

Brighton & Hove City Council

For general release

Meeting: Council

Date: 17 July 2003

Report of: Chief Executive and Monitoring Officer

Subject: Amendments to the Council's Constitution

Ward(s) affected: All

1. Purpose of the report

- 1.1 Since the Council's constitution was last updated, there have been a number of developments, including changes to the political composition of the Council, new legislation as well as emerging national and local priorities that require modifications to the Council's Constitution.
- 1.2 The Leaders Group (consisting of the Leader of the Council, the Leader of the Opposition, the Convenor of the Green Party and the Leader of the Liberal Democrats) considered proposals at their meetings on 28th May and 30th June. This paper outlines the proposals as agreed by the Leaders Group and seeks Council's approval to amendments to the Constitution.

2. Recommendations

- 2.1 That the proposed amendments as set out in paragraphs 4 to 18 and the Appendices be approved and that the Council's constitution be amended accordingly;
- 2.2 That the Monitoring Officer be authorised to amend the text of the Council's constitution in accordance with Council's decision, including any changes necessary, consequential or ancillary to the implementation of the changes;
- 2.3 That the Chief Executive be authorised to take all steps necessary or incidental to the implementation of the proposals, including making transitional arrangements where necessary.

2.4 That Michael Wilkinson and Melanie Carter be confirmed as Independent Members of the Standards Committee as required under the Standards Committee regulations.

2.5 That the Monitoring Officer, after consultation with the Chief Executive, be authorised to appoint to the vacant post of Independent Member of the Standards Committee (the appointment to be subject to Council approval.)

3. Information/background

3.1 Following the May local elections, the Leaders Group has had meetings to discuss the conduct of council business and the structures (both at Member and Officer level) necessary to deliver Council services in accordance with national and local priorities. The Standards Committee and the Independent Remuneration Panel have also had meetings to discuss their respective roles, which were in turn reported to the Leaders Group. This paper summarises the proposals under separate headings. The key textual amendments to the constitution are shown in the underlined italics in the Appendices to this report (which are not attached, but are available in the Members' rooms and on the Wave.) There will, however, be consequential amendments to other parts of the constitution, which are not reproduced in the appendices.

4. A New Housing Committee

4.1 The issue of a committee with a housing focus was raised in the consultation that preceded the adoption of the constitution. The challenges ahead (in particular the need to respond to the decent homes standards and the options for achieving it) require leadership and careful steering from a committee with a housing focus. The committee structure also needs to be adjusted to take account of the officer structure and achieve a more consistent reporting line to committees.

4.2 It is therefore proposed that:

- *The Culture, Regeneration and Housing Committee be renamed the "Housing Committee" and assume overall responsibility for the Council's housing and related functions, including (a) strategic housing (b) housing landlord functions and (c) Supporting People.*
- *The housing functions currently with the Policy & Resources Committee be transferred to the Housing Committee;*
- *The culture, arts, heritage, tourism and marketing, libraries, museums and art galleries, major events, economic development, regeneration,*

grants, Shoreham Airport and management of venues (the Brighton Centre, the Dome, Hove Town Hall etc.) functions, currently with the CR & H Committee, be transferred to the Policy and Resources Committee;

4.3. The proposed terms of reference for the new Housing Committee are set out in Appendix 2 to this report. The Policy & Resources Committee will, as now, retain its functions regarding matters that have corporate policy or corporate budgetary implications as well as the acquisition or disposal of properties.

5. Composition and Reporting Line of the Housing Management Sub-Committee

5.1 Under current arrangements, the Housing Management Sub-Committee is a sub-committee of the Policy and Resources Committee. In view of the transfer of housing functions from P & R to the new committee, it would be more appropriate for the sub-committee to report to the Housing Committee rather than the Policy & Resources Committee.

5.2 There is currently no representation from Leaseholders at the sub-committee. As many of the issues regarding housing management are of interest to or affect leaseholders, it would be useful to have a representative of the Leaseholders as a member of the sub-committee. The Local Government and Housing Act 1989 prohibits any such co-optees (whether tenants or leaseholders) from having voting rights.

