

Council

28 March 2013

Agenda Item 110

Brighton & Hove City Council

Subject:	Review of the Constitution		
Date of Meeting:	28th March 2013 21st March 2013 – Policy & Resources Committee		
Report of:	Interim Lead, Chief Executive's Services		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 On 17th May 2012 the Council adopted a new constitution based on a committee system of governance. This was the earliest date that the Council could move to a committee system following the implementation of the Localism Act 2011 and Brighton & Hove was one of the first authorities to move to the new system of governance.
- 1.2 This report sets out recommendations for amendments to the constitution, taking into account how the new arrangements have worked in practice since their implementation and feedback from Members and Officers.

2. RECOMMENDATIONS:**That Policy & Resources Committee:-**

- 2.1 Approves the proposed changes to the constitution in so far as they relate to the scheme of delegations to Officers as set out in Appendix 3 to this report.

That Policy & Resources Committee recommends to full Council that:-

- 2.2 The Council approves the amended constitution documents set out at Appendix 1 (being those relating to committees, sub-committees and advisory bodies);
- 2.3 The Council approves the changes to the constitution summarised at paragraphs 3.4 to 3.26 and 3.28 to 3.32 of the report and related documents set out in Appendix 2;
- 2.4 The Monitoring Officer be authorised to make consequential amendments as are considered necessary to give effect to the changes agreed at paragraphs 2.1 to 2.3 above;
- 2.5 That the Chief Executive be authorised to take any steps necessary to implementation of the changes agreed in this report.

- 2.6 That the Executive Director of Finance & Resources be authorised to make appropriate amendments to Financial Regulations and Standards Financial Procedures to reflect the Officer restructure and the changes relating to the corporate landlord function.
- 2.7. That the amendments to the constitution set out in paragraphs 2.1 to 2.6 come into effect immediately after the Conclusion of annual Council on 23 May 2013, except any amendments relating to the terms of reference of the Health & Wellbeing Board and the Financial Regulations and Standards Financial Procedure, which shall come into effect on 1st April 2013.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 When Brighton & Hove City Council adopted its new constitution in May 2012, it was recognised that the new arrangements would need to be kept under review and that, once the system had been in place for a time, it would be good practice to consider any further changes that could be made to improve its effectiveness.
- 3.2 The design principles that were agreed for the development of the new constitution included:-
- (1) Openness and Transparency
 - (2) Accountability
 - (3) Efficiency
 - (4) Soundness
 - (5) Affordability
 - (6) Best practice from the cabinet system
 - (7) Forward Looking
- 3.3 After approximately 9 months in operation, Members and Officers have had the opportunity to assess what has worked well in the new system and where changes could be made to improve the arrangements in line with the original design principles. During that period, the Council's new Chief Executive has also joined the Council and a new senior officer structure has been approved.
- 3.4 Officers have worked with the Leaders Group to draw together key issues and proposals. The Committee is asked to recommend the changes set out below to full Council for approval:-

The Council's priorities and values

- 3.5 Currently the constitution does not refer to the Council's purpose, ambition priorities or values. As an important corporate governance document, it would be desirable to reflect these. It is proposed to refer to these in the Chief Executive's introduction and incorporate them into the Articles of the constitution as set out in Appendix 2.

Matters reserved to full council

- 3.6 It is recommended that the following policies and strategies are no longer reserved to full Council for approval. Although they are all important policies and

strategies, it is considered that they are better dealt with by the expert committee rather than impose a mandatory requirement for it to be approved by full Council:-

- Official Feed and Food Control Service Plan
- City Employment and Skills Plan
- Health and Safety Annual Service Plan
- Housing Allocations Policy

3.7. School admissions arrangements (defined as comprising the council's admissions policy as represented by the admissions booklet for primary and secondary schools and the School Organisation Plan) are currently reserved to full Council. Any organisational changes to individual schools proposed under the school organisation legislation are subject to a number of statutory stages: (i) consultation, (ii) the publication of statutory notices, (iii) a period for making representations, and (iv) a final decision. At present the first three stages are considered at the Children and Young People Committee with the final decision reserved to full Council. This has caused problems with timetabling as there is a statutory requirement under the Education and Inspections Act 2006 and associated Regulations that the final decision *must* be taken within two months of the end of the representation period.

