

LONDON BOROUGH OF TOWER HAMLETS
COUNCIL MEETING
WEDNESDAY 15th SEPTEMBER 2010
REVIEW OF THE CONSTITUTION –
RECOMMENDATIONS OF THE CONSTITUTION WORKING PARTY
REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

1. INTRODUCTION

- 1.1 The Council's Constitution is a working tool and is reviewed annually by a cross-party Member Working Party, supported by officers, to ensure it is up to date in terms of legislative and other changes and best practice in efficient and accountable decision making, scrutiny and ethical standards.
- 1.2 Council on 26th May agreed that the Constitution Working Party would convene to consider any necessary changes to the Constitution before the Mayoral election on 21st October. The Working Party has now completed its work and this report proposes constitutional amendments for the Council's consideration.
- 1.3 The full schedule of proposals is attached at Appendix A. Some changes are relatively minor, e.g. to update terminology or codify existing practice, and the amendments are listed in page order, not in order of importance. Therefore sections 5 and 6 of this report highlight areas where material changes are proposed and to which the Council will wish to give particular consideration:
- **Section 5: Proposed amendments relating to the introduction of the Elected Mayor**, including informing the Council of changes to Executive delegations; allocation of functions between the Council and the Mayor and the dispute resolution process; the Elected Mayor and the Council meeting; civic and ceremonial functions; and remuneration of the Elected Mayor.
 - **Section 6: Other proposed Constitutional amendments**, including changes to non-executive committees; Community Governance Reviews; Development public speaking rules; substitution arrangements; photography and recording at meetings; and a Disciplinary Protocol for statutory officers.

2. RECOMMENDATIONS

- 2.1 That changes be agreed to the Council's Constitution as set out in the schedule at Appendix A to this report, to take effect from 21st October 2010 except where indicated in the schedule.
- 2.2 That the Assistant Chief Executive (Legal Services) be authorised to amend the text of the Constitution as necessary to give effect to the agreed changes.

3. BACKGROUND

- 3.1 Following the Council meeting on 26th May, the Constitution Working Party convened to carry out the review of the Constitution. In accordance with nominations from the political groups the members of the Constitution Working Party for 2010/11 are Councillor Joshua Peck (Chair), Councillors Helal Abbas, Peter Golds, Ann Jackson and Denise Jones.
- 3.2 The Working Party has made proposals for Constitutional changes to facilitate the introduction of the Elected Mayor and also more general improvements. In relation to some of the issues considered, the Working Party were informed by officer research into practice at existing mayoral authorities.

4. THE ELECTED MAYOR AND CABINET FORM OF EXECUTIVE

- 4.1 The Local Government Act 2000 requires local authorities to operate 'Executive Arrangements', under which there is a split between the authority's 'Executive' and 'Council' (or 'non-executive') functions. The Executive is responsible for all functions except those that are reserved to the full Council or another part of the authority by law or the Council's constitution.
- 4.2 In practice this means that the Executive is responsible for most operational decisions about Council services, except the regulatory functions (planning, licensing, appeals) and some other matters including staffing, elections, standards, audit, accounts etc. The Executive must exercise its powers within the Budget and Policy Framework agreed by Council, and also has a key role in formulating the plans and strategies that comprise that framework. The Executive may comprise of either a Directly Elected Mayor and Cabinet; or a Leader and Cabinet.
- 4.3 The Mayor elected on 21st October will thus take control of all Executive functions that are currently the responsibility of the Leader and Cabinet. He/she will not take over any non-executive or regulatory functions, which remain the responsibility of the Council.
- 4.4 The Elected Mayor must still appoint a Cabinet. The Cabinet may be advisory or may have power to take decisions at the discretion of the Mayor. The size of the Cabinet is a matter for the Elected Mayor but must include at least two other Members in addition to the Elected Mayor, and as at present may not exceed ten Members in total.
- 4.5 The Elected Mayor must appoint a Deputy Mayor from among the Cabinet Members. Only one Deputy Mayor may be appointed at any one time. The Mayor may replace the Deputy Mayor at any time but otherwise the Deputy Mayor will serve for the duration of the Mayor's term of office. The Deputy Mayor has authority to exercise the Mayor's powers only if the Mayor is unable to act. The Deputy Mayor and all Cabinet Members other than the Elected Mayor must be drawn from the Councillors of the authority.
- 4.6 The powers and duties of non-executive Councillors, including Overview and Scrutiny and regulatory functions, and the delegation of non-executive functions

to committees of the Council and officers are not affected by the change to a Mayoral Executive.

5. CONSTITUTION AMENDMENTS RELATING TO THE INTRODUCTION OF THE ELECTED MAYOR

- 5.1 There are a number of changes that must be made to the Constitution to facilitate the Elected Mayor form of executive. Many of these simply substitute 'Elected Mayor/Deputy Mayor' for 'Leader/Deputy Leader' or 'Chair of Council/Deputy Chair of Council' for '(Civic) Mayor/Deputy Mayor', with appropriate adjustments as necessary to reflect statutory differences between the roles.
- 5.2 In addition to these required changes, the Working Party has proposed further amendments where it feels they are necessary to ensure efficient, effective and accountable government with suitable checks and balances in place. The main proposals made by the Working Party are set out below.

Delegation of Executive Functions

- 5.3 In law, Executive powers may be exercised by the Elected Mayor or, if the Mayor so decides, by the Cabinet, a Cabinet Committee or an individual Member; or by an officer in accordance with an agreed scheme of delegation. The Elected Mayor may allocate to each Cabinet Member a portfolio of responsibilities. The Mayor has power to replace or remove Cabinet Members and to vary or delete their portfolio responsibilities at any time.
- 5.4 All delegations made by the Mayor must be included on a written record which the Mayor must present to the Annual Meeting of the Council and subsequently, within five days of any change to the delegations, to the Monitoring Officer. The Mayor may revoke any such delegations at any time.
- 5.5 It should be noted that although the Mayor may take decisions alone and may delegate individual Cabinet members to do likewise, the rules relating to public access to information; inclusion of Key Decisions on the Forward Plan; and publication of decisions taken apply as under the present system.
- 5.6 Tower Hamlets Council has agreed that as a starting point, to enable the efficient conduct of Executive business from the inception of the new system, all Executive delegations in place on 21st October 2010 will continue to apply until such time as the Mayor elected in October amends them.
- 5.7 Because the detailed arrangements for the discharge of Executive functions will be a matter for the Mayor, and any arrangements put in place now would be subject to change at his/her discretion, the Working Party has not made detailed recommendations on this matter. However, in the interests of clarity, accountability and transparency, **the Working Party proposes that:**
- (i) **The Constitution should make clear the statutory position that the Cabinet members appointed by the Mayor must be Councillors of the authority and the Mayor must appoint one of the Cabinet Members as the Deputy Mayor;**

- (ii) **In the event that the Elected Mayor makes any change to the Executive Scheme of Delegation, Cabinet appointments or portfolios, he/she will be asked to give the reasons for the change(s) on the written statement that he/she must provide to the Monitoring Officer; and**
- (iii) **Whenever the Monitoring Officer receives notification from the Elected Mayor of any change(s) to the Executive scheme of delegation, Cabinet appointments or portfolios, the Monitoring Officer will inform all Councillors of the change(s) made and any reasons given by the Elected Mayor.**

5.8 The Mayor may appoint to Cabinet positions in accordance with the statutory provisions. In relation to the appointment of Councillors either to outside bodies or to other paid advisory roles within the authority, the Council may decide whether or not the Constitution should make provision for Mayoral appointments. **The Working Party proposes that in the first instance the Constitution should not provide for the appointment by the Elected Mayor of Councillors to any paid positions other than those of Executive (Cabinet) Members.**

Allocation of functions between the Mayor and Council

- 5.9 In the main, the allocation of functions between the Elected Mayor and the Council is set down in the 2000 Act and associated Regulations. However, there are some limited areas of discretion. Firstly, there are a small number of functions which Council can either reserve to itself or allocate to the Executive. Examples include determination of appeals; functions relating to contaminated land, pollution or air quality; investigation of statutory nuisances; appointments to outside bodies and functions relating to Local Area Agreements. A full list of these 'local choice' functions is attached at Appendix B.
- 5.10 Council on 2nd March agreed that under the Mayoral system all 'local choice' functions will in the first instance be allocated to the Council and the Working Party proposes no change to this. In practice the discharge of most of these functions is delegated to officers and this will continue.
- 5.11 The second area where the allocation of functions can be varied is in relation to the Council's 'Policy Framework'. This is the list of plans and strategies that must be adopted by the full Council. The Executive proposes the draft plan to the Council and once adopted, the Executive must make decisions in accordance with the agreed plan. By law, the following documents must currently be included in the Policy Framework:
- The Children and Young People's Plan
 - The Crime and Disorder Reduction Strategy
 - The Gambling Policy
 - The Licensing Authority Policy Statement
 - The Local Transport Plan
 - The Plans and Alterations which together comprise the Development Plan
 - The Sustainable Community Strategy
 - The Youth Justice Plan

5.12 If Councils wish, they may add discretionary plans and strategies to the Policy Framework. Tower Hamlets has not previously done so but **the Working Party now proposes that the following two discretionary strategies be included within the Council's Policy Framework, making the Mayor's proposals for those strategies subject to the approval of the full Council:**

- **The Council's Housing Strategy; and**
- **The Council's Environmental Strategy**

Dispute resolution process

5.13 In a Mayoral form of executive, there is one significant difference in the dispute resolution mechanism which applies where the Council wishes to amend or reject the Executive's proposals for the Authority's Budget or for a plan or strategy that is included in the Policy Framework. This is that a two-thirds majority vote is required to amend or reject the item in question, rather than a simple majority under the current system.

