

Item No. 9.2	Classification: Open	Date: December 8 2004	Meeting Name: Council Assembly
Report title:		Licensing Act 2003 - Constitutional Issues	
Ward(s) or groups affected:		All	
From:		Chief Executive (Borough Solicitor)	

RECOMMENDATIONS

1. That council assembly considers the recommendations of the standards committee on the areas listed below and determines the constitutional changes necessary to introduce the new decision-making structures required by the Licensing Act 2003:
 1. Anticipated areas of revision to existing constitution
 2. Size of committee
 3. Proportionality
 4. Sub-committees
 5. Reserves
 6. Election of chair/vice-chair
 7. Workload issues
 8. Impact on community councils and other committees
2. That, in light of recommendation 1, officers be given the authority to make any consequential changes to the constitution to ensure consistency, including any necessary corrections to spelling, grammar and punctuation, without changing the substantive content.
3. That after the first year of operation the new arrangements be reviewed.
4. That further to recommendations (1.2 & 1.3) above, council assembly appoints members to the newly constituted licensing committee for the remainder of the municipal year 2004/05.
5. That further to recommendation (1.6) above, council assembly elects a chair and vice-chair for the newly constituted licensing committee for the remainder of the municipal year 2004/05.
6. That the arrangements take effect from the February 7 2005, i.e. the first operative date for applications to be made.

BACKGROUND INFORMATION

7. The standards committee has a duty to monitor and review the operation of the constitution. The Monitoring Officer has a key role in this process and for making recommendations for amendments to the constitution. Any changes to the constitution have to be approved by council assembly after consideration by the standards committee.
8. The Licensing Act received Royal Assent in July 2003. The main provisions of the act include:

- The transfer of liquor licensing to local authorities,
- Introduction of a new licensing regime dealing with the sale and supply of alcohol; the provision of regulated entertainment, and the provision of late night refreshment (comprising of personal licences, premises licenses, club premises certificates and temporary event notices)
- The introduction of four licensing objectives:
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm.

9. The draft guidance for local authorities was published in October 2004 and officers used this guidance to prepare the options set out in this report. Licensing committee considered the constitutional arrangements on November 11 and its views are included in this report. Standards committee considered the options on November 18 and made recommendations to council assembly. The proposals will impact on community councils and other committees and these are included in paragraphs 34-36. The key themes are:

- Membership and constitution of licensing committee
- The relationship between licensing committee and community councils
- Review of licensing protocols

Timetable

Date	Activity
9 September to 15 October 2004	Public consultation on Licensing Statement (includes all 8 Community Councils)
6 October 2004	Environment & Community Support Scrutiny Sub-Committee
11 November 2004	Licensing Committee
18 November 2004	Standards Committee
8 December 2004	Council Assembly
7 February 2005	First appointed date from which applications can be made.
November 2005	Second appointed date from which all licences become valid.

KEY ISSUES FOR CONSIDERATION

10. There are eight strands for the constitutional changes arising from the Licensing Act 2003 are as follows:

1. Anticipated areas of revision to existing constitution
2. Size of committee
3. Proportionality
4. Sub-committees
5. Reserves
6. Election of chair/vice-chair
7. Workload issues
8. Impact on community councils and other committees

An introduction to each area and recommendations of the standards committee are set out below together with the views of the licensing committee.

