

**London Borough of Sutton  
Standards Committee - 21 January 2009  
Community Leadership Advisory Group - 3 February 2009  
The Executive - 16 February 2009**

**Report of the Interim Executive Head of Legal & Democratic Services**

**ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION 2009**

**Ward Location:** Not Applicable

**Author(s) and Contact Phone Number(s):**

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**Area Served:** N/A

**Executive Councillor:** Sean Brennan

**Key Decision Report**

**Summary**

This report sets out changes proposed to the Council's Constitution, following the annual review.

**Recommendations**

The Executive recommends full Council to agree the following changes to the Constitution:

- a. Amendments to Sections 1 and 2 (Article 9 Standards Committee) to reflect the changes to the role and functions of the Standards Committee and consequential amendments (Article 11 Employees) to the role and functions of the Monitoring Officer
- b. Amendments to Sections 2 (Article 6 Scrutiny Function) to reflect the changes brought by the *Councillor Call for Action* and to the powers of Scrutiny Committee in respect of Partner Authorities and LAA targets
- c. Amendments to the Section 4 (Standing Orders Part 3 Procedure for dealing with matters at Full Council) not to require a vote to be taken on an original, substantive motion following a positive vote on its amendment or the amended motion
- d. Amendments to Section 6 (Part 2 Councillors' Access to Information) to require Members' requests for personal information, including sensitive information, to be made in writing and through the appropriate Director or Chief Executive and the procedure for dealing with such request (Appendix B);
- e. Amendments to Section 3 (Part 3 Scheme of Delegations to Officers) as set out in in Appendix A;
- f. Further amendments to Section 4 (Contract Standing Orders) as set out in Appendix C;
- g. Authorise the Executive Head of Legal & Democratic Services to make any additional minor textual amendments necessary to ensure the changes are reflected consistently throughout the document.

## 1. Background

- 1.1 The Council adopted the present form of Constitution on 19 July 1999. The Constitution is required to be reviewed annually. A number of amendments have previously been agreed by the Council and implemented to reflect changes in services, legislation and the democratic process.
- 1.2 The proposed amendments to the Constitution are as a result of changes in legislation and officers' and members' request.
- 1.3 The Community Leadership Advisory Group is due to consider this report on 3 February 2009.
- 1.4 The basis for the proposed amendments is set out in the paragraphs below.

## 2. Issues

### Standards Committee – *Changes to its Role and Function*

- 2.1 The Local Government and Public Involvement in Health Act 2007 ("the Act") set out the new arrangement for dealing with complaints against local authority members ("Members"). The Act devolves most decision-making on the conduct of Members to Council's Standards Committee, with a revised, regulatory role provided for the Standards Board. The Act enables people to make a written allegation to the Standards Committee that a Member of the Council has failed to comply with the Council's Code of Conduct.
- 2.2 The Committee's current function now needs to be amended to take account of the requirements of the Act, Regulation and the advice and recommendations in the Guidance from the Standards Board. The new functions of the Committee include granting dispensation to members with prejudicial interests and granting exemptions for politically restricted posts.
- 2.3 The Standards Committee is required to establish Sub-Committees to carry out its functions (i.e. Assessment Sub-Committee and Review Sub-Committee).
- 2.4 The Monitoring Officer supports the Standards Committee to carry out its functions. With changes to the role of the Standards Committee, there are also changes to the role of the Monitoring Officer. These changes need to be reflected in the Constitution.

### Scrutiny Committee – *'Councillor Call for Action' and LAA and Partner Authorities*

- 2.5 The Act, as part of the process which is called 'councillor call for action' strengthens the powers of frontline councillors to take action to deal with local problems raised with them by their constituents. They can refer an issue on any local government matter to a relevant scrutiny committee for consideration
- 2.6 There are also increased powers for scrutiny committee to hold partner authorities to account for their contribution to achieving Local Area Agreements targets. Partner authorities subject to the duty to co-operate with LAAs may be required by scrutiny committees to provide information and to have regard to relevant scrutiny reports and recommendations.
- 2.7 Council executives are required to respond to scrutiny reports and recommendations within two months. This must say what (if any) action the council or the executive proposes to take in responding to the reports and recommendations

- 2.8 From 1<sup>st</sup> April 2009, these new powers for Scrutiny Committee shall come into effect.