5.14 This is a requirement of statute. However, for purposes of clarity a number of existing mayoral authorities have adopted specific constitutional provisions setting out how the dispute resolution process would work in the event of a potential impasse between the Council and the Mayor in a particular case. **The Working Party proposes that such a provision should be included in the Constitution as follows:**

'Where the Council wishes to amend the Mayor's proposals it may, by a majority vote, send the budget, plan or strategy back to the Mayor and Executive, who must consider whether or not to make any amendments before re-submitting the item to the Council.

When the item is re-submitted, if the Council still wishes to amend the proposals, it can do so providing there are at least two-thirds of the Councillors present and voting at the meeting in favour of the amendment(s). Where a two-thirds majority in favour of the Council's amendment(s) is not achieved, then the Mayor's proposals stand agreed and shall be deemed to be adopted by the Authority.'

The full Council Meeting

5.15 In law the Elected Mayor is not a Councillor, but he/she will play an important role in the Council meeting, which is a key opportunity for Members to be informed about the Mayor's activities and to hold him/her to account. Most of the existing mayoral authorities accord the Elected Mayor the same rights as Councillors to move motions or amendments, present petitions, be appointed to committees etc. All of those authorities also allow Members' and public questions to the Elected Mayor at the Council meeting, and invite the Mayor to make a report to the meeting.

- 5.16 The Working Party considered how the existing arrangements and timetable for the Council meeting might be adapted to enable all necessary business to be transacted and provide proper accountability of the Elected Mayor within the time available.
- 5.17 It was noted that there was already significant pressure of time at the Council meeting and on occasion this led to very limited time being available to debate important formal business and motions towards the end of the agenda. The additional of a 'Mayor's report' and related business would intensify this pressure and there was therefore a need to review the list of agenda items and the time limits applied to each. **The Working Party proposes a number of changes as set out below.**

(a) Opening Announcements

- 5.18 These should be limited to the Chair or Chief Executive, with the Mayor and Lead Members contributing later in the meeting.

(b) Petitions and Deputations

- 5.19 The distinction between these two items is not well understood and relatively few deputations are received. In relation to petitions, the existing arrangements work well but there is often pressure on the time limit allowed for questions to the petitioners from Councillors, following the initial presentation of the petition.
- 5.20 **It is proposed to delete the provision for deputations. A maximum of three petitions should continue to be received, and the time allowed for questions by members to each group of petitioners should be increased from 3 to 4 minutes.**

(c) Access to the public gallery

- 5.21 The capacity of the public gallery is limited and at many Council meetings is exceeded by the number of people who wish to attend. Previously deputations could comprise of up to five persons and it has been the practice also to reserve up to five places for each group of petitioners. This has sometimes led to very limited access for the general public, once all of the reserved spaces for petitioners, public questioners etc have been filled.
- 5.22 **It is therefore proposed to reduce the number of public gallery seats reserved for each petition from five to two.** Additional petitioners may of course gain admittance to the 'general public' seats subject to availability.

(d) Public Questions

- 5.23 (i) **Time allowed:** A maximum of 30 minutes is currently allowed for public questions but this is rarely fully utilised. **It is proposed to reduce the maximum time for public questions to 20 minutes at any meeting.**

(ii) **Question to be asked by the person who gave notice:** For the avoidance of doubt, the Constitution should make it clear that **a question may only be put at the meeting by the person who has given notice of that question.** In the event that that person does not attend the meeting for any reason, the question may not be put by another person but the original questioner will instead receive a written response following the meeting.

(e) Public Participation – general

- 5.24 In order to increase opportunities for a larger number of individuals to participate within the slots available, **it is proposed that (i) a member of the public may only submit either a question or a petition to any meeting of the Council; and (ii) that a member of the public may not submit a question or a petition to the Council meeting if that person has previously submitted a question or petition to one of the previous two Council meetings.**

(f) Elected Mayor's report

- 5.25 **The Council Procedure Rules should make provision for the Elected Mayor to give a report to each Council Meeting. The Mayor to speak for no more than 5 minutes on this item and each political group leader to then have an opportunity briefly to respond (maximum 1 minute).** This item would be followed by Members' Questions to the Mayor or, on a matter where the Mayor has delegated executive powers to a Lead Member, to that Lead Member (maximum 30 minutes as currently).

(g) Members' Questions

- 5.26 Currently the order of questions rotates only between groups, meaning that any 'ungrouped' members – including a sole representative of a minority party – will not usually have the opportunity to put a question. In order to ensure that over the year all Councillors have an opportunity to put (a) question(s), **it is proposed that the Chair should have discretion, within the 30 minutes allocated for Members' Questions, to vary the printed order of questions in order to invite an 'ungrouped' Councillor to put his/her question.**

(h) 'State of the Borough' debate

- 5.27 **An annual 'State of the Borough' debate should be held, at either the final Council meeting of the municipal year or the first ordinary meeting following the Annual Council.** This debate would be led by the Elected Mayor and would provide an opportunity for a wide ranging discussion of policy matters and issues affecting the Council and the borough. **The Working Party recommends that following the election of the Mayor, officers work with the Mayor and Group Leaders to agree the arrangements for the 'State of**

the Borough’ debate and draft the relevant procedure rules to give effect to this.

Summary of changes

5.28 The table below summarises the proposed changes to the illustrative timetable for the ordinary Council meeting:

Existing		Proposed	
Apologies, interests, minutes	c.10 mins	Apologies, interests, minutes	c.10 mins
Announcements (Civic Mayor, CE, Leader or Cabinet members)	c.10 mins	Announcements (Chair or CE only)	c.5 mins
Petitions (Max 3 @ 9 mins each)	27 mins	Petitions (Max 3 @ 10 mins each)	30 mins
Deputations (Max 3 @ 9 mins each)	27 mins		
Public Questions (max)	30 mins	Public Questions (max)	20 mins
		Elected Mayor’s Report (max)	5 mins
		Group Leaders’ response (2 @ max 1 min each)	2 mins
Members’ Questions – to Cabinet Members or Committee Chairs (max)	30 mins	Members’ Questions – to Elected Mayor, Cabinet Members (where powers delegated) or Committee Chairs (max)	30 mins
Sub-total (est. max)	2 h 14 m	Sub-total (est. max)	1 h 42 m
Leaving approx 46 mins for:- - Cabinet/Committee business - Other formal business - Motions from Councillors		Leaving approx 1 h 18 mins for:- - Mayor’s/Cabinet/Committee recommendations - Other formal business - Motions (from Mayor or Councillors)	

Petition Scheme

5.29 Amendments are required to the terms of reference of the Council and the Overview & Scrutiny Committee to incorporate the provisions of the statutory **Petition Scheme** adopted by the Council on 14th July 2010 as follows:-

- Provision for a petition of 2,000 or more valid signatures to trigger a debate at the full Council meeting;
- Provision for a petition of 1,000 or more valid signatures to require a Chief Officer to give evidence to the Overview and Scrutiny Committee (the Committee will also invite the relevant Lead Member to the meeting); and
- A right of review by the Overview & Scrutiny Committee if a petition organiser feels the authority’s response to their petition was inadequate.

Civic and Ceremonial Duties

5.30 In drawing up the Mayoral Executive Arrangements following consultation, the Council has already decided that the ceremonial duties currently undertaken by the Civic Mayor will not transfer to the Elected Mayor but will remain with a

separate 'Chair of Council' post, the holder of which will also chair the Council meeting and will, as now, have social precedence in the borough.

