



GOVERNANCE COMMITTEE

26 September 2023

Subject Heading:

CONSTITUTIONAL REVIEW – GENEAL UPDATE

SLT Lead:

Gavin Milnthorpe
Deputy Director, Legal Services
01708 432838

Report Author and contact details:

Gavin Milnthorpe
Gavin.milnthorpe@havering.gov.uk

Policy context:

A well run Council that delivers for People and Place.

Financial summary:

There are no financial implications arising from this report.

The subject matter of this report deals with the following Council Objectives

People - Things that matter for residents

Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place. X

SUMMARY

1. The Council's Constitution is not fit for purpose, being out of date and / or inaccurate in many areas. Good practice is to review a constitution every five years.
2. The Council has created a Constitutional Working Group (comprising members and officers) with a view to reviewing and updating the Constitution.

3. This reports sets out the progress to date and seeks the consent of Governance Committee to present the changes to Full Council.
4. Please note that one of the most important aspect of the Constitutional review is the update to Part 3, the Responsibility for Functions. This is particularly true of Part 3.3, the officer Scheme of Delegations. This is currently being updated to both improve the form and function of the delegations and to align the delegations as against the new target operating model (TOM) structure. A report showing the amended delegations will follow later in the year. It is not anticipated that the changes referred to in this report will be approved by Full Council until the revised Part 3 is ready to be approved also, so as to allow all the changes to be introduced together in a coherent fashion.

RECOMMENDATIONS

5. Governance Committee is asked to make the following recommendations to Full Council:
 - (a) to approve the changes to the Constitution in respect of the political balance on the Licensing Committee;
 - (b) to approve the revised Part 4.1, Access to Information;
 - (c) to note the proposed deletion of the majority of OneSource delegations;
 - (d) to approve the amendments to the Code of Conduct for Members in light of the updated Social Media Protocol for Members;
 - (e) to approve the flag-flying and lighting up policy;
 - (f) to note the executive decision guidance note;
 - (g) to note the reallocated portfolios.
6. The revised Constitution shall be submitted to Full Council for approval in due course.

REPORT DETAIL

Licensing Committee

7. Like most other Council sub-committees, the Licensing Committee is not subject to the political balance rules. However, given the sensitive nature of the Licensing Committee it is proposed that all efforts are made to maintain political balance on

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the Licensing Committee. An amendment is therefore proposed to the Constitution.

8. Annex 2 of Part 2 of the Constitution currently states as below. The proposed amendment is shown shaded yellow and bolded.

2: *Licensing Committee*

2.1 *Most of the work of this Committee is carried out through Licensing Sub-Committees comprising a Chairman and two other Members, all drawn from the main Committee. In general, Sub-Committees will be chaired either by the Chairman of the main Committee, or one of the three Vice-Chairmen.*

2.2 *The substitute rule does not apply to Licensing Sub-Committees, which are not required to be politically balanced. **Whilst not required to be politically balanced, Council / Cabinet shall use all reasonable endeavours to ensure political balance when appointing to the Committee.***

9. Part 4.3 11(a)(iv) currently states as below. Again, the proposed amendment is shown in yellow.

(iv) *the political balance rules shall not apply to the composition of a Sub-Committee or Hearings Panel. **Whilst not required to be politically balanced, Council / Cabinet shall use all reasonable endeavours to ensure political balance when appointing to the Committee.***

10. Governance Committee is asked to make the recommendation appearing at 5(a) above.

Access to Information

11. Part 4.1 of the Constitution as it currently stands is fairly muddled in that it concerns information that may be provided to the public, whilst also covering some of the provisions applicable to members. It also ventures into the Council's decision making process, such as the timings concerning the Forward Plan.
12. Part 4.1 has therefore been redrafted to focus upon information available to the public only. The revised document is attached. (A further update to the Constitution is envisaged, to properly capture a member's right to access to information).
13. Governance Committee is asked to make the recommendation appearing at 5(b) above.

OneSource

14. A recent Cabinet decision agreed that certain functions within OneSource should return to the sovereign control of each constituent borough. Only Legal Services and Exchequer & Transactional will remain as a shared service. The London Borough of Newham reached the same decision.
15. The constitution provides for certain delegations into OneSource. Many of these will be redundant once the separation takes place. Further, it seems that the “legal” delegations into OneSource have been underused, with officers preferring to seek authority from the constitution of the relevant council.
16. It is therefore proposed that the OneSource delegations are removed in their entirety from the Constitution, with the exception of those relating to Exchequer & Transactional. Further details will be contained within the Part 3 scheme of delegations report which will follow later in the year.
17. Governance Committee is asked to note the proposed action in 5(c) above.

