

<b>Item No.</b> 7.3	<b>Classification:</b> Open	<b>Meeting Name:</b> Council Assembly	<b>Date:</b> 1 December 2010
<b>Report title:</b>		Constitutional issues arising from Southwark Democracy Commission review of the role of Council Assembly and other constitutional issues	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Constitutional Steering Panel	

## RECOMMENDATIONS

1. That council assembly adopts the constitutional changes recommended by the constitutional steering panel arising from council assembly's recommendations of 20 October 2010 in relation to the report of the Democracy Commission:
  - 1) That a council assembly business panel be established to improve how agendas are planned.
  - 2) That the changes to Part 3O: Panels of the constitution be agreed, as set out in Appendix 2.
  - 3) That the proposed changes to council assembly procedure rules as set out in Appendix 3, including the specific issues described in paragraphs 22 to 30, be agreed.
2. That council assembly adopts the constitutional changes recommended by the constitutional steering panel to amend the role and function of the standards committee as set out below to include:

‘To provide strategic oversight on the use of the powers regulated by the Regulation of Investigatory Powers Act 2000 and to receive reports on operational use at least once a quarter’.
3. That officers be authorised to undertake any consequential and cross referencing changes arising from recommendations 1 and 2.

## BACKGROUND INFORMATION

4. The constitutional steering panel on 15 November 2010 considered a report on changes to the constitution arising from the Southwark Democracy Commission's consideration of the role of council assembly and Regulation of Investigatory Powers Act 2000 and the role of the standards committee. This report sets out the recommendations of the constitutional steering panel.

## Background on Democracy Commission

5. Council assembly at its meeting on 19 May 2010 agreed the cabinet be tasked with establishing a Democracy Commission and bringing recommendations back to council assembly at a later date.
6. Councillor Abdul Mohamed was appointed Chair of the Southwark Democracy Commission by cabinet on 15 June and the membership for the commission was subsequently confirmed as:
  - Councillors Abdul Mohamed (Chair), Anood Al-Samerai, Columba Blango, Mark Glover, Michael Mitchell, Helen Morrissey and Cleo Soanes.
7. The commission met on seven occasions considering a variety of evidence and feedback from local groups and the community.
8. The commission's recommendations were submitted to cabinet on 19 October 2010, which endorsed the Democracy Commission's recommendations (see Appendix 1).
9. On 20 October 2010 council assembly agreed the recommendations of the commission and tasked the cabinet with producing an implementation plan that fully considers the resource implications of the commission's recommendations.
10. A number of constitutional changes arise from the Democracy Commission's recommendations and this requires changes to the council's constitution which have been considered by the constitutional steering panel, who have made a series of recommendations to council assembly.

## **KEY ISSUES FOR CONSIDERATION**

### **Introduction**

11. Any review of the constitution seeks to make it:
  - **Accessible** to all those who need to use it to understand their rights and obligations under it.
  - **Efficient:** supporting effective decision-making so that the business of the council can be delivered in line with best practice on corporate governance.
  - **Inclusive:** so that decision-making is open and transparent and involves local communities.
12. The report sets out the main key issues and changes arising from the constitutional review. The changes to the council assembly procedure rules are set out in Appendix 3. Changes are shown as follows:
  - additions (shown as underlined);
  - deletions (shown with a strike through);
  - comments (added to explain reason for main changes).

### **Recommendations of the Democracy Commission**

13. The Democracy Commission accepted the need for change and acknowledged that doing nothing was not an option based on the strong body of evidence accompanying the review. The commission felt that its recommendations should be considered together as a whole package to obtain the maximum positive effect.

14. The commission recommended the changes on the basis of maximising the benefit to council assembly by:
  - Increasing the involvement and participation of local people
  - Increasing accountability to local people
  - Discussion of issues relevant to local people
  - Better scrutiny of decision making for the people of the borough
  - Improving the quality of decisions made in the council assembly
  - Holding the administration to account.
  
15. The main areas that the Democracy Commission made recommendations on are:
  - The content and format of council assembly meetings to ensure that they are more relevant to residents concerns; more clearly demonstrate the council's community leadership role and strengthen the role of members and residents in holding the administration to account.
  - The establishment of a council assembly business panel to improve how agendas are planned.
  - How the residents, the community and members can more easily bring topical issues to assembly meetings by making it easier to bring deputations and petitions and through strengthening links with community councils.
  - The concept of themed meetings and debates to inform plans, priorities and strategies at an early stage.
  - Plans to involve the community and residents in themed debate by holding early discussions in community councils and other fora prior to council assembly.
  - Making better use of new technology and established communication channels, including local media, to engage and communicate with residents and illicit opinion and questions on debates held at council assembly on themes and plans.
  - Improving how outcomes of debates and decisions at council assembly are communicated to residents and other stakeholders.
  - The location and timing of meetings.
  
16. A key part of the recommendations are that the council assembly adopts themed debate and that there is public engagement prior to the assembly meeting in a variety of fora on these themes. Themed debates will be related to plans, strategies and policies that the council is developing (or refreshing existing one) and will be chosen to ensure that the council would find feedback, engagement and debate particularly useful. Engagement and debate would be led by the relevant cabinet member. The principles for choosing themed debate are set on under paragraph 8 of the democracy commission recommendations attached in Appendix 1.

### **Part 3 – Who takes decisions**

#### **Part 3O – Panels**

17. The Democracy Commission (DC) recommended that a council assembly business panel be established to improve how agendas are planned (see recommendation 10).

18. The Democracy Commission's recommendations in relation to the council assembly business panel are set out below:

- A council assembly business panel be set up. The council assembly business panel is to be responsible for planning the council assembly's agenda as an advisory panel to the Mayor and will meet twice per year. The panel will plan the annual agenda for up to a year of programmes for policy, budgetary framework development, themes, community leadership items and the content of informal sessions. These themed meetings to have a minimum of two months notice. (see recommendation 10.1)
- The Mayor has the ultimate responsibility for deciding on the council assembly business and will be advised by the council assembly business panel. (see recommendation 10.2)
- The council assembly business panel is to be chaired by the Mayor. The composition of the panel should be one representative from each political group on the council. It will have the ability to seek advice from community leaders/ active citizens/ experts / relevant officers as required who will act in an advisory role to plan debates on coming themes. (see recommendation 10.3)
- The council assembly business panel will take into account a balance between items of business promoting participative democracy (community engagement) and representative democracy (getting more out of elected members). (see recommendation 10.4)

19. In addition the Democracy Commission requested that the panel consider the following:

- The council assembly business panel will be asked to consider which additional plans, policies or strategies should be considered by the council assembly. (see recommendation 4.3)
- The council assembly adopts the use of themes, either related to cabinet portfolios or to early debate on plans, policies and strategies. These will be presented by the relevant cabinet member. (see recommendation 4.4)
- That existing arrangements continue to apply for taking and discussing motions at the meetings. The business panel is to advise the Mayor and his officers according to the principles outline in recommendation 8.4. (see recommendation 5.3)
- The council assembly business panel should make allowances for a balanced business agenda and the need to make meetings more engaging. A draft of the council assembly agenda shall be available to political groups well in advance of the dispatch/publishing date. (see recommendation 5.4)
- Themed debates will be linked to plans, strategies and policies and this will be clearly signposted to residents and members so they are able to connect debate to plans and monitor their implementation. (see recommendation 6.4)
- When considering themes the panel will bear in mind the principles set out in recommendation 8.4.

- Partnership - that outside community leaders/active citizens/experts/relevant officers are invited to attend the business panel in an advisory role to plan debates on coming themes (e.g. Youth Council, TM council). (see recommