

Non-Executive Report of the: Council Wednesday, 17 July 2019	 TOWER HAMLETS
Report of: Asmat Hussain, Corporate Director, Governance and Monitoring Officer	Classification: Open (Unrestricted)
Report of the General Purposes Committee: Updated Constitution	

Originating Officer(s)	Mark Norman – Deputy Monitoring Officer Matthew Mannion, Head of Democratic Services Holly Bell, Lawyer – Civil Litigation
Wards affected	(All Wards);

Executive Summary

For the past nine months the General Purposes Committee has been overseeing a review of the Constitution. The main goals of the review have been to:

- Revise the ‘look and feel’ and navigation of the document to make it easier to access for the public, officers and Members.
- Improve the pace and delivery of decision making by ensuring decisions are taken at the appropriate levels within the organisation and that delegations are clear.
- Improving the ability of Committees and officers to innovate by ensuring supporting documents to the main constitution can be updated without requiring full Constitutional reviews.

Following completion of the review the General Purposes Committee have agreed that the Draft Constitution be presented to Council for consideration and agreement.

Following agreement by Council to Constitution will be prepared for publication on the Council’s website and briefing guidance will be prepared for Members and officers..

Recommendations:

The Council is recommended to:

1. Agree the revised Constitution as set out in Appendices 1 – 4 to this report.
2. To note that following agreement the Constitution will be prepared for publication in consultation with the Communications team and therefore to agree to delegate authority to the Corporate Director, Governance and

Monitoring Officer to make non-material changes to the Constitution during this process subject that any changes be subsequently reported to the General Purposes Committee for noting.

3. To confirm the refreshed delegations for revising the constitution including as set out in Sections 15, 19 and 42 of the Constitution, for such that:
 - The Monitoring Officer can approve all non-material changes to the Constitution including those that reflect decisions taken by the Council or changes in legislation or to correct matters of fact;
 - The Monitoring Officer can recommend to Council or General Purposes Committee for approval any material changes to Parts A to C of the Constitution with the exception of the Executive Scheme of Delegation (Section 30) which will be amended by the Monitoring Officer should the Mayor amend his Executive Scheme of Delegation.
 - The introduction to Part D of the Constitution sets out the delegated authority to amend each Part D Section. Unless indicated otherwise, the Monitoring Officer has delegated authority to amend Part D documents in consultation with the Chief Executive.
 - All Sections of the Constitution remain in place unless explicitly revised or removed.
4. To note the updated Corporate Scheme of Delegation within the Constitution and to note that Corporate Directors have delegated authority to create their own Directorate Schemes of Delegation. Any such schemes will be published in Part D of the Constitution.

1. REASONS FOR THE DECISIONS

- 1.1 It is good practise to regularly review the Council's governance arrangements to ensure they are effective in supporting decision making at the Council. This report is presented as the conclusion of the latest review by the General Purposes Committee and proposes a number of improvements to the constitution as set out in Section 3 of the report.
- 1.2 The intention of the review is to make the Constitution easier to navigate, quicker to update where appropriate and to provide clearer decision-making procedures for use by Members and officers. This review is working to support the increase in pace and delivery of decision making at the authority.
- 1.3 This work is also in line with a key recommendation of the Corporate Peer Challenge reported to the Best Value Improvement Board on 17 September 2018 which stated that the Council should 'remove bad bureaucracy whilst retaining good governance'.

2. ALTERNATIVE OPTIONS

- 2.1 It is for Council to review the document and it may propose amendments at the meeting.
- 2.2 Council may also determine not to accept the proposed revised constitution. This is not recommended as the revisions are important in improving the efficiency and effectiveness of the Council's decision making processes and procedures.

3. DETAILS OF THE REPORT

- 3.1 The Local Government Act 2000 requires the Council to prepare and keep up to date a Constitution. Guidance was also issued which requires the Constitution to contain a number of specific items such as Council meeting procedure rules, the role of Councillors and the elected Mayor, and rules relating to finance, contracts and procurement amongst others.
- 3.2 The Constitution was last revised, in stages, through 2017 with a number of reports taken to General Purposes Committee and Council for agreement.
- 3.3 This latest review, overseen by the General Purposes Committee had a number of key goals including:
 - Improving ease of use and navigation of the Constitution
 - Revising decision making rules to ensure decisions can be taken at the appropriate level within the authority and looking to speed up decision making where appropriate.
 - Allowing easier updating of supporting documentation and procedures to allow the Council to adapt more quickly to changing circumstances without requiring full Constitution reviews.

