

**LONDON BOROUGH OF TOWER HAMLETS**  
**COUNCIL MEETING**  
**WEDNESDAY 25<sup>TH</sup> JANUARY 2012**  
**PROPOSED AMENDMENTS TO THE CONSTITUTION**  
**REPORT OF THE ASSISTANT CHIEF EXECUTIVE**  
**(LEGAL SERVICES)**

**Special Reasons for Urgency**

This report was not circulated with the Council agenda in accordance with the timescales set out in the Authority's constitution because the meeting of the General Purposes Committee reported herein took place after the agenda was sent to print. The report is nevertheless recommended for consideration at this meeting because the constitutional matters set out in the report require urgent resolution to enable the implementation of the decisions previously made by the Council and, in relation to the Budget Council procedures, to ensure these are in place before the Budget Council Meeting 2012.

**1. Summary**

- 1.1 Council on 29<sup>th</sup> November amended the terms of reference of the General Purposes Committee to include consideration of proposed amendments to the Council's Constitution. Prior to this the Constitution Working Party was established to give informal, cross-party consideration to constitutional matters.
- 1.2 Officers reported to the General Purposes Committee on 17<sup>th</sup> January 2012 on a number of proposed constitutional amendments. These included some measures previously recommended by the Constitution Working Party in relation to the procedures followed at the Budget Council Meeting; and other changes pursuant to decisions taken on constitutional matters at the November 2011 Council meeting. The officers' report to the General Purposes Committee was circulated with the agenda for this Council meeting.
- 1.3 The General Purposes Committee agreed a number of amendments to the officers' proposals. They also recommended some further changes to parts of the Constitution not covered in the officer report.
- 1.4 Article 15 of the Constitution states that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer. The Chief Finance (Section 151) Officer also has a statutory responsibility to advise the Council on financial matters. This report therefore sets out the recommendations of the General Purposes Committee for changes to the Constitution, including where these differ from the officer

proposals submitted to the committee, and where necessary presents the advice of the relevant statutory officer(s) on the proposed amendment.

## **2. Recommendations**

- 2.1 That the Council consider separately in turn the proposed amendments to the Constitution at sections 5 to 11 of this report, in the light of the recommendations of the General Purposes Committee and the officer advice set out in the report.
- 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 The Constitution Working Party 2011/12 convened on 12<sup>th</sup> September 2011 to begin the annual review of the Council's Constitution. The Working Party met on two occasions and considered a range of matters proposed by officers and Members in relation to possible amendments to enhance the efficient operation of the Constitution.
- 3.2 Further work is required on some of the detailed proposals and this will continue. However, in respect of a number of proposed amendments it is possible to bring forward proposals at this stage. An early decision is required in particular on proposed amendments to the Budget Council Meeting Procedure Rules so that the changes can be in place ahead of the Budget Meeting which is scheduled for 22<sup>nd</sup> February. The Council on 29<sup>th</sup> November 2011 also made a number of decisions in relation to constitutional matters which require amendments to the text of the Constitution.
- 3.3 In accordance with one of those Council decisions, consideration of amendments to the Constitution is now a responsibility of the General Purposes Committee. The proposed changes were therefore reported to that Committee on 17<sup>th</sup> January 2011. The recommendations of the General Purposes Committee are set out below, together in each case with any necessary officer comments for the Council's consideration.

## **4. Budget Council Meeting Procedure Rules**

- 4.1 The budget making process in February/March 2011 was the first such process in Tower Hamlets under the Mayoral form of executive. The procedures to be followed at the Budget Council Meeting(s), particularly in relation to any proposed amendment of the Mayor's proposals, are substantially governed by statutory provisions. Within this however, a number of potential amendments have been identified to the Council's own procedure rules to clarify and improve the process, building on the experience of 2011.

