



## Council

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

**Date:** 26 May 2021

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Director of Law, Governance & HR

### **Outline and recommendations**

This report asks the Council to adopt Constitutional revisions regularising the rights of parental and diocesan representatives on Overview & Scrutiny Task and Finish Groups and the Education Business Panel, amending the provisions providing that the Mayor is automatically the Chair of the Health and Well Being Board and confirming the validity of electronic signatures in contractual matters. The Council is recommended to amend the Constitution to include the proposed revisions at Appendices 1 to 3 of this report.

## Timeline of engagement and decision-making

There have been many Council decisions amending the Constitution since its introduction in 2002.

Consultation about these proposed minor procedural amendments has taken place by the Constitutional Working Party which met on the 17th May 2021 to consider these proposals. The Working Party were further advised that the Director of Law, Governance and HR, will be undertaking a wider ranging review of the Constitution in the coming municipal year. The initial response of the Working Party, that external representatives on formal Council bodies should reflect the diversity of the borough and that Councillors where possible should make up the majority of any required quorum, were noted for consideration as part of the upcoming review.

The advisory Working Party agreed to recommend to Council that it adopts the proposed changes to the Constitution.

## Summary

- 1.1. This report proposes three procedural amendments to the Council's Constitution. Firstly, confirming the voting rights of parental and diocesan representatives on Overview and Scrutiny Task & Finish Groups and the Education Business Panel. Secondly, amending the provisions providing that the Mayor is automatically the Chair of the Health and Well Being Board (HWB) and thirdly, authorising the use of electronic signatures for contractual matters.

## Recommendations

- 1.2. Council is recommended to agree that the Constitution be amended to include the revisions shown at Appendices 1 to 3.

## Policy Context

- 1.3. The Council's Corporate Strategy makes an explicit commitment to strong corporate governance. The procedural amendments proposed at Appendices 1 to 3 would build on that commitment and enable clear, open decision making in relation to all of the priorities set out in the Corporate Strategy.

## Background

- 1.4. Three minor procedural revisions to the Constitution are suggested as set out in this report.
- 1.5. Firstly, it is a legal requirement that parental and diocesan representatives have voting rights on any scrutiny committee considering education matters and this includes Overview and Scrutiny Task and Finish Groups and the Education Business Panel. These Groups/Panel are expressed as sub-committees of the Overview & Scrutiny committee. Currently, the Constitution only explicitly grants voting rights to these representatives on the Children and Young People Select Committee. These proposed Constitutional revisions merely address this anomaly.
- 1.6. In Lewisham, we have three parent governor representatives, representing primary schools, secondary schools and special schools. There are also two diocesan representatives, representing the voluntary aided faith schools in the borough, one representing the Church of England and the other, the Roman Catholic Church.
- 1.7. Secondly, the Constitution currently states the Chair of the HWB shall be the Mayor, it

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is proposed that the Mayor will no longer be automatically appointed as the Chair of the HWB. Instead the Mayor will be able to nominate another Councillor to act as the Chair, as is the practice for most other London Boroughs. It is currently intended that the Mayor will nominate the Cabinet Member for Health and Adult Social Care (who the Mayor has appointed to the HWB) to act as the Chair.

- 1.8. Thirdly, it is proposed to authorise the use of electronic signatures under the Contract Procedure Rules. Remote working during the pandemic has emphasised the need to enable signatures to be electronic to avoid authorised signatories needing to attend the office specifically to sign documents for contractual matters which could otherwise be signed electronically. Processes will be put in place to ensure that arrangements for electronic signatures operate in the same way as physical signatures with identical checks and authorisation being required for both processes.

## Financial implications

- 1.9. There are no immediate financial implications arising from the proposed amendments to the Constitution.

## Legal implications

- 1.10. It is a legal requirement under Section 9P Local Government Act 2000 that the Council have and keep an up to date Constitution which contains standing orders/rules of procedure. Amendments to the Constitution are for full Council to decide.
- 1.11. Section 9FA(4) of the Local Government Act 2000 ('the 2000 Act') provides that an overview and scrutiny committee of a local authority, or any subcommittee of such a committee, may include persons who are not members of the authority.
- 1.12. The Local Government and Housing Act 1989 ('the 1989 Act') establishes that members of committees appointed under the Local Government Acts 1970 and 1972 and who are not elected members of a Council do not generally have voting rights. There are exceptions to this rule in that Church and parent governor members of overview and scrutiny do have voting rights in respect of education matters.
- 1.13. There is a requirement, where a Council is responsible for education functions, for certain voting co-optees to be appointed to the relevant committee(s). Schedule A1 of the 2000 Act makes provision for "Overview and scrutiny committees: education functions" which applies in the case of a relevant authority that maintains one or more Church of England schools. An overview and scrutiny committee or sub-committee must include at least one qualifying person (diocesan representative) that may vote in respect of education matters only.
- 1.14. Schedule A1 further provides that in the case of a relevant authority that maintains one or more Roman Catholic Church schools, an overview and scrutiny committee or sub-committee must include at least one qualifying person (diocesan representative) that may vote in respect of education matters only.
- 1.15. Regulation 3 of the Parent Governor Representatives (England) Regulations 2001 ('the 2001 Regulations') provides that a local authority shall appoint at least two but not more than five parent governor representatives to each of their education overview and scrutiny committees and sub-committees. Regulation 10 of the 2001 Regulations provides that a parent governor representative shall be entitled to vote at a meeting of an education overview and scrutiny committee in respect of education matters only.
- 1.16. Members are reminded of the Council's duties under the Equality Act 2010.
- 1.17. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality gender reassignment, marriage and civil partnership, pregnancy and maternity, race,