Navigation and Ease of Use

- 3.4 The review considered that the existing constitution was split into a lot of 'Parts' and that it did not flow very well as a document, for example, the Articles at the start followed no obvious pattern and some sections later on were interrupted with tables of data, dozens of pages long. Key changes proposed therefore included:
 - Reducing the number of 'Parts' (from 8 down to 4) and now numbering Sections sequentially throughout the Constitution so simply knowing the number of the Section will allow users to navigate to the right place.
 - Merging the current 'Introduction' and 'Articles' Parts to create one new Part A - Introduction and Explanations and look to order the Sections within in a sensible way.

- Look to simplify the Sections in Part A and reduce the occasions where they have to be read in conjunction with later procedures for simple queries.
- Move many of the large tables and detailed procedures to the new Part D to reduce the size of the main part of the document.
- Improve the ability to maintain up to date content within supporting procedures and data within Part D by delegating authority to change specific Sections is given to Committees and/or Senior Officers as appropriate.

3.5 To that end, the proposed new constitution is set out as follows:

- Part A – Summary and Explanation
- Part B – Responsibility for Functions and Decision-Making Procedures
- Part C – Codes and Protocols
- Part D – Supplementary Documents

Revised Decision Making

3.6 Effective decision making requires that decisions are taken efficiently and at the appropriate level within the organisation. The Council's Peer Review last year highlighted that the Council should look for improvements in this area when undertaking a constitutional review.

3.7 A number of specific issues were noted:

- Lack of clarity over whether executive decisions were 'Key Decisions' and thus requiring a Member level decision.
- Confusion over Corporate Delegations and the extent to which Corporate Directors had authority over decision-making within their areas.
- Out of date Directorate Schemes of Delegation.
- The Council was not publishing enough significant officer level decisions.

3.8 Changes have been proposed to address these issues:

- The Key Decisions threshold has been clarified with a new financial threshold introduced (see the paragraph later in this report). Additional guidance has also been provided around the sorts of decisions which would normally be considered Key.
- The Corporate Delegations sections of the constitution have been simplified and Corporate Director powers have been clarified.
- All Directorates are working on revised schemes of delegation to publish alongside the rest of the updated Constitution.
- A new financial threshold has been established for the publication of significant officer decisions (following consultation with the relevant Lead Member) – see paragraph later in this report.

Easier updating of supporting documentation and procedures

- 3.9 The Constitution contains a large amount of detailed information relating to specific functions/committees and decision processes. For example, it contains procedure notes for many committees including Strategic Development, Licensing, Scrutiny Committees and many Boards and Panels.
- 3.10 This ensures transparency of the processes which is an important function of the Constitution. However, it does mean that Committee's face a requirement to take any changes through a constitution review to have them agreed. This was slowing down innovation and discouraging committees from trying new arrangements. For example, the Development Committee has been looking to re-organise how different parties contribute to the discussion on each committee report. However, to have this change agreed it would require it to be added to a constitution review processed through to Council for agreement.
- 3.11 Therefore, documents such as the procedure rules for these Committees have been placed in Part D with specific delegated authorities to make amendments given to relevant officers/committees. In the above example, the Committee would now be authorised to agree the changes which would then be updated straight into the Constitution. Reports on these changes made would be presented to General Purposes Committee to allow it to maintain oversight.

Key Decisions

- 3.12 The Key Decision threshold set out in the current constitution is as follows:
- (i) A "key decision" is an executive decision which is likely-
 - a) to result in the relevant 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) to 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.
- 3.13 The definition is taken from the original Model Code of Constitution from nearly twenty years ago. Most authorities have since looked to increase the guidance in their constitutions around Key Decisions, in particular with reference to the financial thresholds. The lack of a definition beyond 'significant' makes it very difficult to determine whether particular reports are Key Decisions or not so there is concern that in some cases appropriate procedures may not be followed. Officers have also asked for more definition

in respect of threshold (b) on the impact on communities living within two or more wards.

3.14 Having discussed this issue at a number of meetings, the General Purposes Committee are propose the following new Key Decision thresholds and guidance:

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 £1 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.

- i. In considering whether a decision is likely to have a significant impact, the decision maker is to consider the strategic nature of the decision and whether the outcome will have a significant material impact, for better or worse, on the local amenity or wellbeing (including social and environmental impact) of the community or the quality of service provided to a significant number of people living or working in the locality affected.
- ii. When officers consider the impact on the Community they will, for example, consider the effect on specific groups within that Ward (defined by other characteristics such as ‘age’, ‘culture’ etc) where those groups make up a significant proportion of that Ward’s population.
- iii. In determining the meaning of “significant” for the purposes of these paragraphs, regard must be had to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the Local Government Act 2000.

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

1. 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.