## **5. BUDGET COUNCIL MEETING – DEADLINE FOR AMENDMENTS**

- 5.1 Currently any amendments for the Budget Meeting must be submitted by noon on the day before the meeting. Officer comments are then drafted and circulated with the amendments. However if the amendments are extensive, the comments can take some time to prepare so the amendments may not be made available to Councillors until just before the meeting.

### **Recommendation of the General Purposes Committee**

- 5.2 The General Purposes Committee recommends that the deadline for amendments should be brought forward to 9.15 a.m. on the day before the budget meeting and the amendments should be circulated to the Mayor and all Councillors, with any officer comments that are available, at least 24 hours before the meeting.

### **Officer comments**

- 5.3 The officers' original proposal to the GP Committee was to bring forward the deadline for amendments by 24 hours to noon of the second working day before the budget meeting. It is suggested that the revised proposal agreed by the General Purposes Committee may not be sufficient to ensure that it is possible to circulate the officer comments alongside the amendments 24 hours ahead of the meeting as proposed.

### ***Recommendation***

***That the Council consider the recommendation of the General Purposes Committee regarding the deadline for budget amendments at paragraph 5.2 above in the light of the officer comments at paragraph 5.3.***

## **6. BUDGET COUNCIL MEETING – TIMING OF AMENDMENTS AND EXTENSION OF MEETING**

- 6.1 The Budget Council Procedure Rules provide that, other than amendments notified in advance as above, no further substantial amendment may normally be moved at the budget meeting. However it is important that there is some opportunity, at the first budget meeting only, for Members to move new amendments in order to ensure that the final outcome of the debate reflects the wishes of the majority of Members - for example by omitting, or agreeing a different combination of, elements of any amendments that are already on the table. The rules therefore enable the Council to agree, subject to the advice of the Monitoring Officer, Section 151 Officer and Head of Paid Service, that an amendment without notice can be debated.
- 6.2 The normal 'guillotine' procedure at Council Procedure Rule 9.2 applies equally to the Budget meeting. Under this procedure, at the expiry of the time limit for

the meeting, any amendments and motions still on the table are put to the vote and determined without further debate.

- 6.3 However, the budget debate must not be curtailed if there are still matters that have not been adequately discussed and/or Members who have not had the opportunity to speak. In particular the Council must have adequate time to debate any amendment that is moved and accepted for debate. This may be problematic if an attempt is made to move a new amendment close to the end of the allocated time for the meeting.

### **Recommendations of the General Purposes Committee**

- 6.4 That the Budget Council Procedure Rules at paragraph 4.2 of Part 4.1 of the Constitution be amended as follows in relation to the first Budget Council Meeting:-
- (a) Other than amendments notified in advance as above, no further substantial amendment may normally be moved at the budget meeting but the Council may, having heard the advice of the Monitoring Officer, Section 151 Officer and Head of Paid Service, agree that an amendment without notice can be debated.
- (b) The Speaker will remind the Council at the start of the meeting of the importance where possible of all amendments being moved at the beginning of the debate or as soon as the need for the amendment is identified; and before moving to the 'right of reply' and voting stage of the meeting will give a final invitation for any further amendments. No new amendment may be proposed once the call for the vote has commenced.
- (c) At the first Budget Council meeting, if a new amendment is moved during the final 30 minutes of the time allocated for the meeting, the meeting will automatically be extended by up to 30 minutes to enable that amendment to be debated before the guillotine procedure comes into operation. This will apply even if a previous extension has already been agreed.
- (d) At the end of the 30 minutes if the debate is not complete, the guillotine process will come into operation in the normal way and the vote will proceed on the amendments and substantive motion the meeting will conclude, unless the Monitoring Officer and Section 151 officer advise the Speaker that the matter has not been sufficiently discussed – in this case the meeting will continue to consider any outstanding amendment(s) and any further amendments that may arise directly as a consequence of those amendments only.
- (e) Nothing in the above provisions should extend the meeting beyond a total duration of five hours, at which point the guillotine process shall come into operation.