- 5.31 The Working Party proposes that in relation to any future considerations on this matter, **the Constitution should make clear that it is the Council which has power to decide whether or not the Elected Mayor shall assume the functions of the Civic Mayor/Chair of Council** (apart from chairing the Council meeting, which may not be undertaken by the Elected Mayor). If the Council were to decide to abolish the ceremonial post, the Elected Mayor could then determine the extent to which he/she undertakes the ceremonial role.
- 5.32 The Working Party did consider whether, given the distinct skills and qualities required for the two roles, the continuing 'Civic Mayor' role could be further split between a 'Chair of Council' position, carrying out just that function (on an unpaid basis or combined with an existing committee chair position), and a 'Civic Ambassador' carrying out the Civic Mayor's other current duties. However, there was doubt about whether such an arrangement would be lawful, as the Local Government Act 1972 (as amended) provides for the Elected Mayor to have precedence in the Borough unless (as is the case at Tower Hamlets) the Executive Arrangements provide otherwise, in which case the Chairman (sic) has precedence.
- 5.33 **It is therefore recommended that both the civic/ceremonial function as first citizen of the borough, and the role of chairing the Council meeting, continue to be discharged by the 'Chair of Council'**

The Mayor's and members' Remuneration

- 5.34 A full review of the Scheme of Members' Allowances has not been undertaken at this stage and no proposals are made for changes to the Basic Allowance or most Special Responsibility Allowances (SRAs). However there is a need to agree the level of remuneration for the Elected Mayor and to update the terminology of the scheme, titles of posts included and other changes consequent on the introduction of the new system.
- 5.35 It is for the Council to decide the level of allowance to be paid to the Elected Mayor. In doing so, it must take into account (but is not obliged to implement in full) the recommendations of the London Councils Independent Remuneration Panel. The Mayor is not a Councillor and does not receive the Basic Allowance in addition to his/her Mayoral allowance.
- 5.36 The recommendations of the Independent Panel in relation to Elected Mayors' remuneration are attached at Appendix C. In considering what level of remuneration to propose, the Working Party referred to the recommendations and to comparative data on allowances paid to Elected Mayors elsewhere and to a range of other elected postholders (also included at Appendix 'C').
- 5.37 The London Councils Independent Remuneration Panel recommends that an allowance of £81,029 p.a. be paid to an Elected Mayor. Existing Elected Mayors in London are paid between £75,095 and £81,021 p.a. and nationally the remuneration levels range from £53,151 p.a.. The Working Party noted that in general the other Special Responsibility Allowances payable at Tower Hamlets

were below the levels recommended by the Independent Panel and in many cases below the average for London Boroughs. It was felt that the Elected Mayor's allowance should be set at a level consistent with this and one that offers the people of Tower Hamlets value for money, whilst at the same time reflecting the fact that the Elected Mayor is an important and demanding role and one which in all likelihood the postholder would need to undertake on a full-time basis. **The Working Party therefore proposes that an Elected Mayor's allowance of £65,000 p.a. be paid.**

- 5.38 The Council's current Scheme of Allowances does not make specific provision for an SRA to be paid to the Leader of the Majority Group, as under the current system that person is also the Leader of the Council. In a situation where the Elected Mayor is from the same political party as the majority of Councillors this is likely also to be the case. However, the Constitution needs to be able to cover all electoral eventualities and **it is therefore recommended that the Scheme should make separate provision for a Majority Group Leader's SRA, at the same level as a Cabinet Member (£13,325).** Of course if the Leader of the Majority Group is the Mayor or a Cabinet member, this additional SRA would not actually be paid as no Member may receive more than one SRA.
- 5.39 This issue is not specifically addressed in the Independent Panel's report but the sum proposed is below the level of SRA that the Panel recommends for the Leader of a Main Opposition Group (Band 2, c. £15k to £28k).

Overview and Scrutiny Arrangements

- 5.40 The statutory requirements for, and powers of, Overview and Scrutiny are unchanged under a Mayoral Executive. Overview and Scrutiny in Tower Hamlets is well established and widely regarded as efficient and effective. Nevertheless the Council will wish to review the arrangements to ensure that they continue to provide the most appropriate scrutiny and identify any enhancements required. In parallel with the work of the Constitution Working Party, the Chair of Overview and Scrutiny Committee is therefore leading a scrutiny review of Overview and Scrutiny under a Mayoral system and separate recommendations will be brought forward.

6. OTHER CONSTITUTIONAL AMENDMENTS

- 6.1 In addition to provisions relating specifically to the Elected Mayor, the Constitution Working Party also undertook a general review of the Constitution to ensure continued best practice. The main provisions that are the subject of proposed amendments are set out below.

Non-executive committees

- 6.2 The discharge of Non-Executive (Council) functions such as Development, Licensing and the functions currently delegated to the Audit, Human Resources, Pensions, Standards, Appeals and General Purposes Committees are unaffected by any change to a Mayoral executive. Nevertheless the Working Party looked at the current committee structure and in particular whether it would

be possible to improve efficiency through a reduction in the number of committees.

6.3 The Council must by law establish a Standards Committee and an Overview and Scrutiny Committee. No changes are proposed to these Committees, or to the Development, Strategic Development or Licensing Committees, all of which have a significant ongoing workload. In relation to the other non-executive committees, **the Working Party proposes:-**

- **That officers investigate the deletion of the Appeals Committee and the delegation of its functions to officers, preferably by October 2010, subject to any necessary changes to Human Resources procedures; and**
- **That the number of non-executive committees be reduced with effect from the start of the next municipal year, by combining functions into two new committees as follows:**
 - **A General Purposes & Human Resources Committee**, to discharge the functions currently carried out by the General Purposes Committee, Human Resources Committee and, to the extent that its functions are not delegated to officers, the Appeals Committee; and
 - **An Audit, Pensions and Accounts Committee**, to discharge the functions currently carried out by the Pensions Committee and the Audit Committee.

Freedom of the Borough ad hoc panel

6.4 The Working Party considered a suggestion that the former Mayor's Panel should be re-constituted, as a 'Chair of Council's Panel', for the current and future municipal years.

6.5 The purpose of the Mayor's Panel as previously constituted was to support the Mayor of the day in his/her role and in particular to consider and make recommendations for any award of the Freedom of the Borough. Its membership included the current and past Mayors and co-opted persons from the business and third sectors. It had been suggested that the support of such a panel may be of particular use during what will no doubt be a particularly busy period for the Civic Mayor/Chair of Council in the run up to the 2012 Olympic Games.

6.6 The Working Party did not support the re-establishment of a standing Chair of Council's Panel but **does propose that an ad hoc Panel be constituted to consider any proposals that may be made in due course relating to granting the Freedom of the Borough, including any nominations for that award.**

Community Governance Reviews

6.7 The terms of reference of the Council need to be amended to include the determination of matters relating to Community Governance Reviews. These reviews are the mechanism set out in the Local Government and Public Involvement in Health Act 2007 for considering and making recommendations

on whether a parish or town council should be established in any part of the borough and associated matters. The Act provides that decisions on these matters are reserved to the full Council.

Development Procedure Rules and public speaking procedure

- 6.8 The Development and Strategic Development Committees have agreed proposed changes to the Development Procedure Rules at Part 4.8 of the constitution, in relation to the arrangements for public and non-committee members speaking at the committees. The full proposals are attached at Appendix 'D' and the main changes are:
- A common deadline will now apply to both members of the public and councillors registering to speak on an application;
 - Deadlines are now set at a specified number of days before the meeting rather than on a named day of the week, reflecting greater flexibility in the calendar of meetings;
 - For the avoidance of doubt the new procedure requires all speakers to state whether they wish to speak in support of or objection to the application;
 - Additional information is included on how speaking slots will be allocated, and some details in relation to when an applicant or supporters will be invited to address the committee – previously adopted by the committee as part of its own procedures – are now included in the Constitution itself.
- 6.9 The Working Party **endorsed the proposed amendments.**
- 6.10 In relation to the supplementary public speaking procedures adopted by the committees themselves, the Working Party noted that where a Member or Members register to speak in objection to an application, this would trigger an additional three minutes' speaking time for the applicant or a supporter. The Working Party felt that for consistency, consideration should be given to a similar facility for objectors in cases where a Councillor or Councillors register to speak in support and asked officers to investigate and report back as necessary.

Substitution arrangements on Council Committees

- 6.11 The Constitution provides for up to three substitute members to be appointed for each member of a committee other than the Licensing Committee. Substitute members may attend meetings to take the place of the ordinary member for whom they are the designated substitute, but currently they may only do so where the ordinary Member will be absent for the whole of a meeting.
- 6.12 This limitation can cause inconvenience, for example where a substitute member attends a meeting of the Development Committee at which determination of one application is deferred. When that application comes back to the Committee, the substitute member and not the ordinary member is qualified to vote on the matter. However if the substitute member is required to attend for that item, the ordinary member may not then replace him/her for the remainder of the agenda items.