3.8 It is therefore proposed to adopt revised arrangements that reserve to full Council the most strategic aspects of school admissions while allowing the Children & Young People Committee to deal with the annual admissions policy.

3.8.1 This means the following functions will be dealt with by the Children & Young People Committee:

- (1) The annual consultation and determination of school admission arrangements under section 88 of the School Standards and Framework Act 1998, and
- (2) Any proposals under the Education and Inspections Act 2006 (the school organisation legislation) concerning the expansion, alteration, or change in age range of a maintained school.

3.8.2 The following functions will be reserved to full Council:

- (1) Approval of the school organisation plan; and
- (2) Approval of any changes to catchment areas.

3.9. Given its strategic importance and the challenges facing the Council in supporting the local economy, it is recommended that the Council's Economic Strategy be added to the list of policies and strategies reserved for approval by Council. There is also a legal requirement under the Localism Act 2011 for the Statement of Pay Policy to be approved by full Council. It is therefore proposed to add this to the list of functions reserved to full Council in the constitution.

Public questions, deputations and petitions

3.10 There are currently different rules in relation to approval of questions, deputations and petitions for inclusion on the agenda for council and committees. It is proposed to adopt one set of principles and the same approval mechanism

for all of these methods of public engagement so that there is greater consistency and simplicity. It is proposed that:

- (a) The Chief Executive be given the power to reject petitions, questions and deputations following consultation with the Monitoring Officer;
 - (b) The criteria for rejection to include the fact that, the question, petition etc is, in the opinion of the Chief Executive:
 - (i) Frivolous,
 - (ii) Vexatious,
 - (iii) Defamatory,
 - (iv) the same, or substantially the same, as one presented in the last 6 months; or
 - (v) Is from a member of staff on matters affecting them as employees; or
 - (vi) Otherwise inappropriate.
 - (c) Persons presenting deputations be required to give advance notice of the substance of the deputation in the form of a written summary.
- 3.11. The powers given to the Chief Executive above are permissive and therefore not every question, petition or deputation that does not comply with the criteria will necessarily be rejected. It is proposed to consider each case on its merit and, taken as a whole, non-acceptance will be the exception rather than the rule.

Deadline for Notices of Motion and Amendments

- 3.12 The current arrangements make it difficult to clear notices of motion and amendments and to provide advice to the Mayor, the parties and the Chief Executive in time as well as prepare the necessary copies. This means the quality of advice given may be affected and it also makes the organisation of Council business difficult, especially when there is a busy agenda. It is therefore proposed that the deadline for Notices of Motion be brought forward to 9 working days before the Council meeting (instead of 8) by 10am on Friday. In relation to amendments, it is proposed that the informal deadline for amendments be brought forward to 5pm on Wednesday in place of 10am on Thursday (the day of Council). The latter is intended to work not as a legally binding rule, but as an informal agreement.

Lead Member Role

- 3.13 With the growing importance of community engagement and the need to protect the most vulnerable in times of austerity, it is recommended that the Council designates one of its members as the Lead Member for Equalities and Communities. This would normally be a member of the party with the largest number of seats, to ensure maximum co-ordination with the work of Chairs of policy committees.
- 3.14 There are also other areas or functions that would benefit in having a dedicated Lead Member (such as transport.) It is therefore proposed that the articles of the Constitution be amended to allow the Leader of the Council and full Council itself

to designate individual Members as Lead Members. The proposed amendments are set out in Appendix 2 (b) (Article 14.)