Anticipated areas of revision to existing constitution

The role of the committee – Licensing issues

11. The licensing committee has sole responsibility for all of the authority's licensing functions. This committee can arrange for the discharge of any of its functions by a sub-committee established by it or by an officer of the licensing authority. The licensing committee is and will continue under the new arrangements to be a quasi-judicial body which means that it must use procedures similar to a court hearing to ensure that all parties – e.g. applicant and objectors - all have the same rights to speak and question each other. This ensures that there is a fair hearing and all relevant issues are considered.
12. The secretary of state has reserved powers to make future regulations on:
 - (a) the proceedings of licensing committees and their sub-committees (including provisions about the validity of proceedings and the quorum for meetings)
 - (b) public access to committees and sub-committees
 - (c) publicity
 - (d) agendas and records
 - (e) public access to agendas and records and other meeting information.
13. The department for culture, media and sport issued further draft regulations for consultation in September 2004. These regulations require 10 working days notice to be given for most hearings and have access, publicity and record keeping requirements broadly comparable to existing arrangements. The consultation period on these regulations ends on November 10 2004. Should finalised regulations differ substantially from the draft regulations and render any of the proposals in this report redundant, revised proposals will be placed before a further meeting of the standards committee and council assembly.
14. The draft regulations make no directions as to the division of responsibilities within a framework of committee, sub-committee and officer decision-making (there is no provision for individual member decision making). However draft guidance issued by department for culture, media and sport (DCMS) in July 2004 under section 182 of the Licensing Act 2003 specifies all applications attracting relevant representations should be subject to member decision. The council is obliged to have regard to this guidance by paragraph 4(3) of part 2 of the Licensing Act 2003. Subject to that important principle, the council will be able to determine roles and responsibilities within a constitutional review e.g. the central committee could be given policy responsibility, powers to manage and appoint its sub-committees, the ability to determine major applications; while sub-committees would determine the majority of opposed applications and officers could be empowered to determine all unopposed applications.
15. Licensing responsibilities within Southwark are currently shared between a central licensing committee and the eight community councils. The Licensing Act 2003 introduces a single regime for alcohol, entertainment and late night refreshment licensing. The constitution will therefore need to be revised in order to conform with the new legal requirements. Draft revisions to the constitution indicating a new division of responsibilities are attached as appendix 1.
16. The licensing committee considered the issue of striptease and similar entertainment and agreed that such applications should as a matter of course be

considered by the council's licensing committee for the purpose of ensuring consistency with the licensing objectives. Since this meeting officers have taken advice from counsel setting out the position in respect of the licensing of entertainment involving striptease and nudity. Members are also referred to the note prepared by counsel, at Appendix D of the statement of licensing policy report elsewhere on this agenda. The effect of this advice is that the Council can only seek to impose conditions where there is a relevant representation, although it is to be expected that one may be received where premises operate in this manner. Guidance on the operation of the new arrangements states that where there is no relevant representation this should be dealt with by officers.

17. Potentially, members could reserve decisions on premises licences, where a relevant representation has been made relating to the proposal to provide striptease and nudity, to the full committee of 15. This would allow more members to participate in any decision. However, this could also give rise to a number of logistical difficulties, given the need for a larger number of members to form a quorum (presently 4, but subject to Secretary of State guidance that a higher number could be required). The Council's past experience is that hearings where matters of this nature are raised can be protracted, and finding members available can be difficult.

Street trading issues

18. The proposed changes in Appendix 1 also include modified provisions for the future consideration of street trading matters. Street trading matters are a current responsibility of the licensing committee. However there is no legal requirement under the relevant legislation, the London Local Authorities Act 1994, that street trading matters be considered by a licensing committee. Given the anticipated heavy workload arising from the Licensing Act 2003, officers recommended to licensing and standards committees that all future street trading revocations should be considered by an officer panel. The officer panel would also be asked to deal with street trading licences grants, refusals and variations currently delegated to the street trading manager. Thus no decisions on street trading matters would henceforth be taken by any individual officer. A bench marking exercise conducted by the street trading section in August 2004 with seven boroughs with intensive street market activity namely Camden, Lambeth, Westminster, Kensington & Chelsea, Waltham Forest, Newham and Lewisham found six already had officer delegation for all street trading matters in place.
19. The standards committee agreed to recommend the proposal for the licensing officer panel to deal with street trading matters, but in respect of the issue of revocations it concluded there should be a right of appeal to members. This would mean that any trader whose licence is revoked by an officer panel would be given an automatic right of appeal to the licensing committee. This will be additional to the statutory right of appeal to the magistrates' court. The proposal of the standards committee is set out in the recommendation 1.1.

The areas of the constitution affected by the changes are summarised below:

CAPR	Page No.	Title	Action Required
Article 8	18	Regulatory and other Committees:Licensing Committee.	Allocation of all licensing activities to a Licensing

CAPR	Page No.	Title	Action Required
			Committee.
Article 10	24	Community Councils:Licensing functions (non-executive)	Deletion of functions.
Part 3G	55	Matters reserved to the Licensing Committee, Community Councils and the 1st tier officer and officer panel exercising licensing functions.	Allocation of all licensing activities to a Licensing Committee.
Part 3H	59	Matters reserved to Community Councils: Licensing functions (non-executive)	Deletion of functions.

