



Report to:	Strategy and Resources	Date:	31 October 2016
Report title:	Constitutional Review Report		
Report from:	Jessica Crowe, Executive Head - Customers Commissioning & Governance		
Ward/Areas affected:	Borough wide		
Chair of Committee/Lead Member:	Councillor Ruth Dombey, Leader of the Council Councillor Simon Wales, Deputy Leader		
Author(s)/Contact Number(s):	Alexa Coates, Head of Committee and Management Support, 020 8770 5094 Aimee Wittams-Smith, Senior Business Support Officer (Democratic), 020 8770 4171		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • An Open Council • A Fair Council • A Smart Council 		
Open/Exempt:	Open		
Signed:		Date:	20 October 2016

1. Summary

1.1 To consider updates to the Council's Constitution.

2. Recommendations

The Strategy and Resources Committee is recommended to:

- 2.1 Recommend to Council that the Planning Protocol (Appendix A) be included in the Council's Constitution and endorse the principles of Planning Committee training as set out in paragraph 4.2.
- 2.2 Recommend to Council the constitutional changes to the Scheme of Delegation for Planning matters as set out in Appendix B.
- 2.3 Recommend to Council that a Disciplinary Investigation Panel is established in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 as set out in paragraph 4.8



- 2.4 Recommend to Council the Constitutional changes relating to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 as set out in paragraphs 4.5-4.8
- 2.5 Recommend to Council that the Members' Use of Resources Protocol (Appendix C) be included in the Council's Constitution.
- 2.6 Recommend to Council the changes to procedures for appointment of community representatives for local committees as set out at para 4.9.
- 2.7 Recommend to Council constitutional changes to Pension Committee purpose and functions set out in Section 2 Article 8 of the Council's Constitution as set out in para 4.10
- 2.8 Recommend to Council the constitutional changes to decision thresholds for standing committees as set out in paragraphs 4.13
- 2.9 Recommend to Council that the Monitoring Officer is delegated authority to make any consequential amendments to the Council's Constitution arising from this report and subsequent decisions.

3. Background

- 3.1 The purpose of periodically reviewing the Council's Constitution is to strengthen open and transparent decision making, to provide clarity in terms of member and officer relationships and to assist members and officers to work in a more efficient way.

4. Issues

Planning Peer Review

- 4.1 The Planning Advisory Service (PAS) were invited in December 2015 to conduct a peer review of the Planning Committee in order to assess: whether the Committee was running in the most efficient manner, the Committee's roles and responsibilities, the format and processes, the 'customer experience', and how the Committee worked to improve the quality of its work. The original report that the peer team submitted following the review was circulated to members and in response Committee Services have undertaken some immediate actions concerning the layout and running of the Committee, and have also drafted a Planning Protocol and a revised Scheme of Delegation recommended for approval at Council.
- 4.2 Following the Peer Review, Committee Services have undertaken to arrange extensive training for Planning Committee members, in order to ensure that the decision-making powers of the Committee are used to its full potential. The training seeks to avoid decisions where it is possible for an appeal to result in the decision being quashed. Planning Committee members attendance at the training sessions will be monitored via a point-scoring system in order to qualify to sit on the Committee. It is proposed that in order to sit on Planning Committee members of the committee must attend at least 75% of training delivered in a municipal year and commit to undertake any



training missed within 1 year. Committee Services will notify the relevant group leaders if any member of the committee falls below 75% attendance.

- 4.3 A benchmarking review undertaken by the Committee Services team demonstrated that a new scheme of delegation for the Planning Committee, in line with neighbouring London authorities, would promote a more efficient service. The benchmarking review showed that the London Borough of Sutton was above the comparator average from the number of meetings held and applications placed on the agenda. The Schemes of Delegation of these authorities were also not as prescriptive as the London Borough of Sutton as to what would cause an application to go to Committee. It was also found that the number of applications de-delegated by Councillors was increasing, and a revised process for de-delegation is set out as part of the Planning Protocol in Appendix B. The process for de-delegation will be clearly set out and there is a presumption that members will consult with planning officers before making a de-delegation request to enable Members' concerns to be addressed if possible without requiring a decision by Committee, which may be unnecessarily time and resource-intensive. Although more decisions have been coming to Sutton's Planning Committee, this is not having a great impact on the ultimate decisions, as such applications are leaving Committee with a decision in line with the original recommendation.

Members' Use of Resources

- 4.4 The committee are asked to recommend a Use of Council Resources protocol for Councillors to Council for inclusion in the Constitution. The protocol has been developed to provide greater clarity to Councillors on what are acceptable uses of Council resources, in line with similar protocols adopted by other councils. It provides additional guidance to the interpretation of provisions already set out in the Council's Code of Conduct and pulls together in one place for ease of reference a range of policies around use of data, ICT and social media, to explain how these apply to elected Members. A draft protocol is attached at Appendix C.