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duty or the duty). It covers the following protected characteristics: age, disability, religion or belief, sex and sexual orientation

- 1.18. 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.
- 1.19. 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.
- 1.20. 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
- 1.21. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 1.22. 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](#)
- 1.23. 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

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are available at:

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

## Equalities implications

- 1.24. Creating new Overview Task and Finish Groups which are accessible to the public is designed to ensure that the decision making processes of the Council are transparent to as many as possible and that the Council remains as open and transparent to all.

## Climate change and environmental implications

- 1.25. There are none associated with the proposed change to the Constitution.

## Health and wellbeing implications

- 1.26. There are no specific implications

## Background papers

## Glossary

- 1.27. See **Section 7 – “Glossary” in the guidance** for more information.

Term	Definition
Constitution	The rules which govern how Council business is done
Overview & Scrutiny	Overview and scrutiny is the way in which Mayor and Cabinet (the ‘Executive’), officers and external organisations are held to account for the decisions that they make. It is led by Councillors who are not members of the Executive. They also influence policy development and investigate issues of local concern, making recommendations for improvement.
Overview and Scrutiny Committee	A committee made up of all non-executive Councillors which carries out scrutiny focussing on strategic and cross cutting issues.
Overview & Scrutiny Business Panel (OSBP) and Education OSBP	Lewisham has two Business Panels (sub-committees of the Overview and Scrutiny Committee).  OS Business Panel is made up of the chair and vice-chair of the Overview and Scrutiny Committee, the chair of each of the Select Committees, and two other non-Executive Councillors.  The main functions of Business Panel are reviewing key decisions once they have been taken (potentially “calling in” key decisions that have been made but not yet implemented); coordinating and approving the overall scrutiny work programme; and allocating scrutiny work in the event that it

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Term	Definition
	<p>crosses the remit of more than one scrutiny body.</p> <p>Three parent governors and two diocesan representatives sit on the Education Business Panel, alongside the Councillors that make up the regular Business Panel. The Education Business Panel reviews (and can call-in) key decisions that are education matters.</p>
Select Committee	<p>Lewisham has six Select Committees (sub-committees of the Overview and Scrutiny Committee), each made up of non-Executive Councillors and responsible for scrutinising a specific service area. Select Committees gather evidence to help them review policies and performance and make recommendations to improve outcomes for residents.</p>
Task and Finish Groups (TFG)	<p>A time limited scrutiny body which gathers evidence in relation to a topical issue of concern in order to make recommendations to improve outcomes for residents.</p>

## Report author and contact

- 1.28. Kevin Flaherty– Head of Business and Committee, London Borough of Lewisham, Laurence House, Rushey Green, SE6 4RU 0208 314 9327  
[kevin.flaherty@lewisham.gov.uk](mailto:kevin.flaherty@lewisham.gov.uk)

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**Proposed changes to the Council’s Constitution Appendix 1**

The following wording to be inserted at page 32 at para 6.3 of the Constitution.

Education Business Panel	Parent and diocesan representatives have full voting rights on this Business Panel
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The following paragraphs to be inserted at page 44 para.6.11 of the Constitution.

**Task and Finish Groups for all Education related matters.**

Any task and finish groups that is established from time to time by the Overview and Scrutiny Committee to consider any and all education themed topics, they shall consist of 5 elected members plus the invited parent and diocesan representatives.

All parent and diocesan representatives who attend an education themed Task and Finish Group shall have full voting rights.

## **Proposed changes to the Council's Constitution Appendix 2**

Amend Section C, Page 113 at paragraph 32.2(g) of the Constitution to say as follows:

(g) Chair and Vice Chair – The Chair of the HWB shall be the Mayor or such other Councillor as the Mayor may nominate to act as Chair; The Vice-Chair of the HWB shall be elected at the first meeting of the HWB in each year.

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## **Proposed changes to the Council's Constitution Appendix 3**

### **Electronic Signing**

Add a new sentence at Section I, Page 177 - paragraph 1 – Introduction of the Contract Procedure Rules to say:

In these Rules, any reference to “signed” includes signed electronically.

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