Recommendation 1.1

That standards committee recommends that council assembly agrees the constitutional proposal containing a division of responsibilities as indicated in Appendix 1 in respect of;

- (i) Licensing functions
- (ii) Street Trading functions, except that in respect of revocations, that any trader whose licence is revoked by an officer panel be given an automatic right of appeal to members on the licensing committee. This will be additional to the statutory right of appeal to the magistrates' court.

Views of the licensing committee

Supported the proposed division of responsibilities for both licensing and street trading functions as set out in Appendix 1.

Size of Committee

20. Section 6 of Licensing Act 2003 mandates a licensing committee of 10 to 15 members. The existing licensing committee consists of 8 members (quorum 2) and has an average attendance of 3/4 members. There are six possible future options as follows:

- Options
- 10 members (quorum 3)
- 11 members (quorum 3)
- 12 members (quorum 3/4)
- 13 members (quorum 3/4)
- 14 members (quorum 3/4)
- 15 members (quorum 3/4)

Note: The figures given for the quorum are an estimate as confirmation is required from the secretary of state.

Nominations to the new centralised licensing committee could either be made as follows:

No.	Options																						
Option 1	All places appointed by council assembly																						
Option 2	<p>One place allocated to each community council with council assembly determining remaining nominations to ensure proportionality eg assuming a 15 person committee nominations could be as follows:</p> <table border="0"> <tr> <td>Borough & Bankside CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Bermondsey CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Rotherhithe CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Walworth CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Peckham CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Camberwell CC</td> <td>1 Labour</td> </tr> <tr> <td>Nunhead & Peckham Rye CC</td> <td>1 Labour</td> </tr> <tr> <td>Dulwich CC</td> <td>1 Conservative</td> </tr> <tr> <td>Council Assembly</td> <td>2 Liberal Democrat</td> </tr> <tr> <td></td> <td>4 Labour</td> </tr> <tr> <td></td> <td>1 Conservative</td> </tr> </table> <p>This could ensure a continuing link with community councils.</p>	Borough & Bankside CC	1 Liberal Democrat	Bermondsey CC	1 Liberal Democrat	Rotherhithe CC	1 Liberal Democrat	Walworth CC	1 Liberal Democrat	Peckham CC	1 Liberal Democrat	Camberwell CC	1 Labour	Nunhead & Peckham Rye CC	1 Labour	Dulwich CC	1 Conservative	Council Assembly	2 Liberal Democrat		4 Labour		1 Conservative
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Dulwich CC	1 Conservative																						
Council Assembly	2 Liberal Democrat																						
	4 Labour																						
	1 Conservative																						

21. Although the Licensing Act 2003 allows a committee to regulate its own procedures generally, the secretary of state has reserved powers to determine committee and sub-committee quorums. Setting the quorum at the lowest statutory point when known would give a slightly greater degree of flexibility. This could be an important consideration given the projected need to convene multiple quorate committee meetings especially in the initial eight month period.
22. In terms of the size of the committee, opting for the maximum size of 15 would increase the pool of members deputed to deal with the very heavy workload predicted to accompany the onset of new licensing arrangements. Opting for a larger size would also allow flexibility in nominating particularly if direct nominations from the eight community councils to ensure an ongoing link and continuity with past arrangements are deemed appropriate.

Recommendation 1.2

That standards committee recommends in order to achieve maximum flexibility a committee of 15 members is formed (option 1).

Views of the licensing committee

The licensing committee supported option 1.

Proportionality

23. The existing licensing committee was established under the proportionality arrangements of Local Government & Housing Act 1989 as 4 Labour, 3 Liberal

Democrat, 1 Conservative. There was a slight Labour bias on this committee to ensure that the totality of the council's committees were proportionate. There is no requirement in the Licensing Act 2003 that the new licensing committee exercising all licensing functions should be proportionate. However it is assumed members will wish to establish a committee that is proportionate. Any proportionate committee created would not be part of the formula used by council assembly at constitutional council to allocate places to all committees subject to the Local Government & Housing Act 1989 arrangements.