Member Code of Conduct

18. The Member Code of Conduct (the Code) is generally fine, and is largely consistent with other codes in place at other councils. They are just a couple of small points requiring an update, as set out below.
19. Part 5.1 of the Constitution currently provides:

“As a Member of the Council, each Member will in particular address the statutory principles of the code of conduct by:

 - *Dealing with representations or enquiries from residents, members of local communities and visitors fairly, appropriately and impartially.”*
20. The Code does not currently oblige Members to respond to enquiries, nor does it give a timescale by which a response will be given. Dealing with representations or enquiries “appropriately” could encompass the ability not to reply, where that is reasonable under the circumstances.
21. Guidance issued by the Local Government Association does not explicitly state that Members must respond to queries from constituents, although it does refer to an expectation from constituents to a reply. It is therefore suggested that the following wording is added, as shown highlighted yellow and bolded:
 - “Dealing with representations or enquiries from residents, members of local communities and visitors fairly, appropriately and impartially. **Members shall reply to each piece of correspondence within 10 working days of receipt. Where members are not able to substantively respond to query within 10**

working days, the member should acknowledge the query and set out the timescales and / or other arrangements for dealing with the query.”

22. The second issue relates to the Council’s social media protocol which dates from July 2018. The vast majority of the protocol remains relevant. However, in light of certain recent developments the protocol has been updated. The revised version is attached. Changes to the July 2018 protocol are shown in red font and bolded.
23. The Code does not, at present, specifically refer to the social media protocol. The following amendment is therefore proposed to Part 5.1:
- “Members will be expected to comply with the Council’s policies on Equality in Employment, Equality in Service Provision and Harassment and Bullying at Work as well as the Council’s Social Media Protocol.”*
24. Governance Committee is asked to recommend to Full Council that the revised protocol and consequential amendment to the Code of Conduct be approved as per 5(d) above.

Flags & Lighting Up Policy

25. The Council currently has a flag-flying policy which, again, has not been revised for some time. Further it does not account for the lighting up of buildings, a relatively recent innovation.
26. As such, a revised policy is attached for approval. It places emphasis upon the Leader / Deputy Leader to make decisions on a case by case basis as against agreed criteria. This allows for flexibility going forward so as to allow for changing circumstances, both locally and globally.
27. Governance Committee is asked to agree the recommendation at 5(e) above.

Recording Executive Decisions

28. Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, a written statement of officer decisions made in connection with the discharge of executive functions must be published as soon as reasonably practicable after they are made.
29. This is reflected in Part 4.6 of the Constitution which states:
- (a) *As soon as reasonably practicable after an individual Executive decision has been made, the Proper Officer shall produce a written statement in respect of that decision which includes:*
- (i) *A record of that decision;*
- (ii) *A record of the reasons for that decision;*

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- (iii) *Details of any alternative options considered and rejected at the time;*
 - (iv) *A record of any conflict of interest or of any dispensation granted*
- 30. The Council records its decisions by way of Executive Decision (“ED”) report. The process for finalising such a decision is largely the same as seeking Cabinet authority, and brings with it, some degree of bureaucracy and delay.
- 31. Not all councils go via the ED report route. Some allow for an officer to record their decision in a different format. These are then publicised as normal. Other councils draw a distinction between administrative and operational decisions, which do not need to be recorded, and those of an important or political nature, which do.
- 32. The Council has no guidance as to what should and shouldn’t be recorded by way of ED. Those decisions which are recorded via ED at the Council have largely been self-selected over the course of time.
- 33. The Council’s monitoring officer has therefore prepared an advice note, which is attached at Appendix 1. It is not intended to change the decision recording process at this stage, for example by making use of an officer decision record. However, this will be kept under review and any amendment to this position will be brought back to Governance Committee.
- 34. Governance Committee is asked to note the recommendation at 5(f) above.

Portfolios

- 35. With the introduction of the TOM the various allocated portfolios to Members have been revised. The allocation of portfolios is at the discretion of the Leader of the Council. The following changes have been made and are reported to Governance Committee for information.

Leader.