Health and Wellbeing Board

- 3.15 The terms of reference for the Health and Wellbeing Board require updating to reflect the Board's move from shadow form on 1st April 2013 to a fully operational council committee. The relevant Regulations have now been made which enable the Board to retain its current voting membership of both officers and members. The proposed updated terms of reference are attached at Appendix 1.
- 3.16 It is intended that the work of the Board will be monitored and a review undertaken to ensure that it is co-ordinated with the work of other council committees and the family of partnerships that sit under the LSP. It is proposed to bring back to Council revised terms of reference and ways of working when that work is completed.

Joint Commissioning Board (JCB)

- 3.17 The need for a separate JCB meeting was flagged up as an issue at the time of the adoption of the new constitution and the work of the JCB and the Adult Care and Health Committee has been reviewed to consider whether there is duplication or benefit in holding two separate meetings. The Clinical Commissioning Group (CCG) have expressed a desire to continue to have a public forum in which they participate in relation to jointly commissioned services but it is acknowledged that the current arrangements involve an unacceptable level of duplication, with the same reports being taken to both JCB and Adult Care and Health Committees.
- 3.18 It is proposed that the JCB is abolished as a separate meeting and that its business is brought into the Adult Care and Health Committee. This will be managed as a two part agenda, starting with the jointly commissioned (Section 75) business when the CCG will meet concurrently with the Council committee (in the same way as the JCB). The second part of the meeting will be limited to the Council committee business. The updated terms of reference for the Adult Care and Health Committee are set out in Appendix 1.

Children and Young People's Committee

- 3.19 There was a request to move the education co-optees (church and parent governor representatives) from the Scrutiny Committee to the Children and Young People's Committee. Having regard to the protocol on co-option agreed at the time the constitution was adopted, this is not recommended and it is suggested that any issues are dealt with by refocusing and scheduling arrangements of the Health & Wellbeing Overview and Scrutiny Committee.

3.20 The CCG have asked for arrangements in relation to participation in the Children & Young People's Committee similar to the JCB so that they can discuss and make decisions on issues of common interest with elected Councillors in a public forum. Rather than providing for a rigid, permanent arrangement, it is proposed to include an express *permissive* provision in the terms of reference for the Committee which would allow it to meet concurrently with the CCG as necessary to discuss and decide Section 75 business and/or other issues of common interest. As with the arrangements in relation to adults, this would be a concurrent meeting of the CCG and the Council aimed at ensuring there is the opportunity for public debate and decision making in relation to jointly commissioned services. The amended Terms of Reference for the Committee are included in Appendix 1 to this report.

Corporate Parenting Sub-Committee

3.21 This sub-committee was established to champion the interests of looked after children and engage parts of the Council outside Children's Services at member and officer level. The sub-committee has not in practice achieved the increased profile and impact that was sought and the formality of committee procedures have limited its flexibility. It is therefore proposed that it ceases to be a sub-committee and becomes a Corporate Parenting Board reporting to the Policy & Resources Committee. A number of practical changes are proposed, including:-

- Ensuring that it is Chaired by the Leader of the Council and attended by the Chief Executive;
- Establishing and managing a work programme for the meetings which engages all parts of the organisation at member and officer level;
- Regular reporting of the work on Corporate Parenting to Policy & Resources Committee;
- Changing the status of the sub-committee from a formal sub-committee of Policy & Resources Committee to a Corporate Parenting Board. This will increase the flexibility of the Board, enabling fuller engagement and a more open and frank dialogue with looked after children and foster carers in particular. Reporting to Policy & Resources Committee will ensure democratic accountability and transparency in respect of the Council's commitment to its responsibilities as a Corporate Parent and emphasise the corporate nature of the Council's responsibility (rather than limiting it to Children's Services).

3.22 The proposed amended terms of reference for the Board are included at Appendix 1.

Housing Committee and Housing Management Consultative Sub-Committee and Tenant Scrutiny

3.23 The Tenant Innovation Group has been looking at ways of engaging with tenants more effectively, including the development of tenant scrutiny in line with the requirements of the Localism Act. The Tenant Scrutiny Panel has now been established and will start its work shortly. Officers will be monitoring how effectively the current set up with the Housing Committee, Housing Management Sub-Committee and the Tenant Scrutiny Panel works and will bring to Council any proposals for improvement, if any.

