Responsibility Allowance payable to the chairs of each of the Select Committees is £7,151;
7. That the Chair of any Task & Finish Group does not receive a Special Responsibility Allowance;
8. That the work programmes for the Select Committees are approved by the Overview & Scrutiny Committee;
9. The current Task & Finish Groups are recommended to remain provided the following provisions are put in place: -
 - a. The remit, scope, duration and membership of Task & Finish Groups can only be agreed by the Overview & Scrutiny Committee;
 - b. Any non-Executive councillor can be selected to sit on a Task & Finish Group;
 - c. The maximum number of councillors that can sit on a Task & Finish Group is five (5);
 - d. No more than three (3) Task & Finish Groups can be undertaken in any single municipal year.
10. That any post decision call-ins are dealt with by the Overview & Scrutiny Committee;
11. That any pre-decision scrutiny which has taken place is brought to the attention of the decision-maker (ordinarily Mayor & Cabinet) to ensure they are fully informed of the views of scrutiny as appropriate;
12. That, in circumstances where pre-decision scrutiny has taken place and the decision-maker has been made aware of the outcome of the pre-decision scrutiny, there is no requirement for the decision-maker to formally respond to the pre-decision scrutiny;
13. To note that the Head of Overview, Scrutiny & Policy, as the Council's statutory scrutiny officer, will be issuing further detailed guidance following the Annual General Meeting of the Council.

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](https://www.lewisham.gov.uk/our-constitution)

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10. Report author and contact

Jeremy Chambers
Director of Law & Corporate Governance
Monitoring Officer

Email: jeremy.chambers@lewisham.gov.uk

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