



Governance Committee

Constitutional Update

Date: 18th December 2024

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. This report provides a general update, proposes some amendments to the Constitution and details future work to be undertaken.

Recommendations

The Governance Committee is asked to: -

1. note the contents of this report;
2. consider the contents of this report and to make any recommendations it sees fit for further consideration by a future meeting of the Council.

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

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.

- 2.1. The Council's Monitoring Officer, is required to keep the Constitution under periodic review. This report provides a general update, proposes some amendments to the Constitution and details future work that will be undertaken.
- 2.2. The Governance Committee 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 Governance Committee will be included in the report taken to the Council.
- 2.3. The purpose of this report is to allow the Committee to consider the effectiveness of the current constitutional provisions listed above. The report will consider each provision in turn. At the Committee 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.

3. General Update

- 3.1. This section of the report updates the Committee on the impact of the previously agreed amendments to the Constitution relating to questions at Council meetings, the ongoing work of the Overview & Scrutiny Task & Finish Group and amendments made by the Monitoring Officer to the Constitution.

Previous amendments to the Council Procedure Rules relating to questions

- 3.2. At its meeting of 23 October 2022, Council agreed several amendments to the Constitution. One of the resolutions was as follows: -
 - *Public and member questions remain in the Council Procedure Rules;*
 - *Public questions are limited to two questions per member of the public and each question limited to 100 words;*
 - *The time limit for public questions remains at 30 minutes;*
 - *Member questions are limited to two questions per member and each question limited to 100 words;*
 - *The time limit for member questions remains at 30 minutes;*
 - *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.*
- 3.3. Officers have undertaken a review of the impact of these amendments and considered the following questions: -
 1. The number of questions asked by members of the public at each of the Council meetings for the 12 month period prior to 23 October 2022;
 2. The number of questions asked by members of the public at each of the Council meetings for the 12 month period since 23 October 2022;

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3. Since the Council meeting held on 23 October 2022, the number of questions that have been rejected as a result of exceeding the 100 words limit;
4. Details of any occasion since 23 October 2022 where the time limit for public questions has been insufficient to enable all questions and supplementary questions to be dealt with.

3.4. The review has considered the following: -

The number of questions asked by members of the public at each of the Council meetings for the 12-month period prior to 23 October 2022:

Nov 2021	Jan 2022	Mar 2022	May 2022 AGM	July 2022	Sept 2022
75	54	61	N/A	29	34

The number of questions asked by members of the public at each of the Council meetings for the 12-month period since 23 October 2022:

Nov 2022	Jan 2023	Mar 2023	Mar 2023 AGM	May 2023	July 2023	Sept 2023
122	58	101	N/A	54	33	59

Since the Council meeting held on 23 October 2022, the number of questions that have been rejected as a result of exceeding the 100 words limit:

Nov 2022	Jan 2023	Mar 2023	May 2023	July 2023	Sept 2023	Nov 2023	Jan 2024	Feb 2024	May 2024	July 2024	Oct 2024
0	0	0	3	2	4	2	2	1	2	0	0

Details of any occasion since 23 October 2022 where the time limit for public questions has been insufficient to enable all questions and supplementary questions to be dealt with.

Nov 2022	Jan 2023	Mar 2023	May 2023	July 2023	Sept 2023	Nov 2023	Jan 2024	Feb 2024	May 2024	July 2024	Oct 2024
0	0	0	0	0	0	0*	0	0	0	0	0

* November 2023 – meeting suspended for 15 minutes.

The following conclusions can be drawn from the above evidence: -

1. There has been no reduction in the number of public questions asked at Council meetings as a result of the changes;
2. Only 16 (2.2% of those asked) questions have been rejected for exceeding the 100-word limit since the changes were brought in following the October 2022 Council meeting. To put this into perspective, a total of 723 public questions were submitted during this timeframe;
3. Since the changes have been introduced, there have been no occasions where those members of the public wishing to ask a supplementary related question (either in person or online) have been prevented from doing so due to the time limit being reached.

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Taking all of these observations into account, it can be concluded that the changes have made a positive impact overall.