## **Officer comments**

- 6.5 The above proposals are as recommended by the officers with the exception of the words 'having heard' in the third line of paragraph (a). It is essential that the statutory officers are able to advise the Council - for example in relation to a potentially unlawful amendment or one that would not produce a balanced budget – and that the Council act on that advice. Officers would recommend the substitution of 'subject to' for 'having heard' in paragraph (a).

### ***Recommendation***

***That the Council consider the recommendations of the General Purposes Committee regarding the Budget Council Procedure Rules at paragraph 6.4 above in the light of the officer comments at paragraph 6.5.***

## **7. POLICY FRAMEWORK**

- 7.1 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 issued under Section 13 of the Local Government Act 2000 list a number of plans and strategies, the adoption of which is reserved to full Council. The Regulations also empower a Council to specify other plans and strategies, not included in the mandatory list, that shall also be reserved to the Council to adopt. The mandatory and discretionary plans and strategies specified are collectively known as the 'Policy Framework' and special rules apply to their development and adoption.
- 7.2 On 29<sup>th</sup> November 2011, the Council agreed to add four further discretionary strategies to the Tower Hamlets 'Policy Framework':-
- The Employment Strategy;
  - The Enterprise Strategy;
  - The Waste Strategy; and
  - The Open Space Strategy.
- 7.3 It is necessary to update the Budget and Policy Framework Procedure Rules to clarify the procedures to be followed and to reflect that fact that those procedures now apply to these four strategies as to the Budget proposals and the other mandatory and discretionary items included in the Council's Policy Framework.

### **Recommendations of the General Purposes Committee**

- 7.4 That the Budget and Policy Framework Procedure Rules at Part 4.3 of the Constitution be amended as follows:-
- (a) The adoption or approval of the plan or strategy is the responsibility of the full Council;

- (b) The Mayor as the Executive has responsibility for preparing the draft plan or strategy for submission to the full Council; and
- (c) If the Council wishes to amend the Mayor's proposals in relation to the items included in the Budget and Policy Framework only, the Local Authorities (Standing Orders) (England) Regulations 2001 set out the dispute resolution procedure to be followed. The Council must inform the Mayor of any objections which it has to his proposals (i.e. the amendments it wishes to agree) and must give the Mayor at least five working days to reconsider his proposals and re-submit them (amended or not, with reasons) to a further Council meeting. If at this further meeting the Council still wishes to amend the Mayor's revised proposals, such a decision requires a two-thirds majority of the Members present and voting. If no valid amendment at the further meeting receives two-thirds support, the Mayor's proposals are deemed adopted in accordance with the regulations.

#### **Officer comments**

- 7.5 The recommendations above are substantially as proposed by the officers. The GP Committee inserted further words to clarify that the dispute resolution process including the requirement for a two-thirds majority applies only to those matters included in the Budget and Policy Framework.

#### ***Recommendation***

***That the Council agree the recommendations of the General Purposes Committee regarding the Budget and Policy Framework Procedure Rules at paragraph 7.4 above.***

#### **8. DEPUTY SPEAKER**

- 8.1 The Council on 29<sup>th</sup> November 2011 agreed that the position of Chair of Council would be re-titled as 'The Speaker of Council'. The Speaker is designated as the Borough's First Citizen.
- 8.2 No change was agreed at that time in respect of the designation of the Deputy Chair of Council.
- 8.3 For the avoidance of doubt it is now proposed that the position of Deputy Chair of Council be re-designated Deputy Speaker. The General Purposes Committee on 17<sup>th</sup> January endorsed this proposal.

***Recommendation***

***That the Council agree to re-designate the post of Deputy Chair of Council as 'Deputy Speaker'.***

**9. RECORDING OF COUNCIL MEETINGS**

- 9.1 The Council on 29<sup>th</sup> November 2011 agreed that for a trial period of three months, all meetings of the Council will be audio recorded and stored.
- 9.2 Currently the Council Procedure Rules do not allow for recording of the Council meeting without the express permission of the Speaker. In order to facilitate the trial period agreed by the Council it is necessary to amend the rules.