#### Voting on amendments to Motions

- 2.9 Standing Order 11.21 'Procedure for debating Motions' at paragraph vii and viii provides that, following a debate, a vote on the amended motion will be taken and thereafter a vote on the motion. Often, a separate vote on the amended original motion is not necessary. To clarify this, it is suggested that this provision be amended to provide that a vote on the motion will only be taken if necessary because the previous vote has not determined the matter.

#### Member Access to Personal Information including Sensitive Information

- 2.10 As a general rule a Councillor has a right to inspect documents in the possession of the Council so far as his/her access to those documents is reasonably necessary to enable them properly to perform his/her duties as a member of the Council.
- 2.11 The rules relating to Members' access to information are set out in Section 6 of the Constitution. Councillors have to demonstrate the "need to know" about the information sought, whether it is because they are a member of a Committee or as a representative of residents in their ward.
- 2.12 There have been increasing cases where Councillors have requested to see sensitive information relating to residents that Officers have been reluctant to provide and have sought advice from Legal Services. The observation from these cases is that there needs to be a clearer guidance or protocol for Councillors on how to access sensitive personal information.
- 2.13 The Community Leadership Advisory Group has considered this matter and approved a draft Protocol for Dealing with Members' Requests for Sensitive Information, attached as Appendix B to this report. The Executive is recommended that this document, subject to any necessary amendments, should be included in Section 6 of the constitution.

#### Scheme of Delegations to Officers

- 2.14 The scheme of delegations gives authority for the carrying out of duties under legislation. The authorities relating to: (i) the Strategic Director of Environmental Services/Executive Head of Environmental Sustainability; and (ii) the Strategic Director - Resources have been reviewed and updated to take account of new legislation and/or amended legislation.
- 2.15 The authorities relating to the Strategic Director of Adult Social Services & Housing have also been updated to take account of new responsibilities under the Mental Capacity Act 2005.
- 2.16 It is recommended that the changes in Appendix A are agreed to ensure our Scheme of Delegations is up to date and the services continue to operate effectively.

#### Contract Standing Orders

- 2.17 The changes set out in Appendix C relating to Contract Standing Orders in Part 4 of the constitution are RECOMMENDED:

**3. Financial Implications**

3.1 The costs of reprinting the agreed revisions will be contained within existing budgets.

**4. Influence of the Council's Core Values – None**

**5. Equality Impact Assessment**

No detrimental effects have been identified.

**6. Background Papers - None**

**Appendix A****Section 3****Responsibility for Functions****Part 3****STRATEGIC DIRECTOR – RESOURCES**

**Amend** Paragraph 24 to read:

“24. In conjunction with the Strategic Director – Adult Social Services & Housing to adjust annually the minimum assessment limit in accordance with the Department of Health Guidelines for assessment scales for Health and Social Services applications.”

**Amend** paragraph 1 (e) as shown underlined

“(e) Submit proofs of debt and make affidavits in all cases where money is owed to the Council and receiving orders have been made against the debtors, and to institute or defend on behalf of the Council any proceedings relating to the recovery of debt.”

**Delete** paragraph 1 (j)

**Add new** paragraph 1 (p) as follows

“(p) appoint an Authorised Officer in accordance with the Social Security Administration Act 1992, Section 110A, for the purpose of information gathering in respect of suspected Housing Benefit and Council Tax Benefit fraud.”