Update on the work of the Overview & Scrutiny Task & Finish Group

- 3.5. The final report of the Improving Scrutiny Task and Finish Group was considered by Mayor and Cabinet on 18 September 2023. Mayor and Cabinet agreed that the response to the report recommendations should be provided directly to the Overview and Scrutiny Committee.
- 3.6. On 5th November 2024, the Council's Overview & Scrutiny Committee will be considering the recommendations made by the Task and Finish Group.
- 3.7. In summary, the Task and Finish Group recognises that there are areas of both good quality and poor practice in Lewisham and that engagement with Members, officers and stakeholders has indicated a dissatisfaction with some ways of working. The recommendations put forward by the Task and Finish Group are welcomed. Many are within Scrutiny's gift to implement, with some Select Committee Chairs and committees already putting them into practice. Achieving the comprehensive change in practice envisioned by the Task and Finish Group will require uptake of the recommendations across the board and it is hoped that scrutiny members, supported by officers, will take on this challenge.
- 3.8. Some of the recommendations require further discussion and decision by Members before they can be taken forward. Once a consensus has been achieved, if Members agree that they wish to change the number of select committees or task and finish groups, the number of formal meetings held, or the terms of reference of select committees, proposals can be presented to the Governance Committee for onward consideration by Council.
- 3.9. Any proposals put forward by the Overview & Scrutiny Committee that require constitutional change will, in accordance with constitutional requirements, be brought to a future meeting of the Governance Committee for consideration.

Amendment to the Constitution made by the Monitoring Officer

- 3.10. As the Committee is aware, there are three routes for the Constitution to be amended. Firstly, proposed amendments to the Constitution are required to be taken to the Council's Governance Committee for consideration with recommendations being agreed at a meeting of Council. For virtually all constitutional amendments this process is followed and can be evidenced through an analysis of the minutes of the Council meetings.
- 3.11. Secondly, the elected Mayor has authority pursuant to Part IV D(6) of the Constitution, which states the Mayor may amend the Mayoral Scheme of Delegations of Executive Functions throughout the year. Any amendments to the Mayoral Scheme of Delegations of Executive Functions must be notified to the Proper Officer and the Proper Officer is required to notify any such amendments to all councillors and take a report to an appropriate meeting of Council for noting.
- 3.12. Thirdly, and by exception, in circumstances where the Monitoring Officer

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considers it necessary for amendments to be made to the Constitution in order to give it legal effect and protect the Council, there is a well-established practice at Lewisham of amendments being made in advance in a timely manner and reported to the Governance Committee and approved at a meeting of Council. Previously, the Monitoring Officer has amended the Constitution to remove all references to the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020, which if allowed to remain would have been contrary to legislation. Other examples include amending the provisions in the Constitution insofar as they relate to the thresholds contained within the Public Contract Regulations 2015. Without such amendments, the Council's constitutional provisions would be contrary to statute with the potential for any relevant procurement process to be challenged.

3.13. Following an external investigation into matters outside the Terms of Reference for the Governance Committee, on 13th May 2024, I asked the Head of Governance and Committee Services to amend the following provisions in the Scheme of Delegation: -

(1) The following have delegated authority to initiate, conduct and defend all legal proceedings, public inquiries and planning appeals brought by or against the Council in any Court, Tribunal or Arbitration and may make representations at any public inquiry held by or on behalf of any Minister or public body:

(a) the Director of Law;

(b) any individual holding the position of Principal Lawyer, Senior Lawyer or Lawyer within the Legal Services Department.

Be amended as follows: -

(1) The following have delegated authority to initiate, conduct and defend all legal proceedings, public inquiries and planning appeals brought by or against the Council in any Court, Tribunal or Arbitration and may make representations at any public inquiry held by or on behalf of any Minister or public body:

(a) the Director of Law & Corporate Governance;

(b) the Head of Legal Services;

(c) any individual holding the position of Principal Lawyer (provided they hold an appropriate practising certificate)

3.14. Following the investigation, the Monitoring Officer instructed that this amendment be made to the Scheme of Delegation with immediate effect in order to protect the Council and prevent any future potentially unlawful acts by any of its officers. The step taken by the Monitoring Officer has been confirmed as appropriate by Counsel.

3.15. The Chief Executive received a request to consider changing this amendment back to how it was. This has been resisted given the explanation above and that amendments to the Constitution are predominantly matters for the Governance Committee to recommend to Council.