**Recommendation of the General Purposes Committee**

- 9.3 That Council Procedure Rule 27.1 be amended to state:-

'No photography or video or audio recording of any kind by Members, guests or members of the public may take place at any Council meeting without the express permission of the Speaker. The Council may determine that the proceedings of the Council Meeting shall be audio recorded by the officers and those recordings stored in accordance with a policy agreed by the Council and accessed by any member on request, for their own use, including publication. Such requests to be made in writing to the Monitoring Officer.'

**Officer comments**

- 9.4 The Council's decision of 29<sup>th</sup> November covered only the recording of meetings and storing of those recordings. The General Purposes Committee has proposed in addition that the recordings may be accessed by any Member on request for their own use including publication. The Monitoring Officer advises that there will need to be a notice to all members of the public attending the meeting advising that it is being recorded and may be published at some point in the future. For these first few occasions we need to test the quality of the recording so members will be given access to listen to the recording but not to publish it in full. If it is of a quality to be published then the proposal would be to place it on the internet.

***Recommendation***

***That the Council consider the recommendation of the General Purposes Committee regarding recording of Council meetings at paragraph 9.3 above in the light of the officer comments at paragraph 9.4.***

## **10. RECORDED VOTES AT COUNCIL MEETINGS**

10.1 Council Procedure Rule 17.3 states that voting at the Council meeting will be by show of hands unless a recorded vote is held. Rule 17.4 provides that a recorded vote will be held if ten members request it by rising from their seats.

10.2 The General Purposes Committee considered that it would be beneficial to increase the number of members required to trigger a recorded vote.

### **Recommendation of the General Purposes Committee**

10.3 That Council Procedure Rule 17.4 at part 4.1 of the Constitution be amended as follows:-

**'Recorded vote.** If twenty Members present at the meeting request it by rising from their seats, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.'

### **Officer comments**

10.4 No reason has been given to change the procedure for ten Members to call for a vote, which has served the Council well over the years. The current number is already in line with or greater than most other London councils. For example the number required at Barking & Dagenham and Ealing is three; at Greenwich, Redbridge and Hammersmith & Fulham five; at Islington, Wandsworth and Newham six; at Camden and Hillingdon seven; and at Haringey eight. In some cases these levels have been set to enable the smallest group on the authority to call for a recorded vote and this is considered to be good practice. Indeed, a draft mandatory standing order prepared following the enactment of the Local Government and Housing Act 1989 proposed that the number should be set at no more than one-fifth of the Council membership or the size of the second largest political group, whichever is the smaller. Officers therefore recommend that if Members feel a change in the current rule is required, it would be more appropriate to reduce the number to allow the smallest group to call for a recorded vote.

### ***Recommendation***

***That in view of the officer advice at paragraph 10.4 above, the recommendation of the General Purposes Committee regarding recorded votes at the Council meeting be not agreed.***



## **11.1 FINANCIAL PROCEDURE RULES – VIREMENTS**

11.1 The Financial Procedure Rules at Part 4.6 of the Constitution set out the framework of rules to ensure the proper and efficient conduct of the authority's financial affairs.

11.2 The Council is responsible for agreeing the Budget Framework. It is the responsibility of the Executive to operate within that framework. Section 3 of the Financial Procedure Rules sets out the rules relating to virements. These aim to allow the Executive to manage the budget once it has been approved by the Council, whilst also providing for good governance of financial matters.

11.3 Rule 3.3 currently states:-

**3.3** The Executive shall have the power to vire resources within each of the above components of the Budget Framework agreed by Council, subject to the following limitations:

**3.3.1** All individual virement proposals that exceed £1 million require the approval of full Council.

**3.3.2** Individual virements between £250,000 and £1 million must be reported to the Cabinet for decision.

**3.3.3** Individual virements below £250,000 can be authorised by the relevant Corporate Director/Chief Officer provided that any virement so authorised which exceeds £100,000 must be subsequently reported to the Cabinet for noting.