5.3 It is therefore proposed that:

- *the Housing Management Sub-Committee retains its sub-committee status;*
- *the Sub-Committee (currently a sub-committee of P & R) becomes a sub-committee of the Housing Committee; and*
- *a representative from the Leaseholders Group be co-opted as a non-voting member of the sub-committee.*

6. A Smaller Standards Committee

6.1 The current membership of the Standards Committee consists of 7 Councillors, 7 Independent Members and 1 Parish Council representative (a total of 15.) This makes it probably the largest Standards Committee in England.

- 6.2 Under the Local Government Act 2000, complaints about breaches of the code now go to the Standards Board rather than being dealt with locally unless the Board decides to refer the complaint back to the Monitoring Officer.
- 6.3 The new Members' Allowances Regulations, which came into force on 1st May 2003, prohibit any Member of the Independent Remuneration Panel from serving as a member of any Committee or Sub-Committee of the Council with effect from September 2003. At the moment, 3 out of the 5 existing Independent Members of the Panel are Members of the Standards Committee and two of them have already expressed a preference to stay with the Remuneration Panel and resign from the Standards Committee.
- 6.4 When vacancies occurred in the past, officers have found it difficult to recruit new Independent Members. The regulations governing Standards Committees require at least 25% of the members of the committee to be Independent Members. With a large committee, there is always a risk of not being able to comply with the 25% requirement.
- 6.5 The Standards Committee discussed the size and Membership of the committee and supported the reduction in the number of Members. The committee's recommendation was a reduction in the numbers to 8. Since then, the Leaders' Group felt that a slightly larger number would allow for other members to gain experience in the field. It is therefore proposed that the number be reduced to 10 rather than 8.
- 6.6 Under the Standards Committee Regulations, the appointment of Independent Members needs to be confirmed by Council. The Council therefore needs to formally approve/confirm the appointment of the two existing Independent Members in order to comply with the Standards Committee Regulations. The advertisement for the 3rd Member will be published soon. The current practice is for the selection process to be conducted by the Monitoring Officer, after consultation with the Chief Executive. The appointment of the new Member will be reported to Council for approval.
- 6.7 The Standards Committee also recommended an amendment to its terms of reference. No substantive changes were made, but it was felt helpful to group the different functions under 5 headings as shown in Appendix 2.
- 6.8 It is therefore proposed that

(a) the Membership of the Standards Committee be reduced from 15 to 10 consisting of the following:

- 6 Councillors - 2 Lab (including the Chair), 2 Con, 1 Green and 1 Lib Dem;
- 3 Independent Members (including the Deputy Chair); and
- 1 Rottingdean Parish Councillor.

(b) That the terms of reference of the committee be revised and amended to read as shown in Appendix 2.

7. A New Licensing Committee

7.1 The Licensing Bill currently going through Parliament is expected to receive Royal Assent in July this year and come into force in stages (coming into full force by July 2004.) The proposals in the Bill will transfer the functions of the Licensing Justices regarding liquor licensing to local authorities as well as rationalising the licensing system. The Bill includes a mandatory obligation on local authorities to establish a Licensing Committee. In addition to responsibilities for dealing with applications, the Licensing Committee is required to advise the Council on the adoption of a statement of Licensing Policy.

7.2 The co-ordination of the Council's Policy and preparations for the practical arrangements for dealing with licences needs to start at an early stage. Setting up a "shadow" committee will give the Members concerned the opportunity to familiarise themselves with licensing rules and develop expertise in time to undertake the responsibility. One option open to the Council is therefore to set up a shadow licensing committee which can undertake its statutory responsibility when the Act comes into force rather than wait until January 2004. The Bill requires the Committee to consist of no fewer than 10 and no more than 15 Members. The Council can amend or modify the composition as well as the terms of reference of the terms of the Committee as necessary.

7.3 It is therefore proposed that

the Council establishes a Licensing Committee consisting of 10 Members (4 Lab, 4 Con, 1 Green and 1 Lib Dem) that will have the function of overseeing the preparation for the introduction of the Act in the three months between September and December and undertake its statutory functions when the Act comes into force (aspects of the Bill are expected to start to come into force from January 2004 onwards); and

that the draft terms of reference for the proposed committee as shown in Appendix 2 be approved.

7.5 It is not, at this stage, proposed to change the arrangements for the Licensing and Regulatory Functions Sub-Committee or the Policy and Resources Committee. The proposals are intended primarily to enable preparations for the implementation of the Licensing Bill to take place. A further report will be submitted to Council with proposals to rationalise the arrangements for dealing with licensing in the light of the final Act, and secondary legislation and guidance from the Secretary of State.

8. The Arts Commission

8.1 On 26th March, the Policy & Resources Committee decided to establish an Arts Commission to co-ordinate the Arts Strategy and advise the Committee. The Council's thinking and planning around the development of a range of Partnership bodies and commissions has moved on. In order to incorporate that thinking, and to ensure that the Arts Commission is formed in line with other partnerships, it is proposed that:

- *The Commission reports to P & R at least quarterly;*
- *That the Commission reports to the Local Strategic Partnership as well as the Arts Council;*
- *That there be 6 Councillors appointed to the Commission (2 Lab, 2 Con, 1 Green and 1 Lib Dem)*
- *That the terms of reference of the commission be amended to reflect the above (as shown in Appendix 2)*

9. Review of Terms of Reference of the Independent Remuneration Panel

9.1 *Proposal*

It is proposed that the terms of reference of the Panel be revised (as shown in Appendix 2) to include additional responsibilities introduced by the Members Allowances Regulations.

9.2 The Local Authorities (Members Allowances) (England) Regulations 2003 give the Independent Remuneration Panel additional functions, including dealing with pensions for Members and allowances for "co-opted" Members. The current terms of reference of the Panel therefore need revising to reflect the amendments in the regulations. The role of the Panel remains advisory and the final decision on Members' allowances continues to be reserved to full Council. A copy of revised terms of reference is attached in Appendix 2.

- 9.3 One Member of the Independent Panel is a member of the Standards Committee and has decided to stay with the Standards Committee. There will therefore be a vacancy. Under the terms of reference of the Panel, the power to appoint members of the Panel is delegated to the Monitoring Officer after consultation with the Chief Executive.
- 9.4 The Independent Remuneration Panel has been considering changes to the scheme for Members allowances. There will be a report to Council in September with proposals on the number of special responsibility allowances, co-optees allowances and travel and subsistence allowances. This will be followed by a second report in November on the levels of basic and special responsibility allowances.

10. Changes to Officer Structure to Reflect the Housing and Community Safety Priorities

10.1 *Proposal*

It is proposed that the functions currently within "neighbourhood services" in the Housing and City Support Directorate be realigned so that the housing landlord functions remain a discreet service within the Directorate. The other functions within Neighbourhood Services (Environmental Health, Licensing Trading Standards) should be grouped together with the Community Safety Team (currently in the Environment Directorate) under an Assistant Director reporting to the Chief Executive. The Assistant Director to be a member of the Environment Directorate's Departmental Management Team and report to the Director of Environment on day to day operational matters.

In terms of Committees, it is proposed that the Environmental Health and Trading Standards functions report to the Environment Committee rather than Policy & Resources.

- 10.2 This proposal is primarily aimed at increasing management capacity in 2 key areas over the next few years. The decent home standards and the challenges ahead facing the Council regarding housing options require the housing landlord role to be managed as a separately identifiable (discreet) function. The Community Safety priorities ("crime and grime") also mean that the services currently in the Environment Department (community safety) and those in Housing and City Support around environmental issues need to be brought together to achieve coherence and greater co-

ordination. The proposed reporting lines will assist the achievement of a more corporate approach and greater co-ordination of related functions.

- 10.3 As the Environment Committee has overall responsibility for Community Safety and the physical environment, it would make sense for environmental health, trading standards and building control services to report to the Environment Committee.
- 10.4 A copy of the proposed amended terms of reference for the Environment Committee is shown in Appendix 2 and the revised delegations to officers are shown in Appendix 3.

11. Council Procedure Rules

- 11.1 At Leaders Group on 28th May and 30th June a number of suggestions were discussed and the Group agreed the following proposals.

11.2 *Proposal*

- *That current arrangements for reporting to Council be streamlined with a view to reducing the number and length of reports and enabling more strategic discussion to take place and introducing a "green paper" approach on certain issues to enable space at Council for debates to take place on key issues before final decisions are made.*
- *That there be 2/3 "deliberative debates" over the municipal year to be identified from the forward plan at future meetings of the Leaders Group.*

[NB this proposal does not require amendments to the Council's constitution at this stage.]