**STRATEGIC DIRECTOR ENVIRONMENT AND LEISURE AND EXECUTIVE HEAD OF ENVIRONMENTAL SUSTAINABILITY****1. APPROVALS****Legislation to be included:**

European Communities Act 1972 and any Orders, Regulations or other instruments made under the Act where the Council has an enforcement function, (feed authority, food authority, and weights and measures authority).

**7. Legislation to be deleted**

Energy Information (Combined Washer-Dryers) Regulations 1997  
 Energy Information (Lamps) Regulations 1999  
 Energy Information (Refrigerators and Freezers) Regulations 1995  
 Energy Information (Tumble-Dryers) Regulations 1996  
 Energy Information (Washing Machines) Regulations 1996  
 Packaging Essential requirements Regulations 1998

**3. NOTICES**

Replace the current paragraph (dd) with the following

(dd) To serve (including varying, revoking and suspending) notices under Sections 11, 12, 20, 21, 25, 26, 28, 29, 40, 41, 43, 62, 86, 131, 139, 235, 239, 255, Schedule 3 and 7

and to issue penalty charge notices under section 168 and Schedule 8 and to make (including varying, revoking and suspending) Interim Management Orders under sections 102, 111, 112 and Final Management Orders under Sections 113, 121 and 122 all of the Housing Act 2004.

(hh) To service notices under Section 10 Animal Welfare Act 2006

#### **4. WORKS IN DEFAULT**

**Delete** paragraph (g)

To take any steps required to enforce section 23 of the London Local Authorities Act 1991 in respect of burglar alarms.

#### **6. AUTHORISATIONS ETC.**

**Legislation to be included:**

Accommodation Agencies Act 1953  
 Consumer Credit Act 2006  
 Criminal Damage Act 1971  
 Crime and Disorder Act 1998  
 Criminal Justice Acts 1982 to 1991  
 Criminal Law Act 1977  
 Farm and Garden Chemicals Act 1967  
 Fraud Act 2006  
 Identity Cards Act 2006  
 London Local Authorities Act 2007  
 London Olympic Games and Paralympic Games Act 2006  
 Medicines Act 1968  
 Offensive Weapons Act 1996  
 Trading Schemes Act 1996  
 Violent Crime Reduction Act 2006  
 Vehicle Excise & Registration Act 1994

**Please amend wording as follows in Section 6:**

**European Communities Act 1972** and any Orders, Regulations or other instruments made under the Act where the Council has an enforcement function, (feed authority, food authority, and weights and measures authority)

#### **Amendments**

Criminal Justice and Public Order Act 1994. Delete the text (s165 Copyright and Counterfeiting Pornographic video records Unauthorised Campers)

**Replace** the current paragraph (c) with the following:

(c) To appoint suitably qualified persons as the Proper Officer for specified functions under the Public Health (Control of Diseases) Act 1984 and related legislation, and to authorise suitably qualified persons in respect of other relevant functions.

**Legislation to be removed.**

Animal By-Products Regulations 2003  
 Consumer Protection from Unfair Trading Regulations 2007  
 Cosmetic Products Regulations 1978  
 Electromagnetic Compatibility Regulations 1992  
 Energy Information (Combined Washer-Dryers) Regulations 1997  
 Energy Information (Dishwashers) Regulations 1999  
 Energy Information (Household Air Conditioners) Regulations 2003  
 Energy Information (Household Air Conditioners)(No 2) Regulations 2005  
 Energy Information (Household Electric Ovens) Regulations 2003  
 Energy Information (Household Refrigerators and Freezers) Regulations 2004  
 Energy Information (Lamps) Regulations 1999  
 Energy Information (Refrigerators and Freezers) Regulations 1994  
 Energy Information (Refrigerators and Freezers) Regulations 1995  
 Energy Information (Tumble-Dryers) Regulations 1996  
 Energy Information (Washing Machines) Regulations 1996  
 General Product Safety Regulations 1994  
 Licensing Acts 1961 & 1964  
 Medical Devices Regulations 1994  
 Mock Auctions Act 1961  
 Package Travel, Package Holidays and Package Tours Regulations 1992  
 Packaging (Essential Requirements) Regulations 1998  
 Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001  
 Pressure Equipment Regulations 1999  
 Public Entertainments Licenses (Drugs Misuse) Act 1997  
 Telecommunications Terminal Equipment Regulations 1992  
 Trade Marks Act 1938  
 Trading Stamps Act 1964  
 Trading Representations (Disabled Persons) Acts 1958 and 1972  
 Vehicle (Excise) Act 1971