**3.3.4** No virement to or from the following budgets (irrespective of the amount proposed) shall be made without the specific agreement of the Corporate Director, Resources:

- (i) Capital Financing (not normally available for virement)
- (ii) Support service and other forms of internal charges (to avoid unintended impact upon other departments' budget).
- (iii) Rates (to ensure compliance with rating legislation).
- (iv) Insurance (to ensure compliance with insurance policies).
- (v) Pensions (to ensure compliance with Pensions regulations).

11.4 The General Purposes Committee has proposed significant changes to these rules.

## **Recommendations of the General Purposes Committee**

11.5 That paragraph 3.3.1 of the Financial Procedure Rules at Part 4.6 of the Constitution be amended as follows:-

‘All individual virement proposals that exceed £5,000 require the approval of full Council’; and

11.6 That paragraphs 3.3.2 and 3.3.3 be deleted.

### **Officer comments**

11.7 The Chief Finance Officer reports as follows:-

11.8 The majority of proposals in this report, with the exception of proposed changes to Financial Procedure Rules, have the purpose of improving or clarifying the decision-making process of the Council and have limited financial implications.

11.9 Proposals to change the Financial Procedure Rules Part 4.6 concerning virement, however, would have profound financial implications which are set out below.

11.10 In formulating my advice I have had regard to:

- Section 151 of the Local Government Act 1972 in particular the requirement on Local Authorities to “make arrangements for the proper administration of their financial affairs”.
- Section 58 of the Local Government Act 1958 requiring local authorities to make “safe and efficient” arrangements for the receipt and payment of monies.
- Section 28 of the Local Government Act 2003, in particular the statutory obligation on the Chief Financial Officer to keep the authorities finances under review during the year and take action if there is evidence that financial pressures will result in a budget overspend or if there is a shortfall in income
- The CIPFA Statement on the role of the Chief Financial Officer in Local Government (2010) – in particular the requirement to ensure that appropriate management accounting systems, functions and controls are in place so that finances are kept under review on a regular basis; and ensuring that the authority puts in place effective internal financial controls covering codified guidance, budgetary systems, supervision, management review and monitoring, physical safeguards, segregation of duties, accounting procedures, information systems and authorisation and approval processes.
- DCLG report “New Council Constitutions: Guidance for English Authorities” (June 2002). In particular the proposition from the Secretary of State that a local authority’s standing orders or financial rules/regulations need to include reasonable provision to allow the executive to reallocate monies within the budget once set by Council.

11.11 Before concluding my advice, I have also referred this matter to the District Auditor. His very clear advice is set out at paragraph 11.24 below and echoes the recommendations that I make in my comments.

#### Accountability framework

11.12 Virement is the process by which funding is transferred from one budget head to another. Virement involves no increase in the Council's net budget and in order to increase a budget in one area, it is necessary to identify where funding is available in another area. Accountability for budgets applies at three distinct levels and is tightly bound with accountabilities for the formulation and delivery of policy;

- The FULL COUNCIL is responsible for setting the Budget & Policy Framework of the Council.
- The EXECUTIVE MAYOR is responsible for proposing a policy direction and a budget to the Full Council, and for delivering policy within the Budget & Policy Framework. In order to undertake this role effectively, the Mayor needs significant control over the financial resources of the Council. Only matters that would lead to a material or substantive change of policy should be considered as requiring the agreement of Full Council. This is in keeping with the DCLG Guidance referred above and copied at Appendix A attached.
- Corporate Directors and other OFFICERS who have the role of budget managers are responsible for ensuring that services are delivered within the budgets allocated to them. In order to do this effectively, officers need to be able to manage financial resources flexibly to deal with points of detail and unforeseen circumstances.