Communications, Engagement, Strategy, Policy, Performance and HR, Legal

Cabinet Member for Adults, Health and Culture and Deputy Leader

Living Well (Excluding Housing Demand), Aging Well, Health and Public Health

Cabinet Member for Climate Change and Housing Need

Cross Council Climate Change and Living Well Housing Demand

Cabinet Member Children

Starting Life Well, Children with Disability, Youth Services, Safeguarding, Schools and Early Help

Cabinet Member Housing and Property
Housing and Corporate Property Asset Management, Estates Management,
Hostels and H&S

Cabinet Member Environment
Environment, Waste Collection, Parks, Highways, Parking, Public Protection,
Community Safety and Emergency Planning

Cabinet Member Regeneration
Regeneration, Joint Ventures, Mercury Land Holdings, Planning, Building Control
and Inward Investment

Cabinet Member Finance
Finance Management, Audit, Pensions, oneSource transactional Services,
Commissioning and Procurement

Cabinet Member for Digital, Transformation and Customer Services.
IT Services, Transformation, Customer Services, Libraries and Bereavement &
Registrars

36. Governance Committee is asked to note the reallocation in accordance with 5(g) above.

IMPLICATIONS AND RISKS

Equalities implications and Risks

37. None.

Legal implications and Risks

38. A key role for the Governance Committee is to be aware of the strengths and weaknesses of the constitution adopted by the Council and to make recommendations for ways in which it could be amended, in order better to achieve the purposes set out in Article 1, including setting the framework within which the Council operates, enabling the Council to provide clear leadership to the community and providing an effective means of holding decision-makers to public account.
39. Changes to the constitution will be approved by the full Council only after consideration of the proposals by the Governance Committee.
40. It is the Monitoring Officer's responsibility to maintain an up-to-date version of the constitution and ensure that it is widely available for consultation by Members, staff and the public. The proposals set out in the report are intended to meet these requirements.

Financial implications and risks:

41. There are no financial implications arising from the contents of this report.

Human Resources implications and risks:

42. The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

Environmental and climate change implications and risks

43. None.

BACKGROUND PAPERS

None

Appendix 1
Executive Decision Guidance

The Council is a creature of statute. Everything it does has to have a legislative basis. As you exercise certain Executive powers of the Council, it follows that every decision you take has to have sufficient authority. You would generally find this in the Council's scheme of delegations. I would advise you to make frequent reference to it, so that you are aware of what you are authorised to do and whether your delegation is subject to any restrictions.

The Council is obliged by statute to record all Executive decisions. This is a terribly onerous provision and no council actually complies with the letter of the law. But all councils do set parameters of what decisions needs to be recorded, so as to comply with the spirit of the law.

As such, I wanted to confirm to you the kind of decisions that require an ED.

1a. All decisions made by a Member to be by way of ED / KED.

For officers:

1. Any key decision requires a KED. A decision is key where it is likely:
 - (i) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates. For this purpose "significant" is defined as (a) In excess of £500,000 (b) In excess of 10% of the gross controllable composite budget at Head of Service level (subject to a minimum value of £250,000) Whether relating to revenue expenditure/savings or capital expenditure
 - (ii) To be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

And please remember that all key decisions must go on the forward plan.

2. Any decision that falls into the following categories requires an ED (the list and examples are not intended to be exhaustive):
 - (i) A decision relating to expenditure or receipts (in respect of grant funding for example) above £[]k in aggregate in either revenue or capital.
 - Eg Setting rents and charges.
 - Sale of assets.
 - (ii) A decision to make a statutory order or issue a statutory notice or to apply for the same.
 - Eg Issuing a CPO.
 - Applying for planning permission.

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- (iii) A decision to enter into or extend a contract or legal agreement.
- (iv) A decision to close or significantly reduce levels of service at a public facing service or facility.
- (v) A decision to open a new service or facility or to significantly increase the level of service offered.
- (vi) A decision to go out to tender for a particular service, product or set of works where the likely contract to be let as a result exceeds the thresholds set out in the contract procedure rules.
- (vii) A decision to terminate a contract, including land contracts.
- (viii) A decision to enter into any type of agreement relating to land or buildings such as a license, lease (including a lease extension) or easement or to enter any land or building on any sort of register which might affect its use or value.
- (ix) A decision to issue legal proceedings or decide a court settlement.
- (x) A decision to waive or make use of an exemption in respect of any part of the constitution.
 - Eg Approving exceptions to contract procedure rules.