Statutory Officer - Disciplinary Investigation Panels

- 4.5 In June 2015 the Committee considered a report on the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 – change to Designated Independent Person discipline and performance procedures. The report outlined changes to the procedure for dealing with matters of misconduct and poor performance relating to the three statutory officers – Head of Paid Service, Monitoring Officer and Section 151 Officer - and required changes to the Council's constitution as well as the establishment of and delegation to a committee to implement the new procedures if required. The regulations, which were required to be implemented by the Full Council meeting in July 2015, were not clear on the process required for establishing a Panel to consider matters of misconduct and poor performance relating to the three statutory officers.
- 4.6 Subsequent guidance and an updated conditions of service handbook for local authority chief executives has been issued by the Joint Negotiating Committee for Chief Executives of Local Authorities, following consultation with the Department for Communities and Local Government, which clarify the procedures. The guidance and handbook clarify that if there is a proposal to dismiss a statutory officer the authority must appoint a panel and take into account any advice,



views or recommendations of that Panel. The Panel should be a committee of the Council and should contain at least two independent persons appointed under s28(7) of the Localism Act 2011 and should only comprise of independent persons. Therefore no elected members should sit on the panel. It is therefore proposed that a separate panel is established by Council - Disciplinary Investigation Panel to have responsibility for arrangements provided by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

- 4.7 The handbook also clarifies that any decision to take disciplinary action, short of dismissal should be delegated to the Investigations and Disciplinary Committee, (it was previously agreed that this function would be carried out by the Senior Officer Appointments Committee) therefore it is recommended that this is formalised, with the addition of a paragraph to Section 2 Article 8 Regulatory and Other Committees, Senior Officer Appointment Committee as follows:

To decide any disciplinary action in relation a Statutory Officer, Head of Paid Service, Monitoring Officer and Section 151 Officer, short of dismissal.

- 4.8 Some Constitutional provisions require amendment to be consistent with the guidance. Part 5 - Miscellaneous of Section 4 - Rules of Procedure to be amended as follows:

DISCIPLINARY ACTION AGAINST THE CHIEF EXECUTIVE (HEAD OF THE PAID SERVICE), MONITORING OFFICER AND CHIEF FINANCE OFFICER

- 47.1 *No disciplinary action in respect of the head of paid service, (unless s/he is also a Council manager of the authority), its Monitoring Officer or its Chief Finance Officer except action described in 47.2, may be taken by the Authority, or by a Committee, a joint committee on which the Authority is represented, or any person acting on behalf of the Authority, without first inviting at least two locally appointed Independent Persons of its Standards regime (where the Council has not appointed more than one independent person a duly appointed person from another local authority will be invited to sit on the Panel) to sit on a panel, the advice, views and recommendations of which the Council must take into account before taking any decision to dismiss, as set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.*

Local Committee Membership

- 4.9 Under the Council procedure rules the membership of local committees may include non-voting representatives of any formally constituted locally-based groups. At present the appointment of these non-voting representatives is referred to Full Council following a recommendation from the local committee. This can lead to a delay in the the representatives' formal appointment which is not beneficial to the operation of local committees. It is therefore recommended to delegate the authority to appoint the local committees themselves through an amendment to Section 4 Part 4A of the Constitution - Procedures for dealing with matters at Local Committee Meetings as set out below:



29.3 *Local Committees are made up of the councillors whose wards comprise the area covered by the Committee and non-voting representatives of any formally constituted locally-based group that promotes the interests of local residents, businesses or visitors in the Local Committee area. The appointment/removal of non-voting representatives of any formally constituted locally-based group may be made by the relevant Local Committee, for a set term.*

Pension committee

4.10 The Pension Board recently commissioned a review of the governance arrangements of the Pension Fund. The recommendations from this review were reported to the Pension Board on 6 July 2016 and included the following findings and recommendation for changes to the Constitution. The “Function” of the Pension Committee as contained in the Council’s Constitution specifically, and appropriately, requires the Committee to determine the “arrangements for compliance with all” statements required under the LGPS Regulations. Such statements include the Annual Report, Governance Compliance Statement, Statement of Investment Principles (including Asset Allocation, Policy on Socially Responsible Investment and Compliance Statement on the Myners Principles), Funding Strategy Statement, Communications Policy and Discretions Policy. These Statements set out the strategic policy and position of the Fund and therefore should clearly be formally considered and approved by the Pension Committee as the body responsible for the Pension Fund. Although the “Function” of the Committee as set out in the Constitution clearly implies that the Committee should formally approve these statements it does not explicitly state this. Therefore it is recommend that the Constitution of the Council be amended by adding a new point following the existing point 1 of the “Function” of the Pension Committee as follows “ To approve all policy statements required or prepared under the LGPS Regulations or any other relevant statute, regulation or statutory guidance.”

Scheme of Delegation and Thresholds for Decisions

4.11 In January 2016 Council, following a recommendation from the Strategy and Resources Committee, agreed changes to the Council’s scheme of delegation and established some thresholds for decisions for committee. As the new scheme of delegation has been in operation for over 6 months it is an appropriate point to review. The new decision thresholds for committees have been operating well and there appears to be a greater understanding from officers on which decisions require committee approval. Feedback from officers has suggested that the contract thresholds, whilst appropriate for committee - with the £1m sign off for contract awards - has created an inefficient gap between sign offs by Executive Heads (up to £30,000) and Strategic Directors (up to £1m) it is therefore recommended that this is rationalised, with Executive Head sign off for contract awards raised to £100,000.

