

Non-Executive Report of the:  <b>Council</b>  19 July 2017	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Asmat Hussain, Corporate Director, Governance and Monitoring Officer	<b>Classification:</b> Unrestricted
<b>Proposed Revision to the Constitution - Part 3.3 (Overview and Scrutiny Committee Terms of Reference)</b>	

<b>Originating Officer(s)</b>	Paul Greeno, Senior Corporate and Governance Legal Officer
<b>Wards affected</b>	All

### Summary

At General Purposes Committee on 2<sup>nd</sup> May 2017 the revised Overview and Scrutiny Procedure Rules were agreed but it was requested that the Constitutional Working Party consider whether the Muslim Faith representative on the Overview and Scrutiny Committee should have voting rights. This report advises as to those considerations and the recommendation from General Purposes Committee on 5<sup>th</sup> July 2017.

### Recommendations:

Council is recommended to:

1. Resolve that the Muslim Faith representative on the Overview and Scrutiny Committee is able to vote on Education matters; and
2. Agree that the Terms of Reference for the Overview and Scrutiny Committee at Part 3.3 of the Constitution be amended by the Monitoring Officer to reflect that the Muslim Faith representative can vote on Education matters

## 1. REASONS FOR THE DECISIONS

- 1.1 In the interests of fairness it is considered that the Muslim Faith representative should have the same voting rights on the Overview and Scrutiny Committee as the Church of England and a Roman Catholic representative.

## 2. ALTERNATIVE OPTIONS

- 2.1 The Council could decide not to permit the Muslim Faith representative on the Overview and Scrutiny Committee to vote on Education matters.

## 3. DETAILS OF REPORT

- 3.1 At General Purposes Committee on 2<sup>nd</sup> May 2017 the revised Overview and Scrutiny Procedure Rules were agreed but it was requested that the Constitutional Working Party consider whether the Muslim Faith representative on the Overview and Scrutiny Committee should have voting rights.

- 3.2 The legal position regarding voting rights of co-opted members is set out below.

### Legal Position

- 3.3 Section 9FA(4) of the Local Government Act 2000 ('the 2000 Act') provides that an overview and scrutiny committee of a local authority, or any sub-committee of such a committee, may include persons who are not members of the authority. This is the power to appoint co-opted members.

- 3.4 The Local Government and Housing Act 1989 ('the 1989 Act') establishes that members of committees appointed under the Local Government Acts 1970 and 1972 and who are not elected members of the Council do not generally have voting rights. There are exceptions to this rule. As set out below, Church and parent governor members of overview and scrutiny do have voting rights in respect of education matters. Further all members of advisory committees formed under section 102(4) of the Local Government Act 1972 also have voting rights.

- 3.5 Schedule A1 of the 2000 Act makes provision for "**Overview and scrutiny committees: education functions**" and as the Council's Overview and Scrutiny Committee functions under section 9FA relate partly to education functions then paragraphs 7 and 8 of Schedule A1 apply.

- 3.6 Paragraph 8(1) provides that in the case of a relevant authority that maintains one or more Church of England schools, an overview and scrutiny committee or sub-committee to which this paragraph applies must include at least one qualifying person.

- 3.7 Paragraph 8(3) provides that in the case of a relevant authority that maintains one or more Roman Catholic Church schools, an overview and scrutiny committee or sub-committee to which this paragraph applies must include at least one qualifying person.
- 3.8 Paragraphs 8(2) and 8(4) respectively specify who are qualifying persons for the purposes of paragraphs 8(1) and 8(2) respectively.
- 3.9 Paragraph 8(5) provides that in respect of education matters the Church of England and a Roman Catholic representative may vote in respect of education matters only.
- 3.10 Regulation 3 of the Parent Governor Representatives (England) Regulations 2001 ('the 2001 Regulations') provides that a local authority shall appoint at least two but not more than five parent governor representatives to each of their education overview and scrutiny committees and sub-committees. In this case, the Council's Overview and Scrutiny Committee functions relate partly to education functions and therefore the Council has appointed three parent governor representatives to the Overview and Scrutiny Committee.
- 3.11 Regulation 10 of the 2001 Regulations provides that a parent governor representative shall be entitled to vote at a meeting of an education overview and scrutiny committee of which he is a member on any question which relates to any education functions which are the responsibility of the authority concerned's executive and which falls to be considered at the meeting.
- 3.12 This means that in respect of education matters only, the parent governor representative shall be entitled to vote.
- 3.13 In summary, in relation to other co-opted members the general position is as provided by section 13(1) of the 1989 Act and which is that these co-opted members are non-voting. However, having regard to section 13(5) of the 1989 Act nothing in section 13 shall prevent the prevent the appointment of a person who is not a member of a local authority as a voting member of any committee or sub-committee appointed by the local authority wholly or partly for the purpose of discharging any education functions of the authority. The Council can therefore provide that the Muslim Faith representative is able to vote on Education matters only.

**Discussion at Constitutional Working Party on 22<sup>nd</sup> June 2017**

- 3.14 The four group leaders attended the Constitutional Working Party and all agreed that the Muslim Faith representative should be able to vote on Education matters, in the same manner as the Church of England and Roman Catholic representatives. The Borough's two largest religious groups are Muslim and Christian and it was noted that Muslim comprises the largest religious group. As such, it was only fair and just that the Muslim Faith representative should also be able to vote.

### **General Purposes Committee on 5<sup>th</sup> July 2017**

- 3.15 The matter was reported back to General Purposes Committee on 5<sup>th</sup> July 2017 who agreed that the Muslim Faith representative should also be able to vote and recommended that Council agree to this.

### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 There are no financial implications arising out of this report.

### **5. LEGAL COMMENTS**

- 5.1 Legal implications are addressed in the body of the report.

### **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The 2011 Census question on faith simply asked '***What is your religion?*** Respondents were asked to tick one of eight categories which comprised: six religions, a '*no religion*' category, and an '*any other religion*' option which allowed residents to provide further detail. For Tower Hamlets, the Borough's two largest religious groups are Muslim and Christian. At the time of the 2011 Census, 38 per cent of residents said they were Muslim and 30 per cent were Christian.

- 6.2 By giving the Muslim faith representative the same voting as the Christian representatives this should help the Council to achieve the objective of equality inherent in One Tower Hamlets.

### **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 As a best value authority, the Council has an obligation under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" (the best value duty). Whilst the report does not propose any direct expenditure, it is looking to put in place arrangements in the exercise of its functions having regard to efficiency and thereby also economy and effectiveness.

### **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 It is not considered that there are any environmental implications.

### **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 This proposed revision of the Constitution is designed to address weaknesses regarding efficiency, transparency and accountability. The overall aim is therefore to reduce risk.

### **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no crime and disorder reductions implications.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- NONE.

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

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

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

- NONE

### **Officer contact details for documents:**

- N/A