- 6.13 The Working Party therefore **proposes that a substitute member should be able to replace a committee member where necessary for part of a meeting or for (a) specific agenda item(s), subject to any handover between the two members taking place at the beginning of a new agenda item.**

Photography/recording at Council and other meetings

- 6.14 It is current practice that no photography or video or audio recording of any kind may take place at a Council, Committee or other formal meeting without the express permission of the Chair, and this reflects best practice across the majority of local authorities. For clarity and the avoidance of doubt, the Working Party **proposes that this provision, already a working procedure, should be incorporated into the Council Procedure Rules.**

Disciplinary Policy and Procedure for the Chief Executive, Chief Finance Officer and Monitoring Officer

- 6.15 The Working Party considered a draft of the above document as attached at Appendix E. This represents a protocol that will be referred to in, and will supplement, the constitutional provisions on this matter. The content of the draft protocol reflects statutory provisions and the adoption of the protocol had been recommended by the District Auditor.
- 6.16 The Working Party **recommends the adoption of the policy and procedure as attached.**

7. COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 This report proposes amendments to the Constitution as detailed in the appendix. There are no direct costs arising from the proposals with the exception of those relating to Mayors and Members' remuneration.
- 7.2 An Elected Mayor's allowance is proposed of £65,000 p.a.. This exceeds the Special Responsibility Allowance currently payable to the Leader of the Council by £37,120 p.a.. There is also a proposal for an SRA, at the same level as a Cabinet Member (£13,325 p.a.), to be paid to the Leader of the Majority Group only if that person is not otherwise in receipt of an equivalent or higher SRA by virtue of being the Mayor, Deputy Mayor or a Cabinet Member.
- 7.3 The proposed reduction in the number of non-executive committees from May 2011 will result in the deletion of three committee chair posts that currently attract Special Responsibility Allowances totalling £19,601 p.a..
- 7.4 The net additional cost of the proposed changes will therefore be between £17,519 and £30,844 p.a.. This represents an increase in the total cost of the Members' Allowances Scheme for which there is currently no budget provision and which will need to be contained within the total payments to be made from the scheme following any changes to Cabinet appointments made by the Elected Mayor in due course.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 8.1 The comments of the Assistant Chief Executive (Legal Services) have been incorporated into the body of this report.

9. IMPLICATIONS FOR ONE TOWER HAMLETS

- 9.1 The Constitution provides for efficient, accountable and transparent decision-making to the benefit of all local residents and communities.

10. ANTI-POVERTY IMPLICATIONS

- 10.1 There are no direct anti-poverty implications arising from the recommendations in this report.

11. IMPLICATIONS FOR THE REDUCTION OF CRIME AND DISORDER

- 11.1 There are no direct implications for the reduction of crime and disorder arising from the recommendations in this report.

12. STRATEGIC ACTION FOR A GREENER ENVIRONMENT (SAGE)

- 12.1 There are no direct SAGE implications arising from the recommendations in this report.

13. Appendices attached:-

APPENDIX A:	Detailed schedule of proposed constitutional amendments
APPENDIX B:	'Local Choice' functions
APPENDIX C:	Remuneration of the Elected Mayor – Independent Panel recommendations and comparative data
APPENDIX D:	Proposed amendments to Development Procedure Rules
APPENDIX E:	Proposed Disciplinary Policy and Procedure for Chief Executive, Chief Finance Officer and Monitoring Officer

LOCAL GOVERNMENT ACT, 1972 SECTION 100D (AS AMENDED)

LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

Brief description of background papers:

Name and telephone number of holder and address where open to inspection:

- Local Government Act 2000 (as amended) and Guidance to Authorities on constitutions.

John Williams x 4204, 1st floor, Mulberry Place.

CONSTITUTION WORKING PARTY: RECOMMENDATIONS TO THE COUNCIL, 15th SEPTEMBER 2010

SCHEDULE OF PROPOSED AMENDMENTS TO THE CONSTITUTION

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Elected Mayor	<p>(Part 1, page 5)</p> <p>(Article 2, page 11)</p> <p>(Throughout Constitution)</p> <p>(Article 4, page 15)</p> <p>(Article 5, page 18)</p>	<p>Redraft 'Summary and Explanation' to reflect the Elected Mayoral system.</p> <p>Article 2.02 – Insert information on Mayoral election</p> <p>Throughout - substitute 'Mayor' for 'Leader of the Council'; 'Deputy Mayor' for 'Deputy Leader of the Council'; 'Chair of Council' for 'Mayor' and 'Deputy Chair of Council' for 'Deputy Mayor'.</p> <p>Full Council Meeting - to include reference to attendance by 'all Councillors and the Mayor'.</p> <p>Chairing the Council meeting – to include clarification that the ceremonial duties currently undertaken by the Civic Mayor will not transfer to the Elected Mayor but will remain with a separate 'Chair of Council' post, the holder of which will also chair the Council meeting and will, as now, have social precedence in the borough. Also that in relation to any future considerations on this matter, that it is the Council which has power to decide whether or not the Elected Mayor shall assume the functions of the Civic Mayor/Chair of Council (apart from chairing the Council meeting, which may not be undertaken by the Elected Mayor).</p>	<p>Amendments required to introduce the Elected Mayoral form of Executive.</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
	<p>(Article 7, page 22)</p> <p>(Part 4.3, page 159)</p> <p>(Various)</p>	<p>Delete provision for the Council to remove the Leader from office (Article 7.03)</p> <p>Budget and Policy Framework Procedure Rules – amend to reflect statutory difference in dispute resolution process (two-thirds majority required for Council to amend Mayor’s proposals)</p> <p>Standards Committee (Article 9), Members’ Code of Conduct (Part 5.1), Member/Officer Protocol (Part 5.4) and Employees’ Code of Conduct (Part 5.5) – amend to cover ‘Mayor <u>and</u> Councillors’).</p>	
Policy Framework	(Article 4.01, page 15)	<p>Delete ‘Youth Justice Plan’</p> <p>To include the following two discretionary strategies within the Council’s Policy Framework:-</p> <ul style="list-style-type: none"> • The Council’s Housing Strategy; and • The Council’s Environmental Strategy 	<p>No longer a legal requirement (combined with Children & Young People’s Plan).</p> <p>This has the effect of making the Mayor’s proposals for these strategies subject to the approval of the full Council</p>
Community Governance Reviews	(Article 4.02, page 15)	The terms of reference of the Council to include the determination of matters relating to Community Governance Reviews as set out in the Local Government & Public Involvement in Health Act 2007.	These reviews are the mechanism for considering and making recommendations on whether a parish or town council should be established in any part of the borough and associated matters. The Act provides that decisions on these matters are reserved to the full Council.

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Petition Scheme	(Article 4.02, page 15; Article 6, page 19; Part 4.1, page 138 and Part 4.5, page 187)	<p>Incorporation of the new Petition Scheme adopted at Council on 14th July 2010:-</p> <p>Provision for a petition of 2,000 or more valid signatures to trigger a debate at the full Council meeting;</p> <p>Provision for a petition of 1,000 or more valid signatures to require a Chief Officer to give evidence to the Overview and Scrutiny Committee (the Committee will also invite the relevant Lead Member to the meeting); and</p> <p>A right of review by the Overview & Scrutiny Committee if a petition organiser feels the authority's response to their petition was inadequate.</p> <p>Amend criteria for valid signature on any petition to a person who 'lives, works or studies in the borough'</p>	<p>Petition Scheme adopted as required by the Local Democracy, Economic Development and Construction Act 2009.</p> <p>Consistency across the various types of petitions covered by the scheme and to enable persons to sign who cannot be on the electoral roll (e.g. under 18s, as required by the Act)</p>
The Executive	(Article 7, page 22)	Constitution to make clear that the Cabinet Members appointed by the Mayor must be Councillors of the authority and the Mayor must appoint one Cabinet Member as the Deputy Mayor.	For clarity and to reflect the statutory position
Standards Committee	(Article 9, page 27)	<p>Minor amendments to sub-committee remits i.e. Assessment Sub-Committee, not Hearings Sub-Committee, to consider investigation report</p> <p>Addition to Standards Committee terms of reference – to undertake oversight of enforcement activity and receive reports on the authority's use of the Regulation of Investigatory Powers (RIPA) Orders as required.</p>	<p>To reflect agreed changes in the procedure for local consideration of complaints.</p> <p>In accordance with the revised RIPA Codes of Practice issued by the Home Office and effective from 6th April 2010 and as recommended by the Cabinet on 8th September 2010.</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Local Choice functions	(Part 3.1.3, page 70 and Part 3.2.2, page 77)	Responsibility for local choice functions to be allocated to the Council (see Appendix B for details).	As agreed by the Council on 3 rd March 2010.
Appointment of Committees, sub-committees etc	(Part 3.3, page 79 on)	<p>Amendments to provide consistency re:</p> <ul style="list-style-type: none"> • Establishment of main committees and appointment of their Chairs (except Chair of Standards Committee) by the Council; • Establishment of sub-committees and appointment of their Chairs by the main committee; and • Appointment of Vice-Chairs by the committee/sub-committee itself in all cases <p>Deletion of the Appeals Committee and the delegation of its functions to officers, subject to any necessary changes to Human Resources procedures.</p> <p>With effect from the Annual Council meeting in May 2011, to reduce the number of non-executive committees by combining functions into two new committees as follows:</p> <ul style="list-style-type: none"> • A General Purposes & Human Resources Committee, to discharge the functions currently carried out by the General Purposes Committee, Human Resources Committee and, to the extent that its functions are not delegated to officers, the Appeals Committee; and 	<p>Clarity, consistency and best practice.</p> <p>To improve efficiency</p> <p>To improve efficiency</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
		<ul style="list-style-type: none"> An Audit, Pensions and Accounts Committee, to discharge the functions currently carried out by the Pensions Committee and the Audit Committee. <p>To establish a Freedom of the Borough ad hoc Panel to consider any proposals that may be made in due course relating to granting the Freedom of the Borough, including any nominations for that award.</p>	<p>To provide a mechanism for consideration of matters relating to the Freedom of the Borough as previously within the remit of the former Mayor's Panel.</p>
Filling of positions on outside bodies	(Part 3.3.6, page 84)	Delete 'or outside body' from Assistant Chief Executive (Legal)'s delegated power to make or amend an appointment in accordance with the nomination by a political group (i.e. to require any such changes to be made by the GP Committee)	To reflect that, unlike committee/panel appointments, outside body nominations are not allocated by the Council to the political groups on the basis of proportionality and to enable each group to nominate to a vacant position.
Licensing Committee	(Part 3.3.7, page 85)	Update the Committee's terms of reference to reflect legislative changes including power to set fees etc where required.	Changes to legislation.
King George's Field Charity Board	(Part 3.3.12, page 89)	Update to reflect revised governance arrangements for the trust agreed in June 2009.	Revised governance arrangements for the Trust were agreed in June 2009.
Children/Adults Access to Files Panel	(Part 3.3.17, page 91)	Delete	Panel is obsolete following change in legislation
Grants Panel	(Part 3.4.2, page 95)	Increase quorum to 3. Also to discuss with the Elected Mayor whether Grants Appeal Panel is required.	For consistency & best practice

