

Committee General Purposes	Date 3rd July 2012	Classification Unrestricted	Report No.
Report of: Assistant Chief Executive (Legal Services)		Title: Appointments to External Bodies – Constitutional matters Ward(s) affected: All	

1. Summary

- 1.1 The General Purposes (GP) Committee has power on behalf of the Council to make appointments to external bodies. In past years the bulk of these appointments have been made on an annual basis at the June meeting of the Committee. The GP Committee also has (since January 2012) responsibility for considering proposed changes to the Council's constitution.
- 1.2 In October 2010 the Council moved to an elected Mayoral form of governance. As part of the Executive Arrangements adopted at that time most external appointments were allocated to the Mayor, the exception being any appointment that was not related to or in support of an executive function, or where the appointment carried remuneration. The GP Committee would continue to make appointments on behalf of the Council where such exceptions applied.
- 1.3 At the Annual Council Meeting on 18th May 2011, the Council sought to vary this position and passed a resolution that all appointments to external bodies would revert to being a function of the Council or GP Committee and not the Mayor, except where the Council agreed otherwise in certain circumstances. The GP Committee in June 2011 made appointments to a range of external bodies in accordance with this decision.
- 1.4 However, following an investigation carried out by the Monitoring Officer at the request of the Overview and Scrutiny Committee (initiated by discussion at that committee of appointments to Tower Hamlets Homes), it has become apparent that the Council's decision of 18th May 2011 referred to above, did not follow the correct statutory process and does not currently have effect.
- 1.5 The constitutional position in relation to external appointments therefore remains that agreed in October 2010. There are no external appointments that fall to be made by the GP Committee at the current meeting.

2. Recommendations

- 2.1 That GP Committee note the constitutional position described in the report, that the Council's decision of 18th May 2011 in relation to external appointments does not have effect as it is not in accord with the legal position.

3. Background

- 3.1 On 10th January 2012 the Overview and Scrutiny (O&S) Committee considered a call-in of the Mayor's executive decision in relation to the Housing Stock Options Appraisal. One of the matters that was questioned related to the Mayor's decision to reform the Board of Tower Hamlets Homes (THH), including changing the Council appointments to the Board.
- 3.2 The O&S Committee received advice from the Monitoring Officer that appointments to the THH Board were an Executive and not a Council matter. Advice from Counsel had confirmed that the Memorandum and Articles of Association of THH confer powers on the Council's Executive and therefore it followed that the appointments that the General Purposes Committee purported to make on behalf of the Council in June 2011 to the Board of THH were not within the Committee's power to make. This was rectified by the Mayor appointing new Board Members using the correct process.
- 3.3 The O&S Committee expressed concern about this matter and requested that the Monitoring Officer investigate whether other appointments that had been made by General Purposes Committee might be affected by a similar flaw, and report back. This report sets out the results of that investigation. A procedural flaw has been discovered in relation to the change that the Council wished to make to the Constitution in May 2011 in relation to outside appointments generally.

4. Executive Arrangements

- 4.1 The Local Government Act 2000 (Section 13) and the Local Authorities (Functions and Responsibilities) Regulations 2000 issued thereunder, set out a division of functions under Executive Arrangements between the Executive (at Tower Hamlets, the Mayor) and the Council.
- 4.2 Most of the local authority's functions which are not specified as Council functions are by default allocated to the Executive. However, the function of appointing an individual to any office or body other than the authority itself (i.e. appointments to outside bodies) is one of a small number of 'local choice' functions, which the Council can choose whether to allocate to the Executive or reserve to itself.
- 4.3 When Tower Hamlets Council adopted its Executive Arrangements upon the introduction of the Mayoral system in October 2010, the Council agreed that responsibility for this functions would be split as follows:-
- Appointment to outside bodies other than those in relation to or in support of executive functions are allocated to the Council (delegated to the GP Committee); whilst
 - Appointments to outside bodies in relation to or in support of an executive function are allocated to the Mayor, except that the Mayor may not

appoint a councillor to any paid position (including external bodies) other than that of Cabinet Member

- 4.4 The vast majority of outside appointments relate to or support executive functions. The effect of the above allocation is therefore that most such appointments fall to the Mayor. Those appointments that carry remuneration – e.g. to the London Thames Gateway Development Corporation and to the Olympic Development Agency Planning Committee – have remained Council/GP Committee appointments.

Council resolution of 18th May 2011

- 4.5 At the Annual Council Meeting on 18th May 2011, the Council sought to vary the position described at 4.3 above. The Council passed the following resolution:- “That appointments to external bodies shall be a Council and not an Executive Function, with the exception of those appointments that, by law or at the request of the body and with the agreement of Council, are for executive members, which shall be appointed by the Mayor.”
- 4.6 This decision was subsequently implemented by officers, and the General Purposes Committee in June 2011 made appointments to the full range of outside bodies to which Council nominations are required.
- 4.7 However, during the course of investigating the THH appointments and associated matters, the Monitoring Officer has received advice from Counsel that the decision taken by the Council in May 2011 was not procedurally correct and therefore does not currently have effect.
- 4.8 The reason for this is that the Council’s decision to change the allocation of responsibility for some external appointments represents a change to the Executive Arrangements of a kind that requires a number of procedural steps which were not followed in this case.
- 4.9 In 2010 the Council followed the appropriate procedures to implement the constitutional changes required for a possible Mayoral Executive following the referendum, including the arrangements at paragraph 4.3 above. If the Council wishes subsequently to change its Executive Arrangements, statutory provisions apply as described below.
- 4.10 Section 33B of the Local Government Act 2000 states that ‘a local authority in England which is operating executive arrangements may vary the arrangements so that they (a) differ from the existing arrangements in any respect, but (b) still provide for the same form of executive’ (this means that it must still provide for a Mayoral Executive). Sections 33E, 33F and 33N set out processes that must be followed in respect of such a variation.

Consent of the Mayor

- 4.11 In particular, section 33N(2) provides that the local authority ‘may not make any proposals for [a] change [of this type] in governance arrangements unless the elected Mayor has given written consent to the proposed change.’

This provision is restated in the Localism Act 2011, which amends the 2000 Act but retains the wording of section 33N(2) as new section 9NB.

4.12 The effect of this is that the Council cannot subsequently change the “Executive Arrangements” of the Constitution to the extent that they relate to executive functions, without the consent of the Mayor.

4.13 As the resolution of the Council in May 2011 did not follow the above process the appointments made by the GP Committee in June 2011 should not have been made and the position in relation to appointments to outside bodies currently remains as set out at paragraph 4.3 above. The Mayor has confirmed that he will not agree to any changes in the Executive Arrangements.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

5.1 There are no financial costs arising from the proposals.

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

6.1 The legal implications have been incorporated into the body of this report.

7. IMPLICATIONS FOR ONE TOWER HAMLETS

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

8. ANTI-POVERTY IMPLICATIONS

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

9. IMPLICATIONS FOR THE REDUCTION OF CRIME AND DISORDER

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

10. STRATEGIC ACTION FOR A GREENER ENVIRONMENT (SAGE)

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

LOCAL GOVERNMENT ACT, 2000 (SECTION 97) LIST OF “BACKGROUND PAPERS” USED IN THE PREPARATION OF THIS REPORT

Brief description of “background paper”	Name and telephone number of holder and address where open to inspection
Council minutes, 18 th May 2011	John Williams, 020 7364 4204
Counsel’s Opinion, 2 nd May 2012	Isabella Freeman, 020 7364 4801