

	<p>London Borough of Hammersmith & Fulham</p> <p>COUNCIL</p> <p>15 July 2015</p>
<p>REVIEW OF THE CONSTITUTION</p>	
<p>Report of the Leader of the Council: Councillor Stephen Cowan</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p> <p>Key Decision: No</p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Tasnim Shawkat, Monitoring Officer</p>	
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1. EXECUTIVE SUMMARY

- 1.1. The Council at its meeting on 20 May 2015 agreed revisions to the Constitution and re-adopted the document for the 2015/16 Municipal Year.
- 1.2. This report recommends some further amendments:
 - To Officer Employment Procedure Rules in so far as they apply to the dismissal of the Chief Executive, Monitoring Officer and Chief Finance Officer.
 - To the Officers Scheme of Delegation to reflect new legislative changes.
 - To the composition of the Joint Appointments Panel.
 - To establish a Lead Member (Champion) post outside of the Cabinet.

2. RECOMMENDATIONS

- 2.1 That the amendments to the Council's Constitution outlined in Appendix 1 (Officer Employment Procedure Rules) be agreed.
- 2.2 That the changes to the Officers Scheme of delegation, by the Monitoring Officer under delegated powers, to reflect new legislative changes be noted.

2.3 That the Council amends the composition of the Joint Appointments Panel and agrees its terms of reference as follows:

(i) The membership of the panel will comprise three Council members from each relevant authority (to include one Cabinet member from each relevant authority) split in the ratio of administration to opposition members in each Council. The sovereignty guarantee ensures that the Council cannot be forced to accept an appointment in relation to Hammersmith and Fulham.

(ii) For the appointment of Chief Officers with responsibility for shared services covering more than one Council a joint panel shall be convened comprising three members from each relevant authority. Other appointments, other than at Chief Officer level, may be conducted by members where all relevant authorities agree that the appointment should be made by members.

2.4 That the creation of a Member Cycling and Pedestrian Champion post be approved and Councillor Iain Cassidy be appointed into this post.

3. REASONS FOR DECISION

3.1 The Council's Monitoring Officer is required to keep the Council's Constitution up to date to ensure that its aims and principles are given full effect in accordance with Article 15 of the Constitution.

4. INTRODUCTION AND BACKGROUND

4.1 The Constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure business is conducted in an efficient, transparent, and accountable manner. Some of the content of the Constitution is required by law; the remainder is for the Council itself to determine.

4.2 The Monitoring Officer has a duty to keep the Constitution under review and has delegated authority to amend the Constitution where there has been a change in law, job title, structure, rearrangement of job responsibilities or for general administrative convenience. All extensive changes to the Constitution, however, must be approved by Full Council.

5. PROPOSALS AND ISSUES

THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015 - (Dismissal Of Certain Officers)

5.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on 11 May 2015 amending the Local Authorities

(Standing Orders) (England) Regulations 2001 in so far as they apply to the dismissal of certain officers.

- 5.2 Councils are required to modify their standing orders to implement these Regulations no later than the first ordinary meeting of the council after the Regulations come into force.

Current requirements

- 5.3 The following Council officers namely the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer have statutory responsibilities to discharge. Since they work with and report to the elected members, they discharge these responsibilities in a political environment. As a result, statutory protection requiring an appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against these senior officers was introduced in the 2001 Regulations.

New requirements

- 5.4 DCLG report that the DIP process is in practice complex and expensive. It has placed councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP must be followed. There have also been suggestions that some councils prefer to negotiate severance payments rather than go through the formal DIP process. The Government believes that such a process is not appropriate as it defeats the purpose of having the DIP process in place.
- 5.5 The new Regulations, which apply to all principal councils in England, change the disciplinary process for the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. They remove the requirement that a DIP be appointed to investigate and make a binding recommendation on disciplinary action against these members of staff. The Regulations provide that, in place of the DIP process, the decision will be taken by full council, which must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. The Council must appoint the panel at least 20 working days before the Council meeting at which the Council will consider whether or not to dismiss one or more of the statutory officers.
- 5.6 The Council is required to invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to be considered for appointment to the panel with a view to appointing at least two independent persons to the panel.

The Panel

- 5.7 The Regulations provide that the Council must appoint a Panel at least 20 working days before the relevant meeting i.e. the Council meeting to

consider whether or not to dismiss the relevant officer. It requires that the Council appoint to the panel at least two independent persons who have accepted an invitation in accordance with the following priority order:

- an independent person who has been appointed by the council and who is a local government elector;
- any other independent person who has been appointed by the council; and
- an independent person who has been appointed by another council or councils.

Independent Person

5.8 In 2012 the Council appointed Ms Janis Cammel OBE to consider complaints against Members and to offer an impartial view on each case, including any investigations undertaken. The Council will seek to appoint an additional independent person.