24. If based on existing council wide proportionality, licensing committee composition would be on the basis of one of the following seven options:

- 10 members (LD 5 LAB 4 CON1)
- 11 members (LD 5 LAB 5 CON 1)
- 12 members (LD 6 LAB 5 CON 1)
- 13 members (LD 6 LAB 6 CON 1)
- 14 members (LD 7 LAB 6 CON 1)
- 15 members (LD 7 LAB 6 CON 2 or LD 7 LAB 7 CON 1)

The mathematical formula used to calculate committee proportionality allows two options for a 15 member committee, as indicated below, which could both be deemed to be proportionate. From a technical perspective, option (b) below is slightly more proportionate than option (a) although in practical terms the difference between the two options is not statistically significant.

Recommendation 1.3

That standards committee recommends a proportional committee of 15 members to be formed on the basis of 7 Liberal Democrat, 7 Labour and 1 Conservative members (option b).

Views of the licensing committee

The licensing committee's view was that the committee should be proportionate politically but it expressed no preference between the two options:

- (a) 7 Liberal Democrat, 6 Labour and 2 Conservative members;
- OR
- (b) 7 Liberal Democrat, 7 Labour and 1 Conservative members.

Sub-Committees

25. The Licensing Act 2003 allows licensing committee to establish a sub-committee or sub-committees of exactly 3 members of the main committee. Membership of the sub-committees is limited by the Licensing Act requirement that all members of sub-committees must also be members of the 10-15 person main committee.
26. There are no specific regulations covering operation of sub-committees. It is possible, and given the anticipated works, in officers view advisable, that sub-committees deal with the majority of applications. There are a number of options depending on the structure of the main committee. These are set out below:

Option 1

Political proportionality is not a requirement for any new licensing sub-committees.

Generally speaking appointing a committee that reflects the council's political composition is good practice and is likely to be recommended unless there are reasons not to do so. In the case of licensing sub-committees there are arguments to increase the flexibility because of the anticipated workload issues. Therefore it is proposed that the sub-committees operate on a 'taxi-rank' system with the licensing committee appointing sub-committees of any three members of the main committee without further specification. This would give maximum flexibility allowing sub-committees to be formed as required dependent on member availability.

Option 2

This option includes variations to reflect geospatial requirements (eg community council areas).

This option ensures each sub-committee equates to two community council areas and assuming a maximum committee size of 15 is used, would allow the three remaining members to serve on a special sub-committee determining applications affecting two or more of the other sub-committee areas; act in cases where another of the sub-committees could not establish a quorum owing to member conflict of interests; or handle applications remitted to it by any sub-committee facing volume pressures.

Sub Committee North (LD 3) CC	Rotherhithe CC, Bermondsey CC
Sub Committee East (LAB 2 LD 1)	Peckham CC, Nunhead / Peckham Rye CC
Sub Committee West (LD 2 LAB 1)	Borough & Bankside CC, Walworth CC
Sub Committee South (CON 1 LAB 2)	Dulwich CC, Camberwell CC
Special Sub-Committee (LD1 LAB 1 CON 1)	Borough wide

27. Option 2 would allow applications to be allocated on a geographic basis. However this option reduces flexibility to be able to deal with cases within the tight timescales set by the government. This is because it may not always be easy to predict which applications will be objected to and hence which local sub-committee should be convened.

Recommendation 1.4

That standards committee recommends that option 1 be adopted.

Views of the licensing committee

The licensing committee supported option 1.

Reserves

28. The use of reserves on council committee's is an established constitutional arrangement on other committees which seeks to increase flexibility and ensure quorate meetings. However the Licensing Act 2003 designates all functions to a single licensing committee and sub committees with a membership which can only comprise three members of the main committee. Given the absence of any explicit provision to appoint reserves and the implicit expectation in the Licensing Act 2003 that licensing functions be exercised by a limited number of members, it is

advised that the committee does not attempt to appoint reserves.