3.16. A proposed amendment is set out at paragraph 4.16 of this report, which seeks to clarify the process that will be followed by the Monitoring Officer on the rare

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occasions where it is necessary for amendments to be made in this way. The holistic review mentioned later in this report will also include consideration of best practice in this area.

4. Proposed Amendments to the Constitution

- 4.1. Set out below are proposed amendments to the Constitution. The Governance Committee is asked to consider these and agree the recommendations.

Senior Management Structure

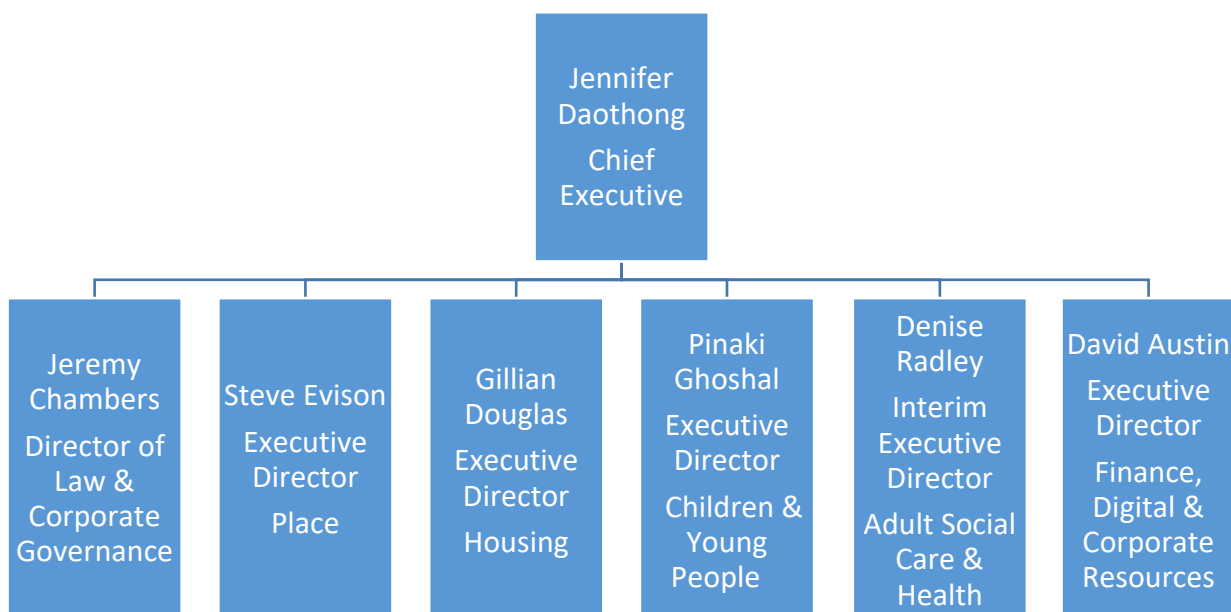
- 4.2. Under Part I - Summary of the Constitution, Section 15 currently states: -

A brief outline of the Council's current organisational structure appears in the Constitution.

It is proposed that this is amended to: -

A copy of the Council's current organisational structure chart is included at Appendix 8.

At Appendix 8 the following structure chart will be included: -



Scrutiny - Executive Protocol

- 4.3. At its meeting of 2nd March 2022, Council agreed to adopt a Scrutiny-Executive Protocol and that this be amended to the Constitution. It is proposed that the protocol is included as Appendix 9 to the Constitution and the following wording is included at Article 6 Overview And Scrutiny at the end of paragraph 6.2: -

The Council has agreed a Scrutiny - Executive Protocol which is included at Appendix 9.

Overview and Scrutiny Procedure Rules - Scrutiny of health matters

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- 4.4. This section needs to be updated to reflect the fact that referrals to the Secretary of State can no longer be made. The current wording is as follows: -

NHS bodies must, subject to certain exceptions, consult the Healthier Communities Select Committee about any proposal for substantial variation in, or substantial development of, a service in the area, and where consulted the Select Committee is entitled to comments and in appropriate cases, the Select Committee may make referrals to the Secretary of State under the 2013 Regulations.

