

## REPORT FOR: Annual Council

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Date of Meeting: 12 June 2014

Subject: Constitutional Changes

Exempt: No

Enclosures: None

### Section 1 – Summary and Recommendations

This report details proposed constitutional changes in respect of the operating arrangements and reduction in the number of committees following consideration by the Constitution Review Working Group. (CRWG)

**Recommendations:**

That Council consider and decide whether to approve the proposed constitutional changes outlined in the report.

That Council delegate to the Monitoring Officer any necessary minor consequential changes to the Constitution as a result of approving all or part of the report.

## Section 2 – Report

The Constitution Review Working Group is an informal body established by agreement between the Group Leaders to receive proposals for alterations or updates to the Authority's constitution for formal submission to Council.

The following are proposed changes considered by the Constitution Review Working Group at its meeting on 9 June 2014 and tabled by the Labour Group. Not all the changes have been agreed by CRWG. Where there was disagreement between the Labour and Conservative Groups, this is indicated.

### **(A) Access to Information Rules for Council**

Proposal to delete paragraph 21.1 from the Constitution. There was no agreement on this proposal at CRWG.

#### Overview and Scrutiny Committee – Access to Documents

~~22.1 Members of Overview and Scrutiny Committee shall have the same rights of access to documents as non-executive Cabinet Members~~

22.2 Members of Overview and Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Executive, Executive (Cabinet) Committee, a Portfolio Holder, Advisory Panel or Consultative Forum and which contains material relating to:

- (a) any business transacted at a meeting of the Executive, Executive (Cabinet) Committee, Advisory Panel or Consultative Forum; or
- (b) any decision taken by a individual Member of the Executive;
- (c) any decision that has been made by an officer of the authority in accordance with Executive Arrangements.

### **(B) Committee Procedure Rules**

Proposal to amend paragraph 32.2 to delete reference to Cabinet Assistants/Advisers and insert Portfolio Holder Assistants. This proposal was unanimously agreed by CRWG

#### Membership of the Overview and Scrutiny Committee

32.2 No member may be involved in scrutinising a decision in which he/she has been directly involved. In particular ~~Cabinet Assistants/Advisers~~

Portfolio Holder Assistants shall not sit on Scrutiny Committees that scrutinise their area of work.

Proposal to delete paragraph 32.5 in total. There was no agreement on this proposal at CRWG.

~~32.5 The Chair of the Overview and Scrutiny Committee and Chairs of the Overview and Scrutiny Sub-Committees shall be selected from the members of the largest minority group. In the case of equality of size of minority groups then the Chairs should be appointed equally between each of the relevant groups.~~

### **(C) Executive Procedure Rules**

Proposal to amend para 5.3. There was no agreement on this proposal at CRWG.

5.3 The Leader shall ~~shall~~ may appoint a maximum of 4 and a minimum of 1 Non-Executive Member from the opposition parties as nominated by their group leaders as Non-Executive Members of Cabinet. They may speak but not vote on items before the Cabinet in private and public meetings, and have commensurate access to documents as full Cabinet Members except for draft Cabinet reports

### **(D) Code of Conduct**

Proposal to amend para 7.3. This proposal was unanimously agreed by CRWG

7.3 No member may be involved in scrutinising a decision in which he/she has been directly involved. In particular, ~~Cabinet Assistants/Advisers~~ Portfolio Holder Assistants should not sit on Scrutiny Committees that scrutinise their area of work.

### **(E) Article 7 The Executive**

Proposal to amend paras 7.13 and 7.14. The change to 7.13 was unanimously agreed by CRWG; there was no agreement at CRWG to change 7.14.

7.13 ~~Portfolio Holder Assistants Advisers and / or Assistants to Portfolio Holders~~

Non-Executive Councillors may be appointed as Portfolio Holder Advisers or Assistants to Portfolio Holders ~~These Advisers or~~

~~Assistants~~ Portfolio Holder Assistants may not exercise any of the powers of a Portfolio Holder nor act in the absence of the Portfolio Holder. Confirmation of the appointment of any ~~Advisers or Assistant Portfolio Holder Assistant~~ Portfolio Holder Assistant must be given by the Executive at the next meeting of Cabinet.

#### 7.14 Non-Executive Cabinet Members

The Leader shall ~~may~~ appoint a maximum of 4 Non Executive members from the opposition parties as nominated by their group leaders as Non Executive members of Cabinet. They may speak but not vote on items before the Cabinet in private and public meetings and have commensurate access to documents as full Cabinet members except for draft Cabinet reports.