## **7. PROPER OFFICER ETC.**

**Replace** paragraph b) with the following:

(b) The Executive Head of Environmental Sustainability is designated as the Proper Officer in respect of Sections 605 and 606 Housing Act 1985 and Parts 1-4 Housing Act 2004

## **8. MISCELLANEOUS**

**Delete** paragraph b)

To lodge objections to applications for liquor licences etc under the Licensing Acts 1961 to 1988.

## **STRATEGIC DIRECTOR – ADULT SOCIAL SERVICES & HOUSING**

### **Legal Powers**

**Reword** paragraph 1 to read

- “1. To enter into agreements under section 53-55 of the Health and Social Care Act 2001 to enable the council to register Deferred Payments against the properties of residents in council homes for elderly people. In the event where a resident is unwilling to enter into such an agreement, to place a charge against their property under section 22 of the Health and Social Services and Social Security Adjudication Act 1983.”

**Mentally Ill and People with a Learning Disability**

**Include under Legal Powers**

5. In appropriate circumstances, to start proceedings in the Court of Protection under the Mental Capacity Act 2005 in respect of persons who are mentally ill or have severe learning difficulties.

**APPENDIX B****PROTOCOL FOR COUNCILLORS ON ACCESS TO  
PERSONAL INFORMATION IN THE POSSESSION OF THE COUNCIL****Introduction**

1. The Protocol clarifies the arrangement for dealing with Councillors' requests for access to personal information in the possession of the Council including sensitive personal information. The aim is to promote better understanding between Councillors and Officers on how such request will be dealt with.
2. Personal data means information about a living individual who can be identified from that information and other information which is in, or likely to come into, the Council's possession and includes any expression of opinion about the individual and any indication of the intentions of the Council or any other person in respect of the individual.
3. Sensitive personal data consist of information as to:-
  - a) the racial or ethnic origin of the living individual;
  - b) his/her political opinions;
  - c) his/her religious beliefs or other beliefs of a similar nature;
  - d) whether he/she is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992);
  - e) his/her physical or mental health or condition;
  - f) his/her sexual life;
  - g) the commission or alleged commission by him/her of any offence; or
  - h) any proceedings for any offence committed or alleged to have been committed by him/her, the disposal of such proceedings or the sentence of any court in such proceedings.

**Councillors' Rights of Access**

4. A Councillor's right to inspect documents in the Council's possession is governed by statute, case law, the Council's Constitution and the Councillor's Code of Conduct.
5. Councillors have the right under section 100F of the Local Government Act 1972 to inspect any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council or a committee or sub-committee (except for certain documents that disclose exempt information). This provision covers only those documents and files that specifically relate to committee business.
6. Councillors also have a common law right to information. This was expressly preserved in the Local Government (Access to Information) Act 1985 and has been established in the courts based on the judgement of a councillor's "need to know". The legal emphasis is that information should be disclosed subject to the councillor

demonstrating a bona fide and reasonably based concern. It is not justifiable to merely "fish" for information.