The following amendment is proposed: -

NHS bodies must, subject to certain exceptions, consult the Healthier Communities Select Committee about any proposal for substantial variation in, or substantial development of, a service in the area, and where consulted the Select Committee is entitled to comments and in appropriate cases, ~~the Select Committee may make referrals to the Secretary of State under the 2013 Regulations.~~ write to the Secretary of State, to request that they 'call-in' a reconfiguration proposal.

- 4.5. Also, that the following addition be made to the Terms of Reference for the Healthier Communities Select Committee: -

To comment on proposals for substantial developments or variation in health services in the local area and, if deemed necessary, write to request that the Secretary of State consider calling in a proposal.

Scheme of Delegation

- 4.6. The current Council Scheme of Delegation and Mayoral Scheme of Delegation do not reflect or align with the current Council management structure. For example, the schemes include authority given to the *Executive Director of Community Services*, a role that no longer exists.
- 4.7. Authority is sought to tidy up both Schemes of Delegation to reflect the current management structure of the Council.
- 4.8. Members should note that authority is not being sought to amend the levels or extent of any delegations at this time and that a detailed review of both schemes will be undertaken and reported back to a future meeting of the Governance Committee.

Deputations

- 4.9. Currently the Constitution refers to deputations in the following sections: -

Under **Article 6 - Overview & Scrutiny Committee**, under *Community Representation* the following wording is included: -

*To receive petitions, **deputations** and representations from local people and other stakeholders about areas of concern within their overview and scrutiny remit and to refer them to the Executive, appropriate committee or officer for action, with a recommendation or report if the committee*

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considers that necessary.

Under the **Council Procedure Rules** under *Business to be conducted at Ordinary Meetings* the following wording is included: -

To receive deputations and petitions, if any

- 4.10. The Constitution does not define what a deputation is or the process for dealing with them. No record of the use of deputations can be found in recent times. The proposal is to delete the word *deputation* from the Constitution.

Substitutes

- 4.11. There are sporadic references to the use of substitutes in the current version of the Constitution. Set out below are some examples: -

Council Urgency Committee

The Council may also determine substitutes who may act in the absence of individual members of the Council Urgency Committee in their absence. Executive members may not be named as substitutes.

Licensing Committee

Every member of the main Licensing Committee acts as substitute for any member sitting on any Licensing Sub-Committee or Urgency Sub Committee.

Appointments Committee

In the event of any member informing the proper officer in writing that they are unable to attend a meeting of the Appointments Committee, then the Council appoints such person as the Leader of the relevant political group shall nominate as substitute in writing to the proper officer to be a member of the Appointments Committee for the purpose of that meeting only.

Cabinet

There may be no formal co-optees or substitutions to the Executive.

Works Council

The Council and the constituent trade unions shall both appoint substitute members of the Works Council, any one of whom shall act as a substitute for a full member of the appropriate side in the event of the latter being unable to attend a meeting. A substitute attending a meeting in place of a member shall have the same powers as the member.

If a member or a substitute member of the Works Council ceases to be a Member of the Council or an employee of the Council, that member shall cease to be a member of the Works Council. Any such vacancy arising shall be filled by the Employer's Side of the Union Side as appropriate.

Pension Board

Specifically prohibits substitutes.

Standing Advisory Council on Religious Education

'Member' means a member of SACRE and includes a substitute or co-opted

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member.

4.12. There have been several occasions in recent times where formal meetings of the authority have needed to be rescheduled or, on one occasion, cancelled on the night due to being inquorate. The current constitutional provisions don't allow sufficient flexibility and the following amendments are proposed: -