### **(F) Standards Committee**

Proposal to abolish the separate Standards Committee and to merge it with GARM which is to be renamed Governance Audit Risk Management and Standards Committee. The whole of this proposal with the subsequent changes was unanimously agreed by CRWG.

#### **(a) Delete the whole of Article 9**

##### ~~Article 9~~

~~The Standards Committee~~

##### ~~Introduction~~

~~The Standards Committee will strengthen and maintain high standards of conduct throughout the authority.~~

##### ~~9.01 Standards Committee~~

~~The Council shall appoint a Standards Committee.~~

##### ~~9.02 Composition~~

~~The Standards Committee is composed of:~~

##### ~~(a) five Councillors~~

~~The Standards Committee does not have to comply with the rules on political proportionality. Only one member of the Executive may be a member of the Committee and that person may not chair the Committee. The Councillors on the Standards Committee will be appointed annually.~~

##### ~~(b) three co-opted independent members~~

~~These will be people who are not Councillors or officers of the Council or members of any other body having a Standards Committee.~~

### **9.03 Reserves**

~~The Council will appoint the same number of reserves in respect of each political group as that group holds ordinary seats on the Committee. If a group has an entitlement of less than three members on the Committee, they may appoint three reserve members to the Committee.~~

~~One independent member will be selected as reserve to act only in the event that any of the independent members resigns or is unable to continue as a member before the expiry of the term of appointment; that is, not to be able to act as a substitute at meetings which the ordinary member cannot attend. The reserve independent member will only be entitled to act as a member of the Committee if and when appointed by the Council.~~

### **9.04 Frequency of meetings**

~~There will be at least four meetings of the Standards Committee each year. Additional meetings may be called by agreement of all members of the Committee, or by the process described in Committee Procedure Rule 11.~~

### **9.05 Quorum**

~~The quorum at a meeting of the Standards Committee shall be three members, one of whom must be an independent member. Where at least one independent member would be present, but is required to withdraw from the meeting because of a conflict of interest or other provision within the Council's Code of Conduct, the requirement for the quorum to include at least one independent member shall not apply.~~

### **9.06 Role and Function**

~~The Standards Committee will have the following roles and functions:~~

~~(a) promoting and maintaining high standards of conduct by Councillors, co-opted members and "church" and parent governor representatives;~~

~~(b) assisting Councillors, co-opted members and "church" and parent governor representatives to observe the Members' Code of Conduct;~~

~~(c) advising the Council on the adoption or revision of the Members' Code of Conduct;~~

~~(d) monitoring the operation of the Members' Code of Conduct;~~

~~(e) developing and recommending local protocols to the Council to supplement the Members' Code of Conduct;~~

~~(f) enforcing local protocols and applying sanctions in respect of breaches as appropriate;~~

~~(g) advising, training or arranging to train Councillors, co-opted members and "church" and parent governor representatives on matters relating to the Members' Code of Conduct;~~

~~(h) granting dispensations to Councillors, co-opted members and “church” and parent governor representatives from requirements relating to interests set out in the Members’ Code of Conduct;~~

~~(i) to keep under review and amend, as appropriate, the Protocol on Councillor/Officer Relations;~~

~~(j) to keep under review the Officer Code of Conduct and, ask Council for amendment or addition;~~

~~(k) to receive reports and keep a general overview of probity matters arising from Ombudsman investigations, Monitoring Officer reports, reports of the Chief Financial Officer and Audit Commission;~~

~~(l) to have oversight of the Council’s whistleblowing policy;~~

~~(m) to agree the policy for decisions on payments to those adversely affected by Council maladministration (under section 92 Local Government Act 2000)~~

~~(n) to establish sub-committees and working groups to deal with complaints that a member or a co-opted member has failed to comply with the Council’s Code of Conduct~~

~~(o) to consider any application received from any officer of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and may direct the Authority that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of that Act.~~

~~(p) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Authority under Section 2(2) of the 1989 Act, and may direct the Authority to include a post in that list.~~

## **(b) Delete Standards Committee, Assessment Sub Committee and Hearing Review Sub Committee from Part 3A Terms of Reference**

### **STANDARDS COMMITTEE**

~~The Standards Committee will have the following powers and duties:~~

~~(a) promoting and maintaining high standards of conduct by Councillors, co-opted members and “church” and parent governor representatives;~~

~~(b) assisting Councillors, co-opted members and “church” and parent governor representatives to observe the Members’ Code of Conduct;~~

~~(c) advising the Council on the adoption or revision of the Members' Code of Conduct;~~