5.9 Ms Cammel and the additional person will act as independent persons falling under priorities 1 and 2 listed above.

NEW LEGISLATION

5.10 The Consumer Rights Act 2015 in summary amends the law relating to the rights of consumers and protection of their interests and to make provision and investigatory powers for enforcing the regulation of traders;

The Act constitutes a major reform of consumer protection law covering:

- statutory implied terms and remedies in consumer contracts for goods, digital content and services;
- unfair contract terms in consumer contracts;
- enforcement of consumer protection law;
- secondary ticketing provisions; and
- measures to facilitate private actions for breaches of competition law.

5.11 The Energy Act 2011 in summary imposes a requirement upon the sale or let of property for any Green Deal obligations to be disclosed as part of the Energy Performance Certificate for the property. These obligations are enforced via the Energy Performance of Buildings (England and Wales) Regulations 2012.

SHARED SERVICES APPOINTMENTS PANELS

5.12 In June 2011 a Joint Appointments Panel was established to appoint joint Chief Officers and Deputy Chief Officers for the Royal Borough of Kensington and Chelsea, City of Westminster and the London Borough of Hammersmith and Fulham.

5.13 The membership of the current panel comprises four Council members from each relevant authority including one Cabinet member. There is a split in the

ratio of administration to opposition members in each Council on the panel. From experience, the panel of twelve members has been large and unwieldy. Members have expressed a preference for a smaller panel while retaining the appropriate safeguards in respect of political proportionality and sovereignty.

- 5.14 This report proposes a panel of nine Members comprising three people from each authority with a split in the ratio of administration to opposition members on each Council. This would result in a panel consisting of two administration and one opposition members. With this arrangement, any H&F Panel will consist of two Labour and one Conservative members. The sovereignty guarantee ensures that the Council cannot be 'outvoted' by the other two councils and cannot be forced to accept an appointment in relation to Hammersmith and Fulham.

CREATION OF A MEMBER CYCLING AND PEDESTRIAN CHAMPION

- 5.15 The Administration has proposed the creation of a Lead Member (Champion) post outside the Cabinet. The post-holder will support the Administration in achieving its manifesto commitments. The posts will not be entitled to a special responsibility allowance. The description of the portfolio's responsibilities are listed below.
- 5.16 This post-holder will be working directly with the Cabinet Member for Environment, Transport and Resident Services to:
- To act as the 'public face' of cycling and pedestrian interests in the borough, representing the council at community events, such as the opening of cycle routes and facilities, opening of play streets, 20mph consultation within the borough and at London-wide and national events.
 - To work with Cabinet Members, the Chief Executive and Directors (particularly in services leading on environment and transport) to ensure cyclists' and pedestrians' needs are taken into account in their activities.
 - To ensure that the council works in a joined up way, making the connections between cycling, pedestrians and health, well-being, tackling obesity, social inclusion, air quality and education.
 - To liaise with the borough's cycling, pedestrian and motorist interest groups and other community groups on relevant issues.
 - To work with Transport for London, the police, residents' associations and community groups such as Action on Disability, and H&F Cyclists to reduce and as far as possible eliminate conflicts between cyclists and pedestrians.

SCHEME OF DELEGATION

- 5.17 The Monitoring Officer has approved the changes to the Officers Scheme of delegation under delegated powers to reflect the introduction of legislation. The updates are outlined in Appendix 2 attached to this report.

6 EQUALITY IMPLICATIONS

6.1 There are none.

7 LEGAL IMPLICATIONS

7.1 It is important to note that the Local Government Act 2000 requires the Council to have and maintain a Constitution. The Monitoring Officer is satisfied that the Council's Constitution continues to fulfil its stated purposes, as set out in Article 1 of the Constitution.

7.2 The Authorities have the power to share officers under s.113 of the Local Government Act 1972. They also have the power to establish joint committees for the joint discharge of non-executive functions, such as appointments, under s.102 of the 1972 Act.

7.3 Implications verified by: Tasnim Shawkat, Director of Law (020 8753 2700)

8 FINANCIAL AND RESOURCES IMPLICATIONS

8.1 There are no direct financial implications.

8.2 Implications verified/completed by: Kayode Adewumi, Head of Governance and Scrutiny (020 8753 2499)

9 RISK MANAGEMENT

9.1 There are no significant risk management implications for this report.

10 PROCUREMENT AND IT STRATEGY IMPLICATIONS

10.1 There are no procurement of IT strategy implications.

10.2 Implications verified/completed by: Kayode Adewumi, Head of Governance and Scrutiny (020 8753 2499)

LOCAL GOVERNMENT ACT 2000 BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None.