- 11.3 The practice adopted in some authorities (e.g. East Sussex) is for shorter reports with extracts from the proceedings of cabinet or other committees reported to Council for information and, where required, for decision. ESCC have a practice of reporting in precis all items from each of the Cabinet and Committee meetings in the cycle. This Council's existing standing orders are flexible enough to enable a similar practice to be adopted. There are, however, time constraints between committee meetings and council, and more thought needs to be given to the practicality of implementing a similar approach. Consideration needs to be given then to whether each group at each Committee would still need to have the right to refer a paper to Council. Where Council is making substantive decisions (rather than having

papers referred to it for information) a full report (including financial and legal implications) will be required to ensure robust decisions are taken.

11.4 Similarly, the Constitution already allows for the holding of “deliberative debates” at Council (i.e. the “green paper” approach whereby issues of significance could be discussed at Council at an early/formulative stage before returning to a later meeting for decision). Using the “Forward Plan” currently being produced, it should be possible to identify (and timetable) 2/3 deliberative debates on key issues over the next 12 months to experiment with the approach to determine a methodology for the future.

11.5 ***Proposal - Amendments***

- *Adopting a requirement that all amendments be submitted by 4pm the day before the Council meeting.*
- *Amendments from the floor should be allowed only if otherwise the substantive resolution would be unlawful or invalid or, where in the view of the Mayor significant or urgent change in circumstances have occurred between the 4 PM deadline and the beginning of the Council meeting.*
- *The Chief Executive to bring any such circumstances to the Mayor's attention.*
- *All amendments of which notice has been given to be circulated to Members at the beginning of the meeting.*
- *That the revised Procedure Rules under Appendix 4 be approved.*

11.6 Under the current Council procedure rules (CPR 24.4) Members are required “where possible” to give 24 hours notice of any amendments they intend to move at Council. However, the rules also allow amendments to be moved at Council without notice, which is what tends to happen in practice. This means that amendments could be moved and be adopted by Council without the full implications of the amendment (legal, financial etc) having been considered in advance. It also makes an orderly conduct of the proceedings of the Council more difficult to achieve. Authorities elsewhere have adopted a practice of requiring any amendments to be submitted in writing in advance of the meeting. In the light of the intention of the groups to work more openly and for all groups to be involved in discussions around the Council agenda the “last minute” amendment should no longer be needed.

11.6 ***Proposal - Alteration of a motion by the Mover:***

It is proposed that where an amendment moved by a Member is accepted by the Mover of the substantive motion, the Mover of the original motion should retain ownership of the motion.

11.8 The Council's procedure rules allow the Mover of a motion to alter the motion with the Council's consent. Frequently, the Movers of a motion accept an amendment moved by another Member. When this happens, the current rules are unclear as to whether the original Mover retains ownership of the motion or whether the Mover of the amendment becomes the Mover of the substantive motion. The significance of this is that the procedure rules give the Mover of the motion, or if the amendment is carried, the Mover of the amendment, the right to reply at the conclusion of the debate (and for the minutes to show ownership of the motion).

11.9 ***Proposal - Notices of Motion, Members Letters etc referred to Committee***

It is proposed that

- *the Committee to which such a notice of motion, letter or deputation is referred should have the discretion to either note the notice or letter or ask for a report. It should not, however, take any steps that require substantive action or expenditure without such a report.*
- *It is also proposed that the rules should apply to petitions so that they are brought into line with the rules for notices of motion, Members letters and deputations.*

11.10 There is, currently, some ambiguity as to whether Members Letters, Notices of Motion and deputations referred to a Committee need to be accompanied by an Officer Report in every case (*cf.* CPR 9.2 and 23.3.) The proposed amendment will clarify this and thus give the committee the discretion to deal with the matter in the most appropriate way.

11.12 ***Proposal - Urgent business***

The Access to Information procedure rules and Council Procedure Rules be amended to reflect the fact that urgent items do not have to comply with the five day rule.

11.13 The Council's procedure rules require agendas and reports to be sent out 5 clear working days before the date of the meeting. They do not specifically cover the situation where the matter is urgent. The procedure rules need to be amended to bring them into line with the access to information procedure rules contained in the Constitution by recognising the urgent items exception.