4.12 Feedback has also suggested that the threshold for contract variations is confused. Following consultation with Commissioning Support it is recommended that this threshold is deleted. Regulation 72 of the Public Contract Regulations 2015 provides circumstances where variations to existing contracts can be made. However the principle that a material change that constitutes a new contract and will require to be procured competitively still applies. One of the circumstances that is permitted enables variations to contracts which are no more than 50% of the original value



of the contract. Therefore under Regulation 72 unless what was being proposed satisfied the Regulation, officers would not be permitted to vary a contract to a significant extent without initiating a new tender process. The threshold was originally developed to ensure that members have oversight of any significant contract variations but it is now felt that this is achieved through the regulations without an additional specification in the Standing Orders. Feedback has also indicated that the provision relating to ceasing of services is too open and it it therefore recommended that the wording is altered to give greater clarity to ensure that committees focus on significant changes to services. It was also noted that the thresholds did not cover decisions to enter into shared services with other local authorities which are appropriate to refer to standing committees, and in practice have been referred to committee for decision.

4.13 It is worth noting that where an officer has delegated powers, the Council or relevant Committee can still exercise that power in a particular case if it considers it appropriate to do so. Therefore where decisions are politically sensitive the presumption is that they will be referred to the relevant committee following consultation with the Chair. The suggested amendments to Article 7 (contained within Section 2 of the Council’s Constitution) are set out below:

Relevant Committee	<ul style="list-style-type: none"> ● Contract awards over £1 million in total ● Contract variations where the value of the variation is greater than £500,000 and is 25% or more of the original contract value. ● Capital virements over £250,000 ● Revenue estimate virements over £500,000 ● New capital schemes over £500,000 ● Decisions which affect wards larger than a local committee area ● Decisions within the policy and budgetary framework ● Any decision to <u>reduce or cease or spin out</u> the provision of a service <u>which affects 50 or more staff</u> ● <u>Any decision to develop a shared service with another authority which affects 50 or more staff</u> ● Any policy decision which has resulted from an overview and scrutiny or task and finish panel review, and the response to such a review and its recommendations. ● Recommendations to Full Council in relation to the policy and budget framework <p>Notes:</p> <ul style="list-style-type: none"> ● Any decision specifically reserved to Strategy and Resources Committee must be taken by that Committee. ● Any relevant Committee may take a decision within the policy and budget framework including contract and virement decisions. Only policy and budget
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	<p>recommendations outside the policy and budget framework are reserved to Strategy and Resources Committee.</p>
Chief Executive and Strategic Directors	<ul style="list-style-type: none"> • Contract awards between £100,001 -£1 million in total (with decisions between £150,001 <u>500,001</u>- £1 million taken in consultation with the Strategic Director - Resources) • Contract variations where the value of the variation is less than 25% of the original contract value and not more than £500,000 • Capital virements up to £250,000 (with decisions between £100,000 - £250,000 taken in consultation with the Strategic Director Resources) • Revenue Virements between £250,000- £500,000 will be taken by the Strategic Director of Resources only • New capital schemes funded by grants, external funding or virements from existing schemes up to £500,000 will be taken by the Strategic Director of Resources only • Decisions which affect all or the majority of a single ward but less than a local committee area • Decisions which are reserved to the Chief Executive and Strategic Directors in accordance with the relevant Directorate schemes of management
Other Officers	<ul style="list-style-type: none"> • Any decision not specifically reserved to a committee, local committee or delegated to a Strategic Director (decisions to be taken in accordance with the relevant Directorate internal scheme of management and the contract and financial standing orders)

5. Options Considered

- 5.1 It is for Council to agree the Constitution which includes the role and functions of committees and the scheme of delegation to officers. It is a decision for members on whether to change how committee and delegated decisions are structured. These changes are being proposed to ensure clarity and robustness of decision making structures in Sutton.

6. Impacts and Implications

Financial

- 6.1 There are no direct financial implications arising out of this report. However, if the thresholds for committee decision are agreed consequential amendments will be required to the contract and financial standing orders



Legal

6.2 The decision to amend the Constitution is reserved to Council. The legal issues are set out in the body of the report.

7. Appendices and Background Documents

Appendix letter	Title
A	Draft Planning Protocol
B	Draft Scheme of Delegation for Planning matters
C	Draft Members' Use of Council Resources Protocol

Background documents
Planning Peer Review Report

Audit Trail		
Version	Final	Date: 20/10/16
Consultation with other officers		
Finance	Yes	Andrew Bryant
Legal	Yes	Fabiola Hickson Tracy Swan Paul Evans David Fellows
Other Officers	Yes	Andy Webber
Integrated Impact Assessment required?	No	N/A