11.13 The prevailing rules in relation to virements support the spirit of the Council's accountability framework. Accordingly virements over £1,000,000 (approximately 0.1% of the Council's budgeted expenditure) require the decision of Council. While monetary value may not be the only determinant of a decision being "material" to our policy framework, it has historically proven to be a reasonable proxy. Virements over £250,000 (approximately 0.025% of the Council's budgeted spend) require Mayoral approval and are subject to Overview and Scrutiny. In setting the limit at £250,000 for Member agreement, a balance has been struck between managerial accountability to deliver within the totality of their budgets and political oversight of management decisions. This is not a scientific formulation and as noted below different authorities draw the lines in different places. However, members should gain comfort from the fact around half a dozen such virements are referred to Cabinet each quarter and no record can be found of any of these virement decisions ever having been "called in" by Overview and Scrutiny. This suggests that the virements system is not currently being abused by officers or by the Executive and the nature of virements has not hitherto been a matter of concern to members of Full Council. In turn, if the Full Council does have any concerns about the way policy is being implemented, this is most unlikely to be addressed by changes to the virement rules.

- 11.14 Benchmarking with other similar London Boroughs reveals our framework to be entirely consistent, a point supported by our District Auditor. Indeed a significant number of London Boroughs do not require any reference of virements back to Full Council.
- 11.15 In reducing the virement limit to £5,000, the Full Council would in effect be taking on a large part of the responsibility for operational delivery currently delegated to Chief Officers to deliver services within Budget. The members should have strategic overview in setting the Budget each year. This proposal will confuse budget accountability and attributing a significant part of the responsibility to the 51 Members of the Council. In a practical sense this would be un-workable; it would have significant service delivery consequence and would introduce unacceptable additional budgetary control risks at time of unprecedented financial risk for the Council. It is impossible to see how this arrangement would be congruent with the statutory and non statutory requirements summarised in paragraph 1.3 above.

#### Operational difficulties and service delivery consequences

- 11.16 Budget managers, service heads and Directors need to be able to manage their budgets so that in total they do not overspend. In Tower Hamlets, no authority is delegated to budget managers to overspend. In reality, individual budget lines are often under stress and the managers need day to day flexibility to manage these variances. A limit of £5,000 would bring with it significant budgetary control and operational difficulties. It could lead, for example, to situations where Full Council approval was required to;
- agree an urgent but high cost care package
  - approve an allocation of additional funding to a school
  - deal with an urgent environmental issue (e.g. a highways or footways issue).
  - undertake routine day to day activities such as running training courses, buying IT equipment or booking a hall.
- 11.17 The need to seek Full Council approval, and seek consensus, for very minor and sometimes very urgent matters would substantially increase the level of risk facing the Council in discharging its duties, and may lead to challenges if the Council failed to respond in reasonable timescales to fulfil these duties. Cross cutting corporate change projects (which are often reliant upon budget virements both to fund their implementation and to realise their saving) would be particularly impacted by a requirement for routine decisions to be the subject of Full Council decision. It is unlikely, for example, that the programme of works to enable the decant of Anchorage would tolerate the additional time pressures that would arise from decisions needing to be taken by Full Council.
- 11.18 To avoid as much operational delay as possible, Council would need to meet much more frequently and have the capacity to meet at short notice. This would create significant additional administrative costs and place an additional burden on Members' diaries.

- 11.19 This burden could be mitigated by altering the shape and construction of our budgets, in other words by aggregating up a number of smaller budgets into larger budgets and in so doing reducing the incidence of virements being required. Indeed were this proposal to be passed by Council, the aggregation of budgets would be the inevitable practical outcome. However, this mitigation would itself bring with it significant and very damaging problems. After all, the construction of a Council's budget should be designed with the objectives of enabling timely, efficient and accurate budgetary control, monitoring and financial decision making material. An over aggregation of budgets would run contrary to these objectives and would result in a significant increase in financial risk as outlined below in more detail.
- 11.20 Currently virements under £100,000 are delegated to Corporate Directors and are not monitored by Corporate Finance. Capturing and reporting these virements would lead to a significant increase in bureaucracy and would be likely to require an increase in back office finance resource. This outcome would be significantly at odds with the prevailing desire to reduce back office costs and protect services to the public.