~~(d) monitoring the operation of the Members' Code of Conduct;~~

~~(e) developing and recommending local protocols to the Council to supplement the Members' Code of Conduct;~~

~~(f) enforcing local protocols and applying sanctions in respect of breaches as appropriate;~~

~~(g) advising, training or arranging to train Councillors, co-opted members and "church" and parent governor representatives on matters relating to the Members' Code of Conduct;~~

~~(h) granting dispensations to Councillors, co-opted members and "church" and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;~~

~~(j) to keep under review and amend, as appropriate, the Protocol on Councillor/Officer Relations;~~

~~(k) to keep under review the Officer Code of Conduct and, after consultation with unions representing staff, make recommendations to Council for amendment or addition;~~

~~(l) to receive reports and keep a general overview of probity matters arising from ombudsman investigations, Monitoring Officer reports, reports of the Chief Financial Officer and Audit Commission;~~

~~(m) to have oversight of the Council's Whistleblowing Policy;~~

~~(n) to agree the policy for decisions on payments to those adversely affected by Council maladministration (under section 92 Local Government Act 2000);~~

~~(o) To establish sub-committees and working groups to deal with complaints that a member or a co-opted member has failed to comply with the Council's Code of Conduct;~~

~~(p) To consider any application received from any officer of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and may direct the Authority that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of that Act;~~

~~(q) Upon the application of any person or otherwise, consider whether a post~~

should be included in the list maintained by the Authority under Section 2(2) of the 1989 Act, and may direct the Authority to include a post in that list.

Membership rules:

- ~~i. An Elected Mayor or the Leader may not be Members;~~
- ~~ii. The Chair of the Committee must not be a Member of the Executive;~~
- ~~iii. Only one member of the Executive can be a member of the Committee.~~

### **~~ASSESSMENT SUB-COMMITTEE~~**

~~The Assessment Sub-Committee has the following powers and duties:~~

~~(a) To receive a referral from the Monitoring Officer in respect of allegations that~~

~~a member or co-opted member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct in circumstances where the Monitoring Officer has not exercised his/her delegation to decide:~~

~~i. To filter out a complaint as being vexatious and/or outside the Code of Conduct; or~~

~~ii. To investigate a complaint~~

~~(b) Upon receipt of a referral from the Monitoring Officer, the Sub-Committee shall make an assessment of the allegation and shall decide whether the complaint should be filtered out/an investigation should take place in respect of each allegation in accordance with the terms of the referral.~~

~~(c) To decide whether a complaint shall proceed to the Hearing Sub-Committee~~

~~in circumstances where the complaint has been investigated and the investigating officer has concluded that the member complained about has not breached the Code of Conduct.~~

~~(d) The Sub-Committee shall state its reasons for that decision.~~

### **~~HEARING REVIEW SUB-COMMITTEE~~**

~~The Hearing Review Sub-Committee has the following powers and duties~~

~~(a) To consider allegations referred to it following investigation that a member or~~

~~coopted member has failed to comply with the Council's Code of Conduct for Councillors~~

~~(b) To determine whether or not there has been a breach of the Code of Conduct~~

~~taking into account the findings and conclusions of the investigation report.~~

~~(c) If the Sub-Committee decides that there has been a breach of the Code of Conduct, to decide that no sanction should be imposed or to impose one of the following sanctions:~~

~~i. Report its findings to Council for information and place them on the Council's website;~~



- ~~ii. Inform the Group Leader (or in the case of an independent member, Council) of its recommendation that a member be removed from any or all Committees or Sub-Committees, or outside body appointments;~~
- ~~iii. Inform the Group Leader of any recommendations that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;~~
- ~~iv. Remove the member from outside body appointments;~~
- ~~v. Instruct the MO to arrange training for the member;~~
- ~~vi. Where the breach involves inappropriate use of facilities, withdraw such facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or~~
- ~~vii. Exclude the member from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council, Committee and Sub-Committee meetings; or~~
- ~~viii. Censure the member for the breach, in which case the MO will be asked to write to the Member and a press report will be issued.~~

**(c) Amend the Name of GARM to Governance, Audit, Risk Management and Standards Committee.**

**(d) Amend the Terms of Reference of GARM to include the following**

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted members and "church" and parent governor representatives;
- (b) assisting Councillors, co-opted members and "church" and parent governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) developing and recommending local protocols to the Council to supplement the Members' Code of Conduct;
- (f) enforcing local protocols and applying sanctions in respect of breaches as appropriate;
- (g) advising, training or arranging to train Councillors, co-opted members and "church" and parent governor representatives on matters relating to the Members' Code of Conduct;