- 3.24 In relation to Housing Committee delegations, it is proposed to explicitly include within the Committee's delegations authority to approve demolition of buildings on HRA land. This is to ensure that the Committee can properly lead on and progress the Estate Regeneration Programme. The proposed amended terms of reference are included in Appendix 1.

Environment and Transport Committees

- 3.25 When the constitution was adopted it was agreed that the workload of these two committees would be monitored and a decision made as to whether to retain the two separate committee or to merge them. Having reviewed the workload of the committees, although the current arrangements have the advantage of one meeting focused on environment and sustainability and another on transport, it is considered possible to manage the work of the two committees within one committee meeting and thereby achieve some efficiency savings. It is therefore proposed that the two committees be merged into one 'Environment, Transport and Sustainability Committee'. In recognition of the importance and breadth of the issues to be covered by the committee, it is proposed that the Leader uses the new powers to designate a Lead member referred to in paragraph 3.13 above to designate the Deputy Chair of the committee as the Lead Member for Transport or Environment and Sustainability as appropriate. The revised terms of reference for the new committee are included in Appendix 1.

Review of advisory bodies

- 3.26 There are a number of advisory bodies whose terms of reference are set out in the constitution. It is proposed that these are reviewed by Officers in Legal Services and the Policy Team in consultation with relevant Members and officers, with a view to ensuring that the family of partnerships sitting under the LSP are well co-ordinated, avoid duplication and work to a common purpose. The outcome of the review will be reported to Council or the Policy & Resources Committee as appropriate

Scheme of Delegations to Officers

- 3.27 The scheme of delegations to officers has been updated following approval of the senior officer restructure by Policy & Resources Committee on 14th February 2013. It is proposed that in addition the following technical amendments are made:-
- The current delegations in relation to HR are advisory only. It is therefore proposed to include decision making powers in relation to HR for the Executive Director of Finance & Resources to ensure greater transparency.
 - To transfer responsibility for property transactions or works relating to Council owned land that require expert input to the Executive Director Finance & Resources, to be exercised through the Central Property Team and Valuer to the Council. The day to day management of properties will remain with the relevant service area. This is to avoid decisions relating to major building works or the acquisition or disposal of interests in land being dealt with by service departments on their own. There will be

exceptions regarding housing where certain matters will continue to be dealt with by Housing Officers.

- To update the delegations to ensure that Executive Director of Finance & Resources has power to determine Community Right to Bid applications and joint delegated power with the Monitoring Officer to determine appeals. This reflects in the scheme of delegations the procedure agreed by P&R when the provisions of the Localism Act relating to Community Right to Bid came into force.
- The current delegations give the Chief Executive responsibility for the overall direction and management of Council services, as well as concurrent delegated powers with all Directors to exercise council functions. It is proposed that the delegations are updated to clarify that the Chief Executive has delegated powers to deal with all matters concerning the workforce which are not specifically reserved to members.

3.28 The relevant amendments are set out in Appendix 3.

Health Overview and Scrutiny Committee (HOSC)

3.29 There have been concerns expressed about the size of HOSC, the breadth of its remit and its overall effectiveness. It is proposed that there are no changes to the constitutional arrangements at this stage, but it is suggested that the the Committee considers adopting measures, such as a themed approach to agenda planning so that, for example, some meetings could focus on education, adult social care or health . It is s further proposed that the remit of this committee be reviewed as part of the wider review of the Children, Adult Care, Health and Wellbeing Board as well as a review of the partnership and advisory bodies arrangements and that the outcome of the review be reported back to Council.

Appointment of Chief Officers and Deputy Chief Officers

3.30 Under the Council's current procedures, permanent appointments to the position of a Chief Officer or Deputy Chief Officer have to be made by a committee or by the Chief Executive or Director on the advice of a Member Appointments and Remuneration Panel. It is recommended that the Procedure Rules are amended to enable appointments in relation to Deputy Chief Officers to be made by the Chief Executive or Director rather than requiring the recommendations of the Appointments and Remuneration Panel. This will be more in line with best practice from other authorities.