#### Finance and Budgetary control

- 11.21 As noted above setting virement limits too tightly will reduce flexibility in the way budgets can be managed. The only effective mitigation for this would be to aggregate budgets. As section 151 officer, this is not something that I can countenance. It is imperative that budgets are established at levels that enable timely and accurate information about budgetary performance. Any reduction in the visibility I or others have over the management of budgets runs contrary to our statutory obligations. It also significantly enhances the risk we face as an authority managing unprecedented reductions in resource.
- 11.22 I am also concerned that impractical financial constraints naturally encourage an environment in which creative means are found to avoid the controls established to enforce them. Setting thresholds at very low levels would also be likely to create a culture of non-compliance; clearly a very bad thing at the best of times, but especially in times when resources are tight and the authority needs to encourage compliance with corporate rules.
- 11.23 Were this change in policy to be adopted I would need to commission two immediate pieces of work. The first would be to review and amend our financial regulations and standing orders to ensure all financial rules and procedures are congruent with this new framework. This would be a substantive exercise that would bring with it additional cost, that would be time consuming and that would distract key financial personnel from the pressing issues of budgetary control and support to budget managers. The second task would be to revisit the provisions and contingencies in the forth-coming budget proposals to ensure they were sufficient to deal with the significant increase in budget risk exposure the Council will face as responsibility for budget management passes from Officers and the Mayor to the Full Council. Until both these tasks were complete and agreed, it would not be possible to implement this proposal.

## Views of the District Auditor

- 11.24 In finalising my advice I have taken an initial sounding from the District Auditor. He advises that the Council's current virement limits are typical of those of a large London Borough and the proposed arrangements are more typical of those of a medium-sized parish council. The auditor is concerned that the practical implementation of this change could lead to a significant additional administrative burden, could cause delays in service delivery and other operations and in delivering capital programmes, which would all bring an additional risk of service failure to the Council.
- 11.25 He is also concerned that such a material change to the Council's budget management arrangements could lead to a significant increase in financial risk at a time when the Council is delivering an ambitious programme of savings and efficiencies. The auditor would need to be satisfied that sufficient arrangements had been made for the timely production of financial information. He indicates that, since this is a significant departure from established practice, he would need to take this into account in reaching his annual Value For Money conclusion on the Council.
- 11.26 **Taking all of these matters into account as Chief Finance Officer I would strongly advise Council not to agree the proposed change to Financial Procedure Rules.**
- 11.27 Should the proposal before Members tonight be implemented, it would be first necessary to;
- revisit the Medium Term Financial Plan to ensure that it can still be delivered within the new arrangements. In particular:
    - o review the levels of reserves and contingencies to take account of enhanced risks, with the likelihood that less money would be available for services.
    - o review the Council's practical arrangements for managing its budgets taking account of the new limits and implications that this will have for the cost of running the Council's finance service and cost of Full Council meeting at least monthly, possibly more frequently
  - review Financial Standing Orders in full to ensure they remain a consistent control framework.
  - Undertake a comprehensive programme of training for all officers and Members of the Council
- 11.28 Until these minimum tasks are undertaken and agreed the proposal cannot be implemented.

### ***Recommendation***

***That in view of the advice of the Chief Finance Officer at 11.7 to 11.28 above, the recommendation of the General Purposes Committee regarding changes to the Financial Procedure Rules be not agreed at this time.***

## **12. Comments of the Chief Financial Officer**

- 12.1 This report proposes amendments to the Constitution as detailed in sections 5 to 11 above. The majority of proposals in the report, with the exception of proposed changes to Financial Procedure Rules, have the purpose of improving or clarifying the decision-making process of the Council and have limited financial implications.
- 12.2 The comments of the Chief Finance Officer on the proposed changes to the Financial Procedure Rules are set out in detail at paragraphs 11.7 to 11.28 above.