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Council Procedure Rules	(Part 4.1, page 117)	Amend as necessary to facilitate participation in the meeting by the Elected Mayor – including attendance, speaking rights at the discretion of the Chair, making reports, asking and responding to questions, moving motions and amendments.	To facilitate effective debate and accountability
Appointment of Substitute members of Committees etc	(Part 4.1, page 123)	To enable a substitute member to attend where necessary for part of a meeting or (a) specific agenda item(s) rather than necessarily replacing the member for the whole meeting, subject to any handover between the two members taking place at the beginning of a new agenda item.	Increased flexibility and to avoid inconvenience, for example where a substitute member attends a meeting of a regulatory committee at which determination of one application is deferred. At the subsequent meeting, the substitute member and not the ordinary member is qualified to vote on that item and under the current rules the ordinary member may not then replace him/her for the remainder of the agenda items.
Ordinary Council Meeting running order	Part 4.1, page 119)	<p>Announcements at the beginning of the meeting (2.1.4) limited to Chair or Chief Executive.</p> <p>Insert, immediately before Members' Questions (2.1.7), provision for the Elected Mayor to give a report to each Council Meeting. The Mayor to speak for no more than 5 minutes on this item and each political group leader to then have an opportunity briefly to respond (maximum 1 minute).</p> <p>To make provision for an annual 'State of the Borough' debate, at either the final Council meeting of the municipal year or the first ordinary meeting following the Annual Council. The debate would be led by the Mayor and would provide an opportunity for a wide ranging discussion of policy matters and issues affecting the Council and the borough.</p>	<p>To enhance efficiency – Mayor and Lead Members to contribute later in the meeting.</p> <p>To enable accountability of the Mayor</p> <p>Following the election of the Mayor, officers to work with the Mayor and Group Leaders to agree the arrangements for the 'State of the Borough' debate and draft the relevant procedure rules to give effect to this.</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Time and Place of meetings	(Part 4.1, page 123 & part 4.5, page 171)	Amendment to enable the Cabinet or a committee/panel to decide the venue for its own meeting(s).	To facilitate more easily meetings to be held outside the Town Hall where required.
Chair of meeting	(Part 4.1, page 124)	Insert 'Participation in a Cabinet, Committee, Panel or other formal meeting by a Councillor or other person who is not an appointed Member or substitute member of that committee shall be at the discretion of the person chairing the meeting'.	Clarification (existing practice).
Duration of meeting	(Part 4.1, page 125)	Include the Licensing Committee/Sub-Committee and Appeals Committee/Sub-Committee alongside the Development Committees on the list of bodies to which special arrangements apply regarding the extension of the meeting; and which are excepted from the normal guillotine arrangements.	Clarification and consistency across the regulatory committees.
Council Meeting – Public participation	(Part 4.1, page 126 onwards)	<p>To restrict an individual member of the public to <u>either</u> a question <u>or</u> a petition at any meeting (currently both are allowed if on separate subjects); and to provide that a member of the public may not submit a question or a petition to the Council meeting if that person has previously submitted a question or petition to one of the previous two Council meetings.</p> <p>Additional wording to clarify that a question may only be put at the meeting by the person who has given notice of that question. In the event that that person does not attend the meeting for any reason, the question may not be put by another person but the original questioner will instead receive a written response following the meeting.</p>	<p>To avoid the meeting(s) being dominated by a small number of individuals and to increase opportunities for a larger number of individuals to participate within the slots available.</p> <p>For the avoidance of doubt.</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Council Meeting – Public Questions	(Part 4.1, page 126)	To reduce the maximum total time for public questions at any meeting from 30 to 20 minutes.	To improve efficiency of the meeting. The current maximum time is rarely fully utilised.
Council Meeting – Members Questions	(Part 4.1, page 128)	<p>To give the Chair discretion, within the 30 minutes allocated for Members’ Questions, to vary the printed order of questions to allow an ‘ungrouped’ Councillor to put his/her question.</p> <p>Questions to be put to the Mayor or, where the Mayor has delegated executive powers to a Lead Member, to the relevant Lead Member.</p>	<p>To ensure that over the year all Councillors have an opportunity to put a question(s) (currently the order of questions rotates only between groups, so the sole representatives of the Liberal Democrat and Respect parties will usually be too far down the list to be reached).</p> <p>To ensure accountability of decision-making</p>
Council Meeting – Petitions and Deputations	(Part 4.1, pages 137 to 140)	<p>To delete the provision for deputations to Council, Cabinet and Committee meetings.</p> <p>To increase the time allowed for questions by Members to petitioners from three to four minutes for each petition.</p> <p>To reduce the number of persons for each petition/ deputation guaranteed access to the public gallery from 5 to 2.</p> <p>To amend wording re: petitions on planning & licensing matters – (i) to extend to all matters relating to a potential or actual live planning application, not merely where the application has been received; and (ii) to note that in order to be admissible at the Licensing Sub-Committee a petition must be relevant to one of the licensing objectives, and received before the deadline.</p>	<p>The distinction between petitions and deputations is not clear and causes confusion. Any relevant matter may be raised through the petition facility and will receive a full response in accordance with the new Petition Scheme.</p> <p>There is often time pressure on this section of the item, with petitioners unable to answer within the time allowed.</p> <p>To avoid all available space being taken up by petitioners and enable more public access to the meeting.</p> <p>Efficiency and to reflect statutory position.</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Council Meeting – General	(Part 4.1, page 141)	To provide that ‘no photography or video or audio recording of any kind may take place at the meeting without the express permission of the Chair’.	Incorporate existing (and best) practice.
Budget and Policy Framework – Dispute Resolution process	(Part 4.3, page 159)	<p>Amend to reflect statutory difference in dispute resolution process (two-thirds majority required for Council to amend Mayor’s proposals)</p> <p>To include an explanatory provision as follows:-</p> <p>‘Where the Council wishes to amend the Mayor’s proposals it may, by a majority vote, send the budget, plan or strategy back to the Mayor and Executive, who must consider whether or not to make any amendments before re-submitting the item to the Council.</p> <p>When the item is re-submitted, if the Council still wishes to amend the proposals, it can do so providing there are at least two-thirds of the Councillors present and voting at the meeting in favour of the amendment(s). Where a two-thirds majority in favour of the Council’s amendment(s) is not achieved, then the Mayor’s proposals stand agreed and shall be deemed to be adopted by the Authority.’</p>	<p>Statutory requirement</p> <p>For purposes of clarity</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
<p>Executive Procedure Rules/ Delegation of Executive functions</p>	<p>(Part 4.4, page 169)</p>	<p>In the event that the Elected Mayor makes any change to the Executive Scheme of Delegation , Cabinet appointments or portfolios, the Mayor will be asked to give the reasons for the change(s) on the written statement that he/she must provide to the Monitoring Officer; and</p> <p>Whenever the Monitoring Officer receives notification from the Elected Mayor of any change(s) to the Executive scheme of delegation, Cabinet appointments or portfolios, the Monitoring Officer will inform all Councillors of the change(s) made and any reasons given by the Elected Mayor.</p> <p>The Constitution not to provide for the appointment by the Elected Mayor of Councillors either to outside bodies or to paid advisory roles within the authority other than to the positions of Executive (Cabinet) Members.</p> <p>Mayor to have power to place items on the Cabinet agenda and to agree the arrangements for Cabinet meetings including the venue, time and date and any question and answer session or other vehicle for public engagement to be included.</p>	<p>To ensure transparency and accountability.</p> <p>Consistency with allocation of 'local choice' functions</p> <p>To provide efficient accountability and to accommodate Q&A session etc without cumbersome procedural mechanisms.</p>
<p>Overview & Scrutiny Procedure Rules</p>	<p>(Part 4.5, pages 178 and 179)</p>	<p>Co-optees – to increase the number of Parent Governor co-optees from 2 to 3.</p>	<p>As agreed by Council 14 July 2010</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Development Procedure Rules	(Part 4.8, page 195)	<p>Update in accordance with review carried out by Development Committee, i.e.:-</p> <ul style="list-style-type: none"> • A common deadline for both members of the public and councillors registering to speak on an application; • Deadlines to be set at a specified number of days before the meeting rather than on a named day of the week, reflecting greater flexibility in the calendar of meetings; • All speakers to state whether they wish to speak in support of or objection to the application; • Additional information on how speaking slots will be allocated, and some details in relation to when an applicant or supporters will be invited to address the committee – previously adopted by the committee as part of its own procedures – to be included in the Constitution itself. <p>(See Appendix 'D' for details)</p>	<p>To ensure consistency, clarity and fairness. The work of the Development Committee in determining planning applications is quasi-judicial in nature and needs to be based on fairness and natural justice.</p>
Officer Employment Procedure Rules	(Part 4.9, page 205)	<p>Amend as necessary to reflect change in Executive Arrangements.</p> <p>Disciplinary Policy and Procedure for the Chief Executive, Chief Finance Officer and Monitoring Officer (see Appendix 'E') to be adopted as a separate document from the Constitution but a reference to it to be included in the Officer Employment Procedure Rules.</p>	<p>Update in light of new Executive Arrangements.</p> <p>The content of the protocol reflects statutory provisions and the adoption of the protocol was recommended by the District Auditor.</p>