(h) granting dispensations to Councillors, co-opted members and “church” and parent governor representatives from requirements relating to interests set out in the Members’ Code of Conduct;

(i) to keep under review and amend, as appropriate, the Protocol on Councillor/Officer Relations;

(j) to keep under review the Officer Code of Conduct and, ask Council for amendment or addition;

(k) to receive reports and keep a general overview of probity matters arising from Ombudsman investigations, Monitoring Officer reports, reports of the Chief Financial Officer and Audit Commission;

(l) to have oversight of the Council’s whistle blowing policy;

(m) to agree the policy for decisions on payments to those adversely affected by Council maladministration (under section 92 Local Government Act 2000)

(n) to establish sub-committees and working groups to deal with complaints that a member or a co-opted member has failed to comply with the Council’s Code of Conduct

(o) to consider any application received from any officer of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and may direct the Authority that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of that Act.

(p) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Authority under Section 2(2) of the 1989 Act, and may direct the Authority to include a post in that list.

Membership rules:

- i. An Elected Mayor or the Leader may not be Members;
- ii. The Chair of the Committee must not be a Member of the Executive;
- iii. Only one member of the Executive can be a member of the Committee.
- iv. The Independent Persons are not members of GARMS and shall be invited to meetings if there is a standards item on the agenda

### **ASSESSMENT SUB-COMMITTEE**

The Assessment Sub-Committee has the following powers and duties:

(a) To receive a referral from the Monitoring Officer in respect of allegations that a member or co-opted member of the Authority has failed, or may have

failed, to comply with the Authority's Code of Conduct in circumstances where the Monitoring Officer has not exercised his/her delegation to decide:

i. To filter out a complaint as being vexatious and/or outside the Code of Conduct; or

ii. To investigate a complaint

(b) Upon receipt of a referral from the Monitoring Officer, the Sub-Committee shall make an assessment of the allegation and shall decide whether the complaint should be filtered out/an investigation should take place in respect of each allegation in accordance with the terms of the referral.

(c) To decide whether a complaint shall proceed to the Hearing Sub-Committee in circumstances where the complaint has been investigated and the investigating officer has concluded that the member complained about has not breached the Code of Conduct.

(d) The Sub-Committee shall state its reasons for that decision.

#### **HEARING REVIEW SUB-COMMITTEE**

The Hearing Review Sub-Committee has the following powers and duties

(a) To consider allegations referred to it following investigation that a member or co opted member has failed to comply with the Council's Code of Conduct for Councillors

(b) To determine whether or not there has been a breach of the Code of Conduct taking into account the findings and conclusions of the investigation report.

(c) If the Sub-Committee decides that there has been a breach of the Code of Conduct, to decide that no sanction should be imposed or to impose one of the following sanctions:

i. Report its findings to GARMS and Council for information and place them on the Council's website;

ii. Inform the Group Leader (or in the case of an independent member, Council) of its recommendation that a member be removed from any or all Committees or Sub-Committees, or outside body appointments;

iii. Inform the Group Leader of any recommendations that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;

iv. Remove the member from outside body appointments;

v. Instruct the MO to arrange training for the member;

vi. Where the breach involves inappropriate use of facilities, withdraw such facilities provided to the member by the Council, such as a

computer, website and/or email and internet access; or

vii. Exclude the member from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council, Committee and Sub-Committee meetings; or

viii. Censure the member for the breach, in which case the MO will be asked to write to the Member and a press report will be issued.

### **(G) Abolish Grants Advisory Panel**

(a) Delete reference to Grants Advisory Panel under Cabinet Advisory Panels. There was no agreement on this proposal at CRWG.

### **GRANTS PANEL**

#### **Terms of Reference**

~~To consider proposals and to make recommendations in respect of:~~

~~(a) To regularly review the arrangements for receiving, processing, and approving applications for support from the voluntary sector, including grants, concessionary lettings, use of the community premises and other council premises, and discretionary rate relief~~

~~(b) To review grant applications annually ensuring that they meet agreed criteria and conditions, and make recommendations for funding to cabinet or the portfolio holder as appropriate~~

~~(c) To consider matters relating to concessionary lettings, and make recommendations to cabinet or the portfolio holder as appropriate~~

~~(d) To consider applications for accommodation within the Community Premises; and make recommendations to cabinet or the portfolio holder as appropriate~~

~~(e) To consider the arrangements for use of other Council premises, and make recommendations to cabinet or the portfolio holder as appropriate~~

~~(f) To review the criteria for the granting of discretionary rate relief to non-profit making organisations, and make recommendations to Cabinet or the Portfolio Holder as appropriate~~

~~(g) To monitor the impact of support to the voluntary sector~~

~~(h) To consider matters relating to the London Boroughs Grants Scheme, administered by London Councils~~

~~(i) To consider applications for funds from the Edward Harvist Trust~~

(b) Amend Terms of Reference of Overview and Scrutiny Committee to include the following:

13. To review and make appropriate recommendations on an annual basis the arrangements for processing application for support from the voluntary sector including grants, concessionary lettings, use of community premises and other council premises and discretionary rate relief.