## **13. Concurrent report of the Assistant Chief Executive (Legal Services)**

- 13.1 Members have a legal obligation to consider the advice of the Chief Finance Officer who is the section 151 Officer and the Monitoring Officer. In relation to the proposed changes to the virement rules it is clear that the recommendation of officers is that the figure proposed is too low and that it will impede the proper operations of the Council. The clear evidence is that it is not justified or necessary. To ignore this advice could be considered to be unreasonable. Under Section 5 of the Local Government and Housing Act 1989 it is my duty to prepare a report to full Council if it appears to me that any proposal or decision by the Council or any committee of the council has given rise or is likely to give rise to a contravention by the authority or an officer of any enactment or rule of law or maladministration or matter for which the Ombudsman has investigated. For the reasons set out in this report it is clear that both the functions of the Council and risk would be increased unreasonably by this proposal of General Purposes Committee which could lead to a breach of law or a decision of maladministration. **Therefore my advice to the council is to reject this proposal.**
- 13.2 Other legal implications have been incorporated into the body of this report.

## **14. Implications for One Tower Hamlets**

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

## **15. Anti-poverty implications**

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

## **16. Implications for the reduction of crime and disorder**

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

## **17. Strategic Action for a Greener Environment (SAGE)**

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

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### **LOCAL GOVERNMENT ACT, 2000 (SECTION 97)**

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

<b>Brief description of "background paper"</b>	<b>Name and telephone number of holder and address where open to inspection</b>
Notes of Constitution Working Party meetings September/October 2011	John Williams 020 7364 4204



## APPENDIX A

### Extract from “New Council Constitutions: Guidance for English Authorities” published by the DCLG.

#### Moving monies between budgetary allocations

2.39 Once the budget has been adopted by the full council, the executive will need to be able to respond quickly to changing circumstances which might require reallocation of funds from one service to another. A local authority's standing orders or financial rules/regulations will need, therefore, to include reasonable provision to allow the executive to reallocate monies within the budget. Those provisions will also need to allow for situations where the executive needs to make an urgent decision which would otherwise be contrary to the budget without reference to the full council (see below).

2.40 The Secretary of State recommends that provisions in a local authority's standing orders or financial rules/regulations should enable the executive to take any decision which is contrary to or not wholly in accordance with the budget or the capital plan providing that any additional costs incurred can be offset by additional (unforeseen) income, contingency funds (reserves and balances) or savings from elsewhere within the budgetary allocations to functions which are the responsibility of the executive. The Secretary of State advises that provisions in a local authority's standing orders or financial rules/regulations should not enable the executive to incur additional expenditure which cannot be offset in these ways without reference to the full council.

2.41 Local authorities will need to consider whether an upper limit to such virement should be set (either as an absolute amount or as a percentage of the budgetary allocations involved). Local authorities may also wish to consider different upper limits for different service allocations particularly where funds are ring-fenced, e.g. by central Government. The upper limit(s) for urgent decisions will usually need to be set higher than for non-urgent decisions.

2.42 In setting such limits local authorities should take account of the provisions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which require that if the executive is minded to determine a matter contrary to or not wholly in accordance with the budget/capital plan and any provisions made in standing orders or financial rules/regulations that decision must be taken by the full council (see below). Therefore, if in its standing orders or financial rules/regulations the local authority sets the executives freedoms too narrowly this will require very many full council meetings.

2.43 In addition, a local authority's standing orders or financial rules/regulations should include mechanisms for moving monies between budgetary allocations for functions which are the responsibility of the executive and budgetary allocations for functions which are not the responsibility of the executive.