SUBJECT	CONSTITUTION PART/PAGE	PROPOSED CHANGE	RATIONALE/COMMENTS
Member/Officer Protocol	(Part 5.4, page 251)	Provision for Members to arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents.	Clarification/improved service to residents.
Members' Allowances	(Part 6, page 291)	<p>Update Allowances including reductions in SRAs agreed at Council on 14th July 2010.</p> <p>Add Elected Mayor's Allowance at £65,000 p.a.</p> <p>Add provision for Leader of Majority Group SRA at the same level as a Cabinet Member</p> <p>Update terminology, post titles to reflect new Executive Arrangements</p> <p>Any further amendments to reflect new Executive Arrangements and any changes agreed to committee structure.</p>	<p>Updating</p> <p>Changes to Executive arrangements</p> <p>Consequential changes</p>
Directorate Delegations – Children, Schools and Families	(Part 8.3, page 341)	Update to reflect changes in legislation, revised structure of the directorate and efficient decision making.	Updating.
General	(Throughout)	Update titles of Cabinet Portfolios (inc. Article 7.05), Committees, departments (inc. Part 7) and management posts (inc. Article 12) as necessary.	To reflect the current titles and structures.

APPENDIX B

LOCAL CHOICE FUNCTIONS – CURRENT AND PROPOSED ALLOCATION

Function	Act/Statutory Instrument	Current allocation (September 2010)	Proposed allocation under Mayor & Cabinet model	Delegation of function
Any function under a local Act other than a function specified or referred to in regulation 2 or schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)	Various/Local Acts	Various – as listed at Parts 3.1.2 and 3.2.1 of the Council's Constitution	Council	Officer and Committee delegations as currently listed in the Constitution. Delegations to 'The Executive' amended to read 'The Council'
The determination of an appeal against any decision made by or on behalf of the authority	Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)	Council	Council	Licensing Committee/App eals Committee as appropriate
The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools	Subsection (1) of section 67 of, and Schedule 18 to the School Standards and Framework Act 1998	Council	Council	Assistant Chief Executive
The making of arrangements in respect of school admission appeals	Sections 94(1), (1A) and (4) of the School Standards and Framework Act 1998	Council	Council	Assistant Chief Executive

Function	Act/Statutory Instrument	Current allocation (September 2010)	Proposed allocation under Mayor & Cabinet model	Delegation of function
The making of arrangements in respect of appeals by a school governing body of a requirement that they take a pupil excluded from another school	Section 95(2) of the School Standards and Framework Act 1998	Council	Council	Assistant Chief Executive
Any function relating to contaminated land	Environmental Protection Act 1990 – Part IIA	Council	Council	Corporate Director, Communities, Localities and Culture
The discharge of any function relating to the control of pollution or the management of air quality	Pollution Prevention and Control Act 1990; Environmental Act 1995 (Part IV); Environmental Protection Act 1990 (Part I); Clean Air Act 1993	Council	Council	Corporate Director, Communities, Localities and Culture
The service of an abatement notice in respect of a statutory nuisance	Environmental Protection Act 1990 – Section 80(1)	Council	Council	Corporate Director, Communities, Localities and Culture
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area	Noise and Statutory Nuisance Act 1993 – Section 8	Executive	Council	Council

Function	Act/Statutory Instrument	Current allocation (September 2010)	Proposed allocation under Mayor & Cabinet model	Delegation of function
The inspection of the authority's area to detect any statutory nuisance	Environmental Protection Act 1990 – Section 79			Corporate Director, Communities, Localities and Culture
The investigation of any complaint as to the existence of a statutory nuisance		Executive	Council	Corporate Director, Communities, Localities and Culture
The obtaining of information as to interests in land.	Section 330 of the Town and Country Planning Act 1990	Executive	Council	Corporate Director, Communities, Localities and Culture
The obtaining of particulars of persons interested in land	Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Executive	Council	Corporate Director, Communities, Localities and Culture
The making of agreements for the execution of highways works	Highways Act 1980 – Section 278 (substituted by the New Roads and Street Works Act 1991 – Section 23)	Executive	Council	Corporate Director, Communities, Localities and Culture
The appointment of any individual- (a) to any office other than an office in which he is employed by the authority (b) to any body other than - (i) the authority; (ii) a joint	Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)	Council	Council	General Purposes Committee

Function	Act/Statutory Instrument	Current allocation (September 2010)	Proposed allocation under Mayor & Cabinet model	Delegation of function
committee of two or more authorities; or (c) to any committee or sub-committee of such a body, and the revocation of any such appointment				
The making of agreements with other local authorities for the placing of staff at the disposal of those authorities	Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)	Council	Council	All Chief Officers
Functions relating to local area agreements	Sections 106, 110, 111 and 113 of the Local Government and Public Involvement in Health Act 2007	Executive	Council	Council

REMUNERATION OF THE ELECTED MAYOR

(i) COMPARATIVE DATA

Post / recommendation	£ p.a.
London Council's Independent Panel Recommendation for Elected Mayor (2010) – Band 5 (calculated by reference to the panel's recommendation for Leader's Allowance plus 25%)	81,029
Existing Mayoral allowances:	
- London Borough of Newham	81,021
- London Borough of Lewisham	77,122
- London Borough of Hackney	75,095
- Watford Borough Council	65,738
- Hartlepool Borough Council	63,902
- Doncaster Council	63,583
- North Tyneside Council	61,734
- Middlesbrough Borough Council	61,300
- Bedford Borough Council	60,000
- Torbay BC	55,523
- Mansfield District Council	53,151
Mayor of London	143,911
London Assembly Member	53,439
Chair of London Assembly	64,103
LBTH Leader's current allowance (inc Basic)	37,945
- plus 25%	47,431

(ii) RECOMMENDATIONS OF THE LONDON COUNCILS INDEPENDENT PANEL

The Independent Panel on Remuneration of Councillors in London, established by London Councils, issued its most recent report in April 2010. The relevant extract from that report, setting out the recommendations of the Independent Panel in relation to Directly Elected Mayors, is reproduced below.

“SPECIAL RESPONSIBILITY ALLOWANCE: BAND FIVE

Directly elected mayor

A directly elected mayor is a full-time job with a high level of responsibility and exercises executive responsibilities over a fixed electoral cycle. It is right that it should be remunerated on a basis which compares with similar positions in the public sector, while still retaining a reflection of the voluntary character of public service.

However we believe this post remains different to that of the strong leader with cabinet model. The directly elected mayor is directly elected by the electorate as a whole. The

strong leader holds office at the pleasure of the council and can be removed by the council. We believe that the distinction is paramount and this should be reflected in the salary level.

We propose that a band five directly elected mayor should receive a remuneration package of 25 per cent higher than that recommended for a council leader and that it should be a salary set at £81,029.”