11.14 ***Proposal – Public Questions***

that members of the public should be allowed one supplementary question following the response given by the relevant committee chair or portfolio holder (as with member questions.)

11.15 The Leaders Group have identified that the public questions sessions at Council is not engaging the public. The opportunity to ask one supplementary question to the member concerned may make the agenda item less formulaic and 'staged' thus attracting greater public engagement from a wider range of participants.

11.16 ***Proposal – Public Question at Policy & Resources Committee***

It is proposed that

- *a set period (15 minutes) be set aside at the beginning of the next two cycles of the Policy and Resources Committee for public questions using a similar format to that currently used at Council.*
- *The new procedure to operate for an experimental period and to be reviewed after the first two meetings in the autumn. Questions not to exceed 50 words in length.*
- *The Monitoring Officer to prepare a procedure based on the current Council procedures, providing that the same question may not be asked at Council and at Policy and Resources Committee.*

[NB this will not require an amendment to the Council procedures and will operate using the Chair's discretion during the experimental stages. The Council Procedure Rules may need amending before the proposed question time is adopted on a permanent basis]

11.17 The Leaders Group considered this and agreed to try it on an experimental basis at Policy and Resources Committee. In the light of experience, Council will have to make a decision whether to extend it beyond the first two meetings and possibly other committees. It is proposed to use a similar format to the one used at Council to start with. As the trial will be introduced using the Chair's discretion, there will be the flexibility to modify the procedure to suit circumstances.

12. **Planning and Building Control**

12.1 ***Proposal***

That the Development Control and Building Control functions be transferred to the Environment Directorate on a permanent basis

- 12.2 When the Council approved changes to the Constitution in February this year, the Planning and Building Control function were under review. Council agreed that these functions be transferred to the Housing and City Support Directorate pending the outcome of the Review. It also gave the Chief Executive the power to make transitional arrangements and take any steps necessary or consequential to the implementation of the proposals. Having regard to the outcome of the Review, a decision was taken to move these functions to the Environment Directorate on a transitional basis. This needs to be regularised by formally amending the Constitution so that Development Control and Building Control become an integral part of the functions of the Environment Directorate. The revised officer delegations in Appendix 3 incorporate these amendments.

13. Authority for Members of DMT

13.1 *Proposal*

Assistant Directors reporting to the Chief Executive be given direct delegated powers to be exercised in accordance with direction given by the Chief Executive from time to time.

- 13.2 The current scheme of delegation to officers allows Members of each Departmental Management Team (DMT) to exercise the powers delegated to the Chief Officer “in their own name” where the Chief Officer is absent or otherwise unable to act. Whilst this works well in other cases, it does not cover the arrangements for Assistant Directors for Economic Development and Regeneration and Royal Pavilion, Libraries and Museums as they report to the Chief Executive and there is no “DMT” for the Chief Executive’s service. The best way to address this is to grant the relevant officers direct delegated powers to be exercised in accordance with instructions from the Chief Executive. This will also apply to the position of Assistant Director, Neighbourhood Services.

- 13.3. The revised officer delegation (Appendix 3 reflects the proposed arrangements under the delegations to the Chief Executive.)

14. Appointment of Chief Officers

14.1 *Proposal*

The current requirement for Chief Officers to be appointed by a Committee or Sub-Committee of the Council should cease to apply where the appointment is on an Acting Basis or following interviews by a panel including Members

14.2 The current Officer Employment Procedure Rules require the appointment of Chief Officers, the Monitoring Officer and the Chief Finance Officer to be made by a Committee or Sub-Committee of the Council. This is largely a formality and would not serve a real purpose when the appointment follows an interview by a panel of Members or when the appointment is on an acting basis only. It is therefore proposed to amend the officer appointment procedures as shown in Appendix 5 by avoiding the need for committee approval in such cases.

15. Contract Standing Orders

15.1 *Proposal*

- *The requirement for all contracts to be recorded in an electronic register, the restriction on ability to contract to Contracts Officers and the rules as to negotiations be removed from the Contract Standing Orders and be placed in the Codes of Practice.*
- *That the Head of Law and the Head of Procurement be instructed to incorporate these provisions in Contract Codes of Practice.*
- *That the changes come into force when the Codes of practice are amended or 1st September, whichever is the later.*

15.2 The Council's Contract Standing Orders require, among other things (a) all contracts entered into by the Council to be recorded in an electronic central register; (b) contracts to be entered only by Chief Officers, Assistant Directors or designated Contracts Officers and; (c) negotiations with outside contractors to be conducted by trained negotiators.