Recommendation 1.5

That standards committee recommends that reserves are not appointed to the new licensing committee.

Views of the licensing committee

The licensing committee recommended that reserves should not be appointed.

Election of chair/vice chair

30. Council assembly currently elects the chair and vice-chair of the licensing committee. The Licensing Act 2003 would allow licensing committee to elect its own chair, but does not make it mandatory to do so.

Recommendation 1.6

That in accordance with current practice, standards committee recommends council assembly should appoint the chair and vice-chair and the committee determines its sub-committee memberships and provisions for the election of the chairs of its sub-committees.

Views of the licensing committee

The licensing committee supported recommendation 1.6.

Workload Issues

31. There are 1200 licensed premises in the Borough and on average there will be 2 applications for personal licenses per premises. 60% of premises (c.720) are likely to apply for variations of current consents and will go out to public consultation.
32. The number of committee meetings required will depend on the level of public objection as summarised in the table below:

Level of objections	No of applications	objected	Objected frequency	application
5%	36		1 per week	
10%	72		2 per week	
15%	108		3 per week	
20%	144		4 per week	
25%	180		5 per week	

33. DCMS predicts a 6% objection rate. The council's environment and leisure department are working on a 10% objection rate. However it would be advisable to prepare for a much higher objection rate.
34. These hearings will all fall between the first and the second operative dates ie the 8 month period between March and November 2005. The council is however obliged to determine applications within either 8 or 12 weeks of receipt. Therefore the council does not have the absolute ability to ensure there will be an even

throughput of applications in this eight-month period.

35. It is legal requirement that hearings take place within either an 8 or 12 week period from the receipt of an application, dependent on the type of application made. If this deadline is not complied with, dependent on the type of application, it will be deemed to have been either agreed or refused. Objections will become apparent in a number of ways: first licensing officers proactively forecasting and assessing likely objected cases based on their local knowledge, and second, the receipt of objections themselves. These objections will not be received until after the formal consultation period of 4 weeks (in most cases). This leaves only about 3 weeks to prepare the report, provide notice of the meeting (10 clear working days in most cases), issues the agenda, hold the hearing and publish the decision, which is a tight timetable for dealing with these matters. For this reason, officers have had to review the arrangements for meetings in order to manage such a workload. In practice, it is officers recommendation that this is the only possible by utilising the following:
- a) Day (either full or part) and evening meetings.
 - b) Multiple sub-committees meetings on the same day.
 - c) Utilisation of maximum speaking limits as provided for in draft Regulations (September 2004) to ensure more than one application can be heard at a single meeting. This approach has been piloted in some community councils.
 - d) Linked to (c), requiring parties to make as much as possible of their case/objection in writing prior to the meeting.
36. A copy of the draft guidance for use at hearings based on current practice in community councils is set out in Appendix 2. Officers will examine this and other options for rationalising contributions once final regulations are received.
37. The increased workload will require a major new commitment from members. At present only the chair of the licensing committee receives a responsibility allowance. Given the expected heavy additional workload, officers advised the licensing committee and the standards committee that they may wish to consider recommending a band 1 special responsibility allowance to all other members, with the chair receiving a band 2 allowance. The table below sets out the cost of allowances at this level:

Position	Proposed Allowances		No of members	Annual Cost	Additional resources	Comments
	Band	£/annum				
1. Chair	Band 2	£7,942	1	£7,942	No	Already paid at this level
2. All other licensing committee members	Band 1	£2,686	14	£37,604	Yes	-
Total 1+ 2				£45,546	£37,604	

Note: The allowances shown in the table are at 2004/05 levels.

38. The standards committee supported the payment of allowances for the new duties involved in serving on the new licensing committee and the levels proposed in the table above. However when it considered the issue of whether allowances should be paid in addition to any other special responsibility allowance received, members were of the view that this should only apply to those in receipt of band 1 or 2 allowances.

All other allowance holders would be entitled to receive no more than one allowance.

39. As the Licensing Act 2003 introduces an entirely new regime for decision making on licensing matters, it is felt imperative that all committee members receive training prior to the consideration of any application. The borough solicitor is preparing a relevant training programme based on the requirements of the Licensing Act with an expected delivery in January 2005. Best operating practice would require all members of the new committee to be fully trained and it is suggested membership of any committee or sub-committee determining applications and the receipt of any special responsibility allowance be contingent on the satisfactory completion of the training provided.