DEVELOPMENT PROCEDURE RULES

Proposed provisions in the Council's Constitution (Part 4.8) relating to public speaking:

- 6.1 Where a planning application is reported on the "Planning Applications for Decision" part of the agenda, individuals and organisations which have expressed views on the application will be sent a letter that notifies them that the application will be considered by Committee. The letter will explain the provisions regarding public speaking. The letter will be posted by 1st class post at least five clear working days prior to the meeting.
- 6.2 When a planning application is reported to Committee for determination the provision for the applicant/supporters of the application and objectors to address the Committee on any planning issues raised by the application, will be in accordance with the public speaking procedure adopted by the relevant Committee from time to time.
- 6.3 All requests from members of the public to address a Committee in support of, or objection to, a particular application must be made to the Committee Clerk by 4:00pm one clear working day prior to the day of the meeting. It is recommended that email or telephone is used for this purpose. This communication must provide the name and contact details of the intended speaker and whether they wish to speak in support of or in objection to the application. Requests to address a Committee will not be accepted prior to the publication of the agenda.
- 6.4 Any Committee or non-Committee Member who wishes to address the Committee on an item on the agenda shall also give notice of their intention to speak in support of or in objection to the application, to the Committee Clerk by no later than 4:00pm one clear working day prior to the day of the meeting.
- 6.5 For objectors, the allocation of slots will be on a first come, first served basis.
- 6.6 For supporters, the allocation of slots will be at the discretion of the applicant.
- 6.7 After 4:00pm one clear working day prior to the day of the meeting the Committee Clerk will advise the applicant of the number of objectors wishing to speak and the length of his/her speaking slot. This slot can be used for supporters or other persons that the applicant wishes to present the application to the Committee.
- 6.8 Where a planning application has been recommended for approval by officers and the applicant or his/her supporter has requested to speak but there are no objectors or Members registered to speak, then the applicant or their supporter(s) will not be expected to address the Committee.
- 6.9 Where a planning application has been recommended for refusal by officers and the applicant or his/her supporter has requested to speak but there are no objectors or Members registered to speak, then the applicant and his/her supporter(s) can address the Committee for up to three minutes.
- 6.10 The order of public speaking shall be as stated in Rule 5.3.
- 6.11 Public speaking shall comprise verbal presentation only. The distribution of additional material or information to Members of the Committee is not permitted.

- 6.12 Following the completion of a speaker's address to the Committee, that speaker shall take no further part in the proceedings of the meeting unless directed by the Chair of the Committee.
- 6.13 Following the completion of all the speakers' addresses to the Committee, at the discretion of and through the Chair, Committee Members may ask questions of a speaker on points of clarification only.
- 6.14 In the interests of natural justice or in exceptional circumstances, at the discretion of the Chair, the procedures in Rule 5.3 and in this Rule may be varied. The reasons for any such variation shall be recorded in the minutes.
- 6.15 Speakers and other members of the public may leave the meeting after the item in which they are interested has been determined.

DISCIPLINARY POLICY AND PROCEDURE
FOR CHIEF EXECUTIVE, THE CHIEF FINANCE OFFICER
AND THE MONITORING OFFICER

Introduction

1. A separate procedure is required for these Officers in order to comply with The Local Authorities (Standing Orders)(England) Regulations 2001.

The procedure will be applied fairly and consistently by the Council regardless of sex, creed, ethnic origin, age, marital status, disability and sexual orientation.

Individuals with disabilities will be given the opportunity, time and support to request and received appropriate facilities required for them to participate in the procedure.

All involved in this procedure are reminded of the importance of confidentiality and must ensure that all information, whether verbal or written, is kept strictly confidential and not passed on to persons who are not involved in the procedure. Disciplinary action may result from breaches of confidentiality.

The principals of natural justice and good management practice will govern the conduct of any proceedings against the officer on the grounds of either alleged misconduct (i.e. discipline) or alleged inability to carry out the job (i.e. capability).

In general, informal conciliation is to be preferred to formal procedures if this can bring about a mutually agreed solution to the problems. Such solutions should make it clear what specific changes in behaviour and/or performance are expected and within what timescales.

The Procedures

2. The following procedures apply to both misconduct (disciplinary) or inability to fulfil the duties and responsibilities of the post (capability)
3. In the case of an allegation of misconduct or lack of capability against the Chief Executive, the matter shall be referred by the Monitoring Officer to a sub committee of the Human Resources Committee which will be advised and assisted by the Monitoring Officer and Service Head of Human Resources and have the following terms of reference:
 - (a) to receive and consider any formal allegation of misconduct or lack of capability in relation to the Chief Executive/Head of Paid Service referred by either the Monitoring Officer or the Service Head of Human Resources
 - (b) to determine, with advice from the Monitoring Officer and Service Head Human Resources, whether the subject of the allegation is such as is properly dealt with under the disciplinary procedure applicable to the post

- (c) to determine, with advice for the Council's Monitoring Officer and Service Head Human Resources whether the allegation appears to have any substance or is material on the basis of the information presented and to advise the Mayor accordingly

In the case of an allegation of misconduct or capability against the Director of Resources or the Monitoring Officer of the Council, the matter shall be referred to the Chief Executive of the Council.

Whether the matter is an allegation of misconduct or capability against the Director of Resources or Monitoring Officer, the initial step shall be to decide (with the help of an independent advisor if necessary) whether the allegation of misconduct or capability appears to have any substance or is material. If the Chief Executive or the Mayor following advice of Monitoring Officer as the case may be consider that the matter has no substances or is not material, then they shall confirm in writing to the person who raised the allegation and that shall be the end of the matter.

- 4. If the Mayor or the Chief Executive, as the case may be, considers that there is some substance to the allegation of misconduct or capability, then he/she shall follow the procedure set out under the Disciplinary Procedure for the Appointment of a Designated Independent Person. (Paragraph 17 below).

The Mayor or Chief Executive (as appropriate) following advice of Monitoring Officer shall first consider whether suspension of the Relevant officer is necessary having regard to the situation and whether the continuing presence at work might compromise the investigation or impair the efficient exercise of the Council's functions.

If suspension is considered appropriate the Relevant officer may be suspended by the Mayor or the Chief Executive (as appropriate). Written notice stating the reasons for any such suspension shall be given. The suspension may be for a period of 2 months only and shall be subject to any direction of the Designated Independent Person who may direct the authority to terminate the suspension, to continue it or to vary the terms upon which it has taken place.

- 5. Once a Designated Independent Person has been appointed the matter shall be referred to the Designated Independent Person to carry out a preliminary investigation to determine whether the question is an issue of misconduct or of capability or of both.
- 6. Once the preliminary investigation has commenced the Designated Independent Person shall notify the Relevant officer (as hereinafter defined) in writing of the allegation(s) being investigated and shall ask the Relevant officer for written representations within 10 working days (or such longer period as is reasonable in the circumstances). If the Designated Independent Person considers it necessary, he may interview other witnesses or call for relevant documents to be disclosed, but at this stage of the procedure a full investigation need not be carried out.

7. The investigation only needs to be sufficient to make an initial assessment as to whether the allegation is a matter of substance or whether no further action should be taken; and if the matter is of substance, whether it falls within the capability procedure or the disciplinary procedure.
8. If in the opinion of the Designated Independent Person, the preliminary investigation reveals that the misconduct or Disciplinary Action (as defined in paragraph 15 below) is of such a nature as should be dealt with informally (i.e. without a warning recorded on the personnel file) then the Designated Independent Person shall record this in his report to the Chief Executive or the Mayor, as the case may be, and no further action shall be taken other than the informal action recommended by the Designated Independent Person.
9. If the conclusion of the Designated Independent Person is that Disciplinary Action should be taken, then the procedures set out below for Disciplinary Action shall be followed. If the opinion of the Designated Independent Person is that the matter is one of capability, then the Capability Procedure set out below shall be followed. If it is a combination of disciplinary and capability, then the matter shall be conducted under Disciplinary Action.

Capability Procedure

10. Where the capability matter at issue is a medical fitness matter, then the Council's Ill-Health Capability Procedure shall be followed.
11. If the preliminary investigation is carried out by the Designated Independent Person concludes that there is a question of substance as to the Relevant officer's capability, the Designated Independent Person should advise the Relevant officer of the nature of the question and make recommendations to the Mayor and/or Chief Executive, as the case may be, of ways in which the performance should improve and (unless there has been a previous warning or there is evidence of serious incapability which is not likely to be remedied within a reasonable time) the a period of time after which the capability will be reviewed, should be set. This period of time after which the capability will be reviewed, should be set. This period should not be less than 4 weeks and nor more than 12 weeks (the period may be extended by the Council if the circumstances are appropriate), but shall be sufficient to allow the Relevant officer a reasonable opportunity to show either an improvement in performance or, if the performance has not improved, then the Designated Independent Person shall carry out a further investigation.
12. The investigation shall be conducted by interview of the Relevant officer in relation to the issues of capability and what steps were carried out in the review. The Designated Independent Person shall then set out a report which shall recommend either a further period in which the Relevant officer shall be given time to improve (such period not to exceed 12 weeks) or if the conclusion of the Designated Independent Person is that the Relevant officer is not carrying his/her duties and responsibilities to the level of capability that is required, the Designated Independent Person may either recommend alterations to duties and responsibilities or if he considers that a written warning is necessary, with a further period to improve, then he may make this recommendation, or if the

Designated Independent Person judges the incapability to be fundamentally irremediable then the recommendations shall be dismissal with notice.

13. The report of the Designated Independent Person shall be presented to the Human Resources Committee of the Council which shall carry out a Hearing as set out in Paragraphs 22 to 25 below and then make recommendations to the Council. Those recommendations shall be confidential and all papers shall be sent out as Part 2 Committee reports (under Paragraph 1 of Part I of Schedule 12A of the Local Government Act 1972 as containing exempt information).