15.3 Although the practice suggested in Standing Orders is desirable, including them in Contract Standing Orders carries with it the risk that contracts entered into without compliance with the procedures may be rendered invalid. The same objectives can be better achieved by including the above provisions in Codes of Practice.

15.4 The proposed changes to contract standing orders are shown in Appendix 6

16. Signing of Notices

16.1 *Proposal*

It is proposed that the Scheme of Delegation to officers be amended to remove the direct authorisations given to officers where this is not necessary so as to enable the Scheme of Delegation to be rationalised and a consistent approach adopted.

- 16.2 The Scheme of Delegation to officers includes a number of references authorising officers below Director level to serve notices in their own name. This has created some anomalies with officers not included in the authorisations requesting that they be so included. In most cases, there is no legal requirement for these officers to have delegated powers independent of their Chief Officer and they can serve notices providing it is done in the name of the Director. The Scheme of delegation as amended is shown in Appendix 3. The introduction, under paragraph 4, makes it clear that such notices may be signed by authorised persons.

17 Power to Pay Compensation to Tenants

17.1 *Proposal*

It is proposed that the Director of Housing and City Support be authorised to pay compensation for improvements where the amounts are prescribed by legislation notwithstanding that they exceed £1000 without needing to seek Committee approval or consulting the Chair of the Housing Management Sub-Committee.

Any such payments shall be reported to the Housing Committee every 6 months.

- 17.2 The Scheme of Delegation to officers gives the Director of Housing and City Support the power to make payments in respect of removal expenses, compensation for improvements and disrepair not exceeding £1000. There are cases where the compensation payable is prescribed by regulations and the Council has no discretion. In such cases it makes no sense to require committee approval. The scheme of delegation to officers will require any such payments to be reported to the Housing Committee on a 6 monthly basis so that Members can be kept informed.

18. GUIDANCE FOR MEMBERS AND OFFICERS WHEN SERVING ON OUTSIDE BODIES

18.1 *Proposal*

That the guidance for Members and Officers be revised to take into account developments since its adoption in 1998.

18.2 The current guidance in the Constitution was adopted in 1998 and needs updating to take into account legislative developments, the increasing use of partnerships to deliver Council services as well as good practice from elsewhere. The proposed amendments will only involve providing more detailed information about the law and referring to the new Code of Conduct for Members. The Standards Committee considered the amended draft guidance and recommended its approval with minor modifications, which have been incorporated in the draft show in Appendix 7.

19. Consultation

19.1 The proposals in this report were discussed by the Leaders' Group. The changes to the size and composition of the Standards Committee and the revised Guidance for Members on Outside Bodies were discussed by the Standards Committee and the revised Terms of Reference of the Independent Remuneration Panel were discussed by the Panel. Their views have been incorporated into this report. businesses, the public/local residents, communities of interest and/or union/staff representatives.

COMMITTEE REPORT APPENDIX 1



Meeting/Date	<i>Council</i>
Report of	<i>Chief Executive and Monitoring Officer</i>
Subject	<i>Amendments to the Council's Constitution</i>
Wards affected	<i>All</i>

Financial implications

No financial implications arising directly from this report. There will be costs involved in the advertisement for the vacant Independent Member of the Standards Committee and Remuneration Panel posts.

Legal implications

These are incorporated into the body of the report.

Lawyer consulted: Abraham Ghebre-Ghiorghis Date 7 July 2003.

Corporate/Citywide implications

The proposals in the report will assist in the achievement of the Council's corporate and citywide priorities by proposing a structure that facilitates the achievement of those objectives.

Risk assessment

The timescale for the implementation of the proposals is adequate and no substantial risk is envisaged.

Sustainability implications

The proposal brings together a number of functions that support the sustainability agenda.

Equalities implications

There are no adverse equalities implications arising from this report.

Implications for the prevention of crime and disorder

The proposed arrangements for neighbourhood services will strengthen the Council's ability focus on community safety.

Background papers

Council's constitution.

Contact Officer

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