Recommendation 1.7

That standards committee recommends:

1. That the chair receives a band 2 special responsibility allowance.
2. That all other members receive a band 1 special responsibility allowance.
3. That any allowances paid to licensing committee members be additional to any band 1 or 2 allowances they currently receive.
4. That all members undertake a course of training approved by the Borough Solicitor prior to hearing any applications or receiving a special responsibility allowance.

Views of licensing committee

Licensing committee expressed no opinion as to the payment of allowances.

Impact on Community Councils and other committees

40. The impact of community council of the constitutional changes is to remove decision-making on licensing matters from community council's terms of reference and matters reserved. The changes to put this in effect are set out in Appendix 1. The reason is that all licensing functions under the new act now must be the responsibility of the new licensing committee. Officers view is that for the first year a central committee should operate to deal with the anticipated workflow. Thereafter it might be possible to review future patterns of hearings and introduce a local element to decision-making.
41. Officers have looked at whether there may be an impact on proportionality in respect of the other committees, planning and appointments. This is because the current licensing committee sits in a pool with these committees and proportionality is calculated across all 3 committees. As the new licensing committee will established under Licensing Act 2003, proportionality in respect of the planning and appointments committees has been recalculated. As a result of the changes members should note that there is no change to the composition of these committees.
42. Members should note the office of the deputy prime minister has indicated that the Functions and Responsibilities Regulations (SI 2000 No 2853 as amended) under the Local Government Act 2000, are to be amended for England, so as to include the

licensing functions under Section 5 - 8 of the Licensing Act 2003 into schedule 1 of the Regulations. The effect of this is to exclude these functions from being 'Executive Functions'. This therefore means that these functions (includes section 5 and section 6 of the Licensing Act 2003 which relates to the 'Determining Licensing Policy' and to 'Appointing a Licensing Committee') are functions of council assembly and cannot be undertaken by the executive or other committee.

Recommendation 1.8

That standards committee recommends:

1. That the constitutional changes affecting community council terms of reference and matters reserved as set out in Appendix 1 be noted.
2. That the fact that there is no change in the proportionality of the planning and appointments committees be noted.

Views of the licensing committee

Licensing committee noted both recommendations.

Future Reviews

43. Officers would recommend that after the first year of operation that the new arrangements be reviewed. The standards committee supported this proposal especially given the uncertainty about future workload, especially after the initial eight months period.

Effect Of Proposed Changes on those affected

44. In considering constitutional changes regard should be given to the impact on individuals and structures:
 - Not to erode officer delegations
 - Have regard to the opportunity for individual members of the public and groups to make representations to decision-makers
 - Taking account of access to information

Resource Implications

45. This report recommends the creation of new allowances for licensing committee members to reflect the increased workload. The allowances could apply from February 7 2005. The estimated annual costs are set out in the table in paragraph 37. There is funding in the 2004/05 year budget to cover this additional commitment for the remainder of this year. However for 2005/06 additional funding of £37,604 would need to be identified to fund the new allowances (see paragraph 37 above).
46. There are no specific financial implications within this report although additional staffing resources will need to be identified to support decision making in the first year.

Legal Implications

47. The borough solicitor and her staff have been involved in the preparation of this report and the legal implications are contained in the body of the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark's Constitution	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Ian Millichap 020 7525 7225
Standards Committee – Minutes – March 8 & April 27 2004	Ditto	Paula Thornton 020 7525 4395

APPENDICES

Appendix No.	Title
Appendix 1	Licensing Act 2003 - Revisions to the constitution
Appendix 2	Community council licensing procedure.

AUDIT TRAIL

Lead Officer	Deborah Holmes, Borough Solicitor	
Report Author	Ian Millichap, Constitutional Team Manager Kevin Flaherty, Constitutional Officer	
Version	Final	
Dated	November 22 2004	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
Executive Member	No	No
Date final report sent to Constitutional Support Services	9/11/04	

Appendix 1