Disciplinary Action

14. This procedure incorporates the Local Authorities (Standing Orders)(England) Regulations 2001 (“the Regulations”).

15. Disciplinary Action is defined by the Regulations as:

“any action occasional by alleged misconduct which, if proved, would, according to the usual practice of the authority, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind and body, but does not include failure to review a contract of employment for a fixed term unless the authority has undertaken to review such contract”.

16. No Disciplinary Action in respect of the authority’s Head of Paid Service (Chief Executive) its Monitoring Officer, (its Director of Resources may be taken by the Council (except the action described in paragraph 18 below), or by a Committee, Sub Committee, a joint Committee on which the authority is represented or by any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a Designated Independent Person.
17. Where an allegation of misconduct by the Head of Authority’s Paid Services (Chief Executive), its Monitoring Officer, its Director of Resources as the case may be (“the Relevant officer)” requires to be investigated, the authority must appoint a person (“the Designated Independent Person”) for the purposes of producing a report pursuant to paragraph 20 below. The Designated Independent Person must be such a person as may be agreed between the authority and the Relevant officer or in default of such agreement; the Designated Independent Person shall be nominated by the Secretary of State.
18. The Chief Executive or the Mayor of the Council, as the case may be, may for good reason, immediately suspend the Relevant officer for the purposes of investigating the alleged misconduct occasioning the action and any such suspension must be on full pay and terminate no later than the expiry of 8 weeks beginning on the day of the suspension takes effect. If suspension is appropriate having regard to the considerations set out in paragraph 4 above, then written notice as set out in that paragraph must be given.
19. The Designated Independent Person shall notify the Relevant officer in writing of the allegations which are being investigated and shall give the Relevant officer 10 working days (or such longer period as is reasonable in the circumstances) to prepare a response to the allegation which gives rise to the investigation.

During the investigation the Relevant officer is entitled to have a meeting with the Designated Independent Person and to be represented by his Trade Union representative or a work colleague or another representative of his choice (but not at the authority's cost) who is not a lawyer. If the Designated Independent Person has evidence from third parties then this evidence must be evaluated and if it is intended to form the basis of the case then this shall be put to the Relevant officer in order that he/she may respond or comment.

20. During the investigation, the Designated Independent Person:-

(a) may direct:-

- (i) that the Council shall terminate any suspension of the Relevant officer;
- (ii) that any such suspension must continue after the expiry of the initial period of up to 8 weeks;
- (iii) that the terms on which any such suspension has taken place must be varied; or
- (iv) that no steps (whether by the authority or any Committee or Sub Committee or officer acting on behalf of the authority) towards Disciplinary Action or further Disciplinary Action against the Relevant officer, other than steps taken in the presence, or with the agreement of the Designated Independent person, are to be taken before the report referred to in sub-paragraph (d) below

(b) may inspect any documents relating to the conduct of the Relevant officer which are in the possession of the authority, or which the authority has power to authorise him to inspect;

(c) may require any member of staff of the authority to answer questions concerning the conduct of the Relevant officer;

(d) must make a report to Human Resources Committee of the authority:-

- (i) stating his opinion as to whether (and if so, the extent to which) the evidence he has obtained supports any allegation of misconduct against the Relevant officer; and
- (ii) recommending any Disciplinary Action which appears to him/her to be appropriate for the authority to take against the Relevant officer; and

(e) must, no later than the time at which he makes his report under sub-paragraph (d), send a copy of the report to the Relevant officer.

21. The Council must pay a reasonable remuneration to a Designated Independent person appointed by the Council and any cost incurred by him or her in, or in connection with, the discharge of the functions under this procedure.

22. Following the submission of the report of the Designated Independent Person to the Council's Human Resources Committee, that Committee shall appoint a Sub Committee of three Members, and must include at least one member of the Executive and one member opposition group as an Investigation Sub Committee to conduct a Hearing. The Relevant officer shall be given at least 10 working days notice of the Hearing date. The Relevant officer may request a postponement of the Hearing date for a period to be agreed between the parties or in default of agreement, for a period not exceeding 10 working days.
23. At the Hearing, the Relevant officer is entitled to be present and has the right to be represented by his Trade Union representative or some other person of his choice, including a lawyer (at his own cost).
24. The Designated Independent Person will submit his report, evidence of the allegations against the Relevant officer by witness and/or the submission of relevant documents.

Such witnesses shall be open to cross-examination by or on behalf of the Relevant officer. The Relevant officer may give evidence and call any witnesses whom he/she considers appropriate and submit any relevant documents. Any such witnesses called by the Relevant officer shall be open to cross-examination by the Designated Independent Person and the Investigating Panel. The Designated Independent Person and the Relevant officer or his/her representative have the right to sum up at the end of the case.

25. The Investigating Sub-Committee may make the following recommendations to the Human Resources Committee:-
 - (a) that no further action (whether by the Council or Committee or Sub Committee or Officer) be taken in respect of the Disciplinary Action and that suspension be terminated; or
 - (b) state whether the evidence is has obtained at the Hearing, including the Designated Independent Person's report supports the allegations; and
 - (i) agree with the Disciplinary Action recommended in the Designated Independent Person's report; or
 - (ii) state reasons why it disagrees and make such other recommendations as it considers appropriate which could be drawn from the following list:
 - Formal oral warning
 - Formal written warning
 - Final written warning
 - Transfer to another post
 - Disciplinary suspension without pay
 - Impose a financial penalty or other reasonable requirement within employment best practice
 - Dismissal

26. The report of the Investigation Panel shall go to the Human Resources Committee and the Committee shall act as “Dismissor” in the even that there is a dismissal recommended of the Monitoring Officer or Director of Resources (see paragraph 29 below) and shall follow the procedure set out in paragraphs 27 and 30 before any dismissal can take place.
27. The power to approve the dismissal of the Head of Authority’s Paid Service shall be exercised only by the Council itself. Where the Human Resources Committee is discharging on behalf of the Council the function of dismissal of the Head of Authority’s Paid Service (Chief Executive), the Council must approve that dismissal before the Notice of Dismissal is given to her/him.

Before the notification procedure set out in paragraph 30 takes place, the Human Resources Committee shall offer to the Relevant officer the right (within 5 days) to request to make written representations and to attend a Part 2 meeting of the Council. If the Relevant officer requests to make written representations and/or to attend a meeting of the Council then as soon as practicable, an extraordinarily meeting of the Council shall be convened and the Relevant officer shall be given at least 10 days notice of the date of the meeting. The Relevant officer must send in the written representations to the Proper Officer at least 5 working days prior to the meeting.

The Relevant officer may attend the meeting with a representative (union or legal representative). The Designated Independent Person and a Member of the Investigating Panel shall also attend the Council meeting. The Members of the Council shall have before them the report of the Employment and Appeals Committee and the Investigation Panel together with the written representations of the Relevant officer. Any documents to be relied on by either party from the previous hearing of the matter, shall be made available at the meeting but shall not be distributed to Members prior to the meeting. Any new evidence to be relied upon by either party may only be introduced to the meeting if it has been disclosed to the other party at least 5 working days prior to the meeting.

The Council, at the meeting, shall conduct the process as a review of the matter and not as a re-hearing and therefore no witnesses shall be called. The Relevant officer or his/her representative shall first make their representations. Members may ask questions through the Chair. The Designated Independent Person and/or the member of the Investigation Panel shall respond to the representations. Members may ask questions through the Chair. The Relevant officer or his/her representative may then make a closing summation an the member of the Council shall then deliberate in private and shall notify the Chair of Human Resources Committee of its decision within 3 working days.

28. The Human Resources Committee shall discharge on behalf of the Council, the function of the dismissal of the Chief Executive, the Monitoring Officer or the Director of Resources and where it does so, at least one member of the Executive must be a member of that Committee.
29. In paragraph 30 “Dismissor” means, in relation to the dismissal of the Relevant officer, the Human Resources Committee and “Proper Officer” means the Service Head of Human Resources or such other person appointed by the Council for the purposes of these provisions.

30. Notice of dismissal of an Officer who is the Head of Paid Service (Chief Executive), Director of Resources, Monitoring Officer or Director of Service, must not be given by the Dismissor until:-
- (a) The Dismissor has notified the Proper Officer of the name of the person who the Dismissor wishes to dismiss and any other particulars which the Dismissor considers as relevant to the dismissal.
 - (b) The Proper Officer has notified every member of the Executive of the authority of:-
 - (i) the name of the person who the Dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the Dismissor has notified to the Proper Officer; and
 - (iii) the period of 5 working days within which any objection to the dismissal is to be made by the Mayor on behalf of the Executive to the Proper Officer ; and
 - (c) either:-
 - (i) the Mayor has, within the period specified in the Notice under subparagraph (b)(iii), notified the Dismissor that neither he/she nor any other member of the Executive has any objection to the dismissal;
 - (ii) the Proper Officer has notified the Dismissor that no objection was received by him within the period from the Mayor; or
 - (iii) the Dismissor is satisfied that any objection received from the Mayor within period is to material or is not well-founded.