7. A councillor may justify a need to know based on two principal grounds
  - a) being a member of a committee or sub-committee responsible for the service about which the enquiry is made; or
  - b) as a member of the Council seeking information to carry out the duty of a local councillor.
8. Councillors have the same rights of access to information held by the Council under the Freedom of Information Act 2000 as a member of the public. Although a Councillor does not need to demonstrate a "need to know", the Act contains a number of exemptions. For example, where information is confidential, consists of personal data, or is commercially sensitive, it is likely to be exempt from disclosure.
9. In addition to the legal requirements, the Council has a policy of supporting "open government" and making information open and accessible to the public. The same principle applies to the disclosure of information to councillors and the presumption must be that information should be disclosed to councillors unless there are clear grounds for the information being withheld - in which case reasons must be given.

### **The Process**

10. Councillors' requests for personal information should be made through the appropriate Director or the Chief Executive, unless other arrangements have been agreed. The request should be;
  - a) in writing,
  - b) as specific as possible about the information sought;
  - c) state the reason for wanting the information, and the purpose to which it will be put.
11. Councillors will sometimes be given personal information by their constituents to enable a matter to be pursued with the Council. To satisfy data protection legislation Councillors must obtain the written agreement of the constituent for disclosure of their personal information and provide a copy of that agreement with their request.
12. The Director or Chief Executive shall respond to the Councillor's request within five working days. If the request meets the necessary requirements for disclosure, the Director or Chief Executive shall provide the information sought as soon as it is reasonably practicable, but in any event within 15 working days.
13. Councillors should only use the information for the purpose for which it is sought.
14. If the Director or Chief Executive considers that to meet the request would not be justified because of the administrative cost - for example because the documentation is too bulky to be photocopied, or would require expensive and continuing computer runs - then alternative arrangements must be considered. For example, Councillors could be invited to inspect the relevant document(s) or file(s). This should be done under the supervision of a senior officer with knowledge of the subject area, and the Councillor should mark any documents requiring photocopying.
15. The Director or Chief Executive, having taken legal advice from the Executive Head of Legal and Democratic Services, may decide to not to disclose the information sought to a Councillor and must give the Councillor a reason for his decision.

16. Where a Councillor is provided with the information on a confidential basis, the Councillor must not disclose the information to another person or breach the confidential nature of the information.

## Appendix C

### RECOMMENDED CHANGES TO CONTRACT STANDING ORDERS

S.O. 52. Statutory Requirements - **Add new section 52.3** as follows. This will reinforce the requirements of the EU Directive, for the benefit of officers:

“52.3 All procurement undertaken by the Council will be transparent, non - discriminatory and fair in accordance with the European Directive.”

S.O. 57 Tendering – Selection of Tenderers – **Insert new section 57.3** as set out below and renumber the existing sections accordingly. This new wording is recommended as a result of a recent EU ruling which clarifies that public bodies can only take financial standing, technical capacity, experience and resources as criteria for selection at the Pre Qualification Questionnaire stage. Once companies have been selected to tender, these criteria cannot be used to reject a tender:

“57.3 - The financial standing, technical capacity, experience and resources of any organisation must be assessed as adequate in relation to the contract being procured before being invited to tender.”

S.O. 69 Acceptance of Tenders – **Insert** the additional wording shown underlined below. This is to clarify and make transparent what is already done in practice, but can cause some confusion:

“69. - The Chief Executive, Strategic Directors or Executive Heads of Service shall be authorised to accept a tender by Category 3 Delegated Decision Notice provided that it is either:-

- 7.1 Standing Order 70.3 currently requires that contracts over £150k shall be “sealed with the common seal”. This is an internal process to ensure that high value contracts are better monitored. From a legal perspective, however, this means that contracts executed by sealing are executed as a deed. This has the effect of extending liability under the contract for 12 years as opposed to 6 years when a contract is executed “under hand”, i.e. by signing. In a recent case, a company refused to seal the contract on the grounds that the Constitution only required that the council’s seal should be affixed and did not require that contracts over £150k must be executed under seal. The following **amended wording** is recommended to address this weakness:

“70.3 Every contract that exceeds £150,000 must be executed as a deed and, on the part of the Council, must be sealed with the common seal of the Council. Audit Committee minute approval is required before any contract is sealed  
.....”