2. 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 29 of the Constitution.
 3. 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 criterions (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.
 4. 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.
 5. 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 criterions (A) or (B) above, is not a Key Decision even if the comparable previous decision was identified as a Key Decision.
- 3.15 The Council's constitution states that all Key Decisions must be taken by the Mayor (in Cabinet or as an Individual Mayoral Decision). Therefore, all decisions which meet the above criteria must be presented for Member-level decision.

Publication of Officer Decisions

- 3.16 The Openness of Local Government Bodies Regulations require that certain officer decisions should be published after they have been taken. Therefore Section 3 of the new Constitution will also set out new thresholds for the publication of decisions taken by officers. This states that officers must publish details of any decision (executive or non-executive) that they take over a threshold of £250,000.
- 3.17 Where officers are taking executive decisions, these decisions can only be taken following consultation with the relevant Lead Member.
- 3.18 The combination of the new, clearer Key Decision threshold and the new officer decision publication threshold should ensure that Lead Members are engaged with all significant executive decision making at the Council.

Overview and Scrutiny Committee

- 3.19 The Overview and Scrutiny Committee (OSC) has reviewed the structure of its sub-committees and these changes are covered in the new Constitution. In addition the Scrutiny procedure information in the Constitution has also been reviewed to bring it into line with the new style. Note that the new OSC membership should be reviewing how their procedures operate and any consequential amendments from any such review will be dealt with at a later date.

Selected other changes to the Constitution

- 3.20 **Council Procedure Rules** – General Purposes Committee are proposing a number of minor amendments to the Council Procedure Rules, including:
- Allowing the Mayor 2 minutes to respond to opposition comments on his report to Council.
 - Providing a minimum of 5 minutes for opposition group contributions to the State of the Borough debate.
 - Allowing scope to the Young Mayor to address Council if required.
 - Making the rules around accepting Motions clearer including where the Monitoring Officer may reject a motion.
 - In line with recent case law, allowing ungrouped Councillors to submit motions without a seconder.
 - Clarity on allowing Members to withdraw a motion or amendment at any time.
 - Updating the petition scheme with notes highlighting that young people may submit petitions and giving the Chair of the meeting scope to vary the usual procedures if necessary in order to allow those attending time to properly express their views.
- 3.21 **Corporate Scheme of Delegation** – the Corporate Scheme of Delegation, as set out in Part 3 of the current constitution has been updated and simplified (the content is in Part B of the new Constitution). In particular, it is now clearer on delegated authority to Corporate Directors for matters within their service area. The new Corporate Scheme is significantly shorter than the previous version.
- 3.22 **Directorate Schemes of Delegation** – all Corporate Directors have delegated authority to produce a Directorate Scheme of Delegation. All Corporate Directors are looking to revise their schemes and these will be published in Part D of the new constitution to ensure transparency.
- 3.23 **Council Financial Regulations** – the Corporate Director, Resources has undertaken a review of the Council's Financial Regulations (currently in Part 6 – Officer Procedure Rules). This review will bring the procedures up to date and increase their effectiveness. It also proposes a new Corporate Scheme of Financial Delegations which sits in Part D of the new Constitution.

Next Steps

- 3.24 Following agreement by Council, the revised document will be prepared for publication on the Council's website and to Members and officers. This work may involve making minor non-material changes to ensure the best look and feel for the document, in particular in line with new accessibility rules for local authority websites which are being implemented.

4. EQUALITIES IMPLICATIONS

- 4.1 The Constitution sets out a Citizen's Rights and Responsibilities in respect of their dealings with the Council.
- 4.2 An effective Constitution ensures the Council maintains the necessary transparency and public engagement procedures to allow proper engagement with the Council's decision making.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
 - Data Protection / Privacy Impact Assessment.

- 5.2 An ineffective Constitution would be a significant risk to the Council in many areas leaving the Council open to challenge in its decision making and in its provision of services.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report asks Council to agree the revised Constitution as set out in Appendices 1 – 4 to this report. There are no direct financial implications arising.

7. COMMENTS OF LEGAL SERVICES

- 7.1 Section 9P of the Local Government Act 2000 (as amended) requires the Council to prepare and keep up to date a constitution.

- 7.2 The constitution must contain the elements identified specified by the Secretary of State in the Constitution Direction issued in December 2000.
- 7.3 The constitution must be published and be available for inspection by members of the public.
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Linked Reports, Appendices and Background Documents

Linked Report

- Reports presented to the General Purposes Committee meetings on 29 October 2018, 11 December 2018, 26 February 2019, 3 April 2019 and 25 June 2019.

Appendices

- Appendices 1 – 4 – proposed new Parts A – D of the revised Constitution.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None

Officer contact details for documents:

N/A