



Constitution Working Party

Report title: Proposed changes to the Council's Constitution.

Date: 8 October 2020

Key decision: No.

Class: Part 1

Ward(s) affected: All

Contributors: Suki Binjal, Director of Law, Governance & HR

Outline and recommendations

This report suggests that the Council should change its Constitution to reflect the findings of the Local Democracy Review, along with minor changes to the Health & Wellbeing Board to reflect the creation of a new regional Clinical Commissioning Group from 1 April 2020.

Timeline of engagement and decision-making

The Local Democracy Working Group, following extensive consultation with local people, members, staff and stakeholders made a recommendation on 18 December 2019 that Constitution Working Party should consider the proposed changes to overview and scrutiny set out in this paper. Details of that extensive engagement were set out in the paper considered by the Local Democracy Working Group.

1. Summary

- 1.1 This report suggests that the Council should change its Constitution to reflect the findings of the Local Democracy Review. In particular it suggests that Overview & Scrutiny task and finish groups should be set up.
- 1.2 The report also suggests minor changes to the membership of the Council's Health and Wellbeing Board which are needed because of the creation of a new regional Clinical Commissioning Group from 1 April 2020.
- 1.3 This report was originally intended to be considered by the Constitution Working Party in March but has been delayed due to the Council's response to the Coronavirus (Covid-19) crisis.

2. Recommendations

- 2.1 CWP is recommended to propose to Council that:
 - (a) The current Article 6 of the Constitution, which relates to Overview and Scrutiny be replaced with that appearing at Part A of Appendix 1.
 - (b) The current Overview and Scrutiny Rules appearing at Part E of the Council's Constitution be replaced with those appearing at Part B of Appendix 1
 - (c) that the current paragraph 15 (c) of the Council's Executive Procedure Rules be replaced with that appearing at Part C of Appendix 1
 - (d) That the membership of the Health and Wellbeing Board (HWB) be changed with effect from 1 April 2020 so that the representative of Lewisham Clinical Commissioning Group (CCG) is replaced by the representative of the South East London CCG and the Constitution amended accordingly

3. Policy Context

- 3.1. The proposals relating to the changes to overview and scrutiny are consistent with the Council's commitment to openness and transparency as set out in the Corporate Strategy. Those relating to the changes to the Health and Wellbeing Board are a response to the national agenda to create regional CCGs.

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4. Background

4.1. The Constitution sets out the procedures for conducting Council business. Its contents are set out in law. The Council must have arrangements in place for overview and scrutiny though it has some discretion about how it organises its overview and scrutiny activities.

4.2. **Overview and Scrutiny**

Briefly, the Council's overview and scrutiny arrangements are:-

- All members, other than members of Mayor and Cabinet, sit on the main Overview and Scrutiny Committee
- There are 6 standing sub committees known as select committees, consisting of between 7 and 11 members, which can make recommendations and reports to the Mayor and Cabinet and hold executive members and senior officers to account
- Two of these select committees have some legal responsibilities for the overview and scrutiny of health and crime and disorder issues
- The Business Panel and the Education Business Panel carry out the statutory role of "call in" which means that they can ask the Mayor and Cabinet to reconsider decisions made but not yet implemented.

4.3. Following in depth review of these arrangements, the Local Democracy Review Working Group recommended that the Council should change the focus of its overview and scrutiny work to enable members to make a contribution other than through the standing select committees. The Group recommended that the Overview and Scrutiny Committee should be able to set up time limited task and finish groups to carry out in depth reviews of particular issues. This would allow more focused contribution by overview and scrutiny members alongside the work of the standing select committees.

4.4. To free up members to participate in this time limited work it was recommended that the numbers serving on select committees should be reduced from between 7 and 11 members, normally to 6 members, with flexibility, if required, to appoint up to 10 members.

4.5. The Working Group suggested that the membership of any time limited task and finish group should be limited to 5, and that such groups should only last for a period of between 3 and 12 months. Any report a task and finish group prepares should be submitted to the appropriate decision making body within the Council and then the response should be considered by the full Overview and Scrutiny Committee.

4.6. These proposals are reflected in the proposed amended Article 6 and Procedure Rules appearing in Part A of Appendix 1.

4.7. **Health and Wellbeing Board**

4.8. By law, the Council must have a Health and Wellbeing Board. Its terms of reference are set out in law, as is its composition. These legal requirements are reflected in the Council's Constitution now.

4.9. Currently one of the members on the HWB is a representative of the Lewisham CCG. From 1 April 2020 that will no longer exist. From then it will be replaced by the South East London CCG. We therefore need to reflect this in the Constitution and replace the reference to the Lewisham CCG with the South East London CCG.

5. Financial implications

5.1. There are no financial implications arising from this report.

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6. Legal implications

- 6.1. It is a legal requirement to have and maintain a constitution which reflects statutory requirements. The current Constitution complies with this requirement and will still do so if the amendments are accepted.
- 6.2. It is also a legal requirement that the Constitution must be publicly available and if Council agrees the amendments, an amended version will be placed on the Council's website as soon as possible.
- 6.3. Only the full Council can agree changes to the Constitution.
- 6.4. The constitution allows changes to be made to the overview and scrutiny arrangements without consultation save in exceptional circumstances which do not apply in this case. In any event there has been consultation in the course of the work of the Local Democracy Working Group.
- 6.5. 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.
- 6.6. 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.
- 6.7. 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.
- 6.8. 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
- 6.9. 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->

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[practice](#)

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

6.10 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](#)

6.11 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>

7. Equalities implications

7.1. There are no equalities implications.

8. Climate change and environmental implications

8.1. There are none.

9. Crime and disorder implications

9.1. There are none.

10. Health and wellbeing implications

10.1. There are proposals to amend the composition of the HWB slightly, but only to reflect national organisational changes affecting CCGs.

11. Background papers

11.1. There are none.

12. Glossary

Term	Definition
Constitution	The rules which govern how council business is done

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Term	Definition
Constitution Working Party (CWP)	A group of councillors set up to advise the Council about whether to change its Constitution
Clinical Commissioning Group (CCG)	Clinically-led NHS bodies responsible for the planning and commissioning of health care services for their area.
Health and Wellbeing Board (HWB)	A Council Committee consisting of councillors, health representatives and others to consider and assess local health and wellbeing needs and joint plans
Local Democracy Working Group	A group of councillors set up to advise the Council on how to make its decision making more open and effective
Overview and Scrutiny	The role of helping the Council with policy development, holding to account and asking the Mayor and Cabinet to reconsider decisions

13. Report author and contact

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