Statement of Pay Policy

3.31 At the moment, Brighton & Hove is one of the few authorities that requires the Statement of Pay Policy to be approved by full Council. There has also been recent supplementary guidance issued by the Secretary of State .There is a separate report elsewhere on the agenda to reflect this with suggested changes which will be reflected in the revision to the terms of reference of the Appointments and Remuneration Panel.

Financial Standing Orders

- 3.32 Some of the changes mentioned above, in particular the changes regarding the corporate landlord function, and the implementation of the Officer restructure agreed in February will require amendments to the Council's Financial Standing Orders and Standards Financial Procedures. Although Article 13 gives the Section 151 Officer delegated powers to amend these, given the importance of the changes made, it is proposed that express delegated powers are granted for the avoidance of doubt.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 The decision to move to a committee system of governance was made by a meeting of full council in December 2011. The design principles and working assumptions were agreed by a Constitution Working Group and the Leaders Group. Following approximately 9 months of the new system being in operation, discussions have taken place with SLT and lead officers to collate the list of issues and proposals set out in this report.
- 4.2 The Community and Voluntary Sector Forum have also raised a number of questions regarding the constitution and officers have been able to respond positively to these in terms of clarifying the role and place of Communities in the Council's structure. The Council will engage further with the CVSF in 2013/14 when the Sustainable Community Strategy will be reviewed and this will include a review of partnerships and committees with partnership components. This will be an opportunity to thoroughly review CVS representation.
- 4.3 The amended constitution and a summary document will be available to the public both at Council offices and on the Council's website.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The proposals and their support requirements can be met within the agreed 2013/14 budget. The combining of Committees will deliver efficiencies through lower committee support and administrative costs and a resultant saving of £15k against the Democratic Services budget was agreed at Budget Council.

Finance Officer Consulted: Anne Silley Date: 01/03/13

Legal Implications:

- 5.2 Full Council has the authority to agree the proposed changes to the constitution set out in the report. The proposals are consistent with the requirements of the Localism Act 2011 and the associated Regulations.

Lawyer Consulted: Elizabeth Culbert Date: 27th February 2013

Equalities Implications:

- 5.3 There is no adverse impact of the amendments to the new system that has been identified in relation to individuals with protected characteristics. An Equality Impact Assessment was undertaken to consider any potential adverse impact and mitigating steps when the new system was introduced and this has been reviewed to take into account the recommendations in this report.

Sustainability Implications:

- 5.4 It is anticipated that the recommendations in relation to the JCB, the Corporate Parenting Board and the Environment, Transport and Sustainability Committee will result in a small reduction of the number of papers that are required to be printed. IT solutions that may be able to alleviate the impact of printed agendas and papers continue to be actively pursued.

Crime & Disorder Implications:

- 5.5 There are no adverse Crime and Disorder implications arising from the proposals in this report.

Risk and Opportunity Management Implications:

- 5.6 The transition from a cabinet system to a committee system has been successfully managed and the proposed constitutional amendments set out in the report do not represent a significant change to the decision making structure.

Public Health Implications:

- 5.7 The amended constitution will reflect the establishment of the Health and Wellbeing Board which will consider the priorities and key strategies for public health in the City. The remit and focus for this Board will be kept under review to ensure the most effective arrangements are in place.

Corporate / Citywide Implications:

- 5.8 The amendments to the constitution do not represent a significant change to decision making arrangements. All of the existing opportunities for the public and partners to participate remain in place and have been strengthened where this has been appropriate (eg for the Corporate Parenting Board proposals).

SUPPORTING DOCUMENTATION

Appendices:

1. Amended Scheme of Delegation to Committees, Sub-Committees and Advisory Bodies
- 2(A). Amended Introduction, Summary and Articles of the constitution
- 2(B). Amended Introduction, Summary and Articles of the constitution
3. Amended Scheme of Delegations to Officers