1. Substitutes be permitted at the following committees of the Council: -
 - a. All Planning Committees
 - b. All Licensing Sub-committees (as current)
 - c. Governance Committee
 - d. Standards Committee
 - e. Overview & Scrutiny Committee and all Select-Committees
 - f. Appointments Committee (as current)
 - g. Council Urgency Committee (as current)
 - h. Works Council (as current)
2. Substitutes not permitted at the following: -
 - a. Pensions Board
 - b. Cabinet
3. The following rules to be put in place regarding the use of substitutes: -
 - a. For each committee, 2 substitute members for each group to be appointed at the Annual General Meeting of the Council.
 - b. Substitute members to be permitted to take the place of an ordinary member from the respective political group on the Committee where that member will be absent for the whole of the meeting. Such an appointment would apply for the entire meeting, including where the meeting is reconvened after any adjournment.
 - c. The political group whose committee member wishes to appoint a substitute member must notify the Monitoring Officer in writing, prior to the beginning of the relevant committee meeting of the intended substitution. Once notification of a substitute member has been received the ordinary member of the committee will not (unless the notice of substitution is withdrawn by the political group prior to the start of the meeting) be entitled to attend the relevant meeting.
 - d. Any nominated substitute must have undertaken appropriate training relevant to the committee in question.

Council meetings during any Pre-election Publicity Period

4.13. The last 18 months have seen more elections than usual. As a starting point, wherever possible, all formal meetings of the authority that can be cancelled are cancelled during the period from publication of the Notice of Election until 10pm on the day of Poll. However, there are occasions where Council meetings are necessary during these periods.

4.14. As currently drafted, the Council Procedure Rules make no allowance for the difficulties that arise in holding a meeting of Council during a pre-election publicity period. Cabinet Members have understandably struggled to fully respond to questions or debate motions fully. This has led to frustration all round.

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4.15. With this in mind, the following additional Council Procedure Rule is proposed, which seeks to balance the restrictions caused by any election and the need for business to be transacted: -

Meetings of the Council during any Pre-election Publicity Period

Should, in the opinion of the Monitoring Officer, a meeting of the Council be required during any Pre-election Publicity Period, then the following provisions will apply: -

- *The meeting will be summonsed in the normal way;*
- *The meeting will only consider reports relating to the decisions needed that necessitated the calling of the meeting;*
- *No other business will be considered;*
- *There will be no Announcements, Petitions, Public Questions, Member Questions or Motions on Notice;*
- *During any debate members will at all times be mindful of the restrictions placed on them and the Council by the Pre-election Publicity Rules.*

Amendments to the Constitution

4.16. As referenced in paragraph 3.15, above, there are, from time to time, exceptional circumstances where the Monitoring Officer is required to make immediate amendments to the Constitution in order to give it legal effect and protect the Council.

4.17. It is recommended that the following additional wording is added to Article 21.2 of the Constitution: -

This provision shall not apply where in the professional opinion of the Monitoring Officer the Constitution requires amendment without delay. In these circumstances, the Monitoring Officer will notify the Chair of the Governance Committee and the Chief Executive of the amendment and the reasons for it within 24 hours.

The Monitoring Officer will also notify all members of the Council of the amendment and the reasons for it within five working days.

The Council's Website will be updated within five working days.

The amendment will be reported to a meeting of the Governance Committee as soon as reasonably practicable.

5. Future Work Programme

5.1. The current version of the Constitution has been reviewed in phases since early 2022. Whilst this approach has been useful in allowing some much-needed amendments to be considered and agreed by members, it is useful periodically for the whole Constitution to be subject to a review. The Constitution is a document that should be accessible and easy to use for Members, officers, stakeholders and the public. The current Constitution is sometimes difficult to

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navigate, particularly the lack of a clear overall structure, contents (with hyperlinks) and index.

- 5.2. Following discussion between the Monitoring Officer and the Mayor, Chair and Vice-Chair of the Governance Committee, Cabinet Member with responsibility for governance and the Chief Executive, a holistic review of the Council's Constitution has been requested.
- 5.3. The Council has committed to undertake a review of industrial relations and it is likely that a number of recommendations relating to engagement mechanisms will be forthcoming. Those will be picked up and incorporated into the constitutional review.
- 5.4. Set out below is an indicative timeline for the holistic review: -

18th December 2024

Governance Committee considers this report.

22nd January 2025

Council considers any recommendations from the Governance Committee.

December 2024 – February 2025

Officers carry out a detailed analysis of other London council constitutions.

March 2025 – April 2025

Several workshops and Governance Committee meetings to consider potential revisions.

7th May 2025

Council AGM to consider and approve the revised Constitution.

6. Financial implications

- 6.1. Not Applicable

7. Legal implications

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

8. Background papers

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

[Lewisham Council - Our constitution](#)

9. Report author and contact

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