(c) Amend Terms of Reference of the Portfolio Holder for Community and Culture to include the following:

To decide on applications for funds from the Edward Harvist Trust.

## **(H) Abolish the School Placement Panel**

(a) Delete reference to School Placement Panel under Cabinet Advisory Panels. This proposal was unanimously agreed at CRWG.

### **SCHOOL PLACEMENT PANEL**

~~Harrow's Fair Access Protocol may exceptionally require schools to admit children in excess of published admission numbers in order to protect the interests of vulnerable children and those with challenging behaviour. The School Placement Panel undertakes this role for the local authority in partnership with the Secondary Headteacher Executive about admissions arrangements and academies.~~

#### ~~Terms of Reference~~

##### ~~1. Purpose~~

~~The purpose of the School Placement Panel (SPP) is to consider cases presented in accordance with the Fair Access Protocol. The Fair Access Protocol considers cases in relation to pupils in one of three broad categories:~~

- ~~• Excluded Pupils~~
- ~~• Managed Moves Process~~
- ~~• In-Year Applications~~

~~The SPP is a decision-making body with the power to direct a school to admit a pupil over their planned admission number.~~

## ~~2. Scope~~

~~SPP would consider cases in relation to any of the categories but it is expected that the majority of cases will be for In-Year Applications.~~

## ~~3. Composition of the School Placement Panel~~

~~The Panel will be comprised of the following members:~~

- ~~(a) 3 elected members with two from the majority group.~~
- ~~(b) 1 primary headteacher representative~~
- ~~(c) 1 secondary headteacher representative~~

## ~~4. Meetings and Attendees~~

- ~~(a) The chair will be appointed by the Executive and will be a Councillor~~
- ~~(b) Each member has formal voting rights when making a decision to direct a school to admit a child.~~
- ~~(c) The chair has the casting vote.~~
- ~~(d) The Panel will meet on a fortnightly basis during term time. Meetings during school holidays may be required in exceptional circumstances.~~

(b) There are no consequential amendments as the Director of Children's Services already has the statutory function under s18 Children Act 2004 to be responsible for functions conferred on or exercisable by the authority in their capacity as a local education authority.

## **(I) Abolish the National Non Domestic Rate: Discretionary Rate Relief Appeal Panel and remove reference to it in Part 3A of the Constitution – Terms of Reference.**

This proposal was unanimously agreed at CRWG.

### **~~NATIONAL NON-DOMESTIC RATE: DISCRETIONARY RATE RELIEF APPEAL PANEL~~**

~~The National Non-Domestic Rate Discretionary Rate Relief Appeal Panel has the following powers and duties:~~

- ~~• To determine appeals in respect of all categories of discretionary rate relief.~~

## **(J) Abolish the Supporting People Panel and remove reference to it in Part 3A of the Constitution – Terms of Reference.**

This proposal was unanimously agreed at CRWG

### **~~SUPPORTING PEOPLE PANEL~~**

## Terms of Reference

- ~~1. To be informed of developments in the implementation of Supporting People including consultation, strategy development, practical and procedural matters;~~
- ~~2. To make recommendations on the Supporting People strategy, following consultation with local stakeholders and the Health and Social Care Strategy Group of the Harrow Partnership;~~
- ~~3. To make recommendations on the approval of associated strategies, policies and implementation needs in line with DTLR guidance in order to deliver strategy by April 2013.~~

## Section 3 – Legal, Risk and Financial Implications

There are no risks to the Council in approving changes to the Constitution as this serves as the framework for the decision making processes for matters falling within its remit.

Any legal issues are addressed within the report.

Not all the committees it is proposed to abolish have met recently or meet regularly. However, it is anticipated that the proposed changes will achieve some small financial savings.

## Section 4 - Contact Details and Background Papers

**Contact:** Jessica Farmer, Head of Legal Services  
Tel: 020 8424 1889  
Email: [Jessica.Farmer@harrow.go.uk](mailto:Jessica.Farmer@harrow.go.uk)

**Background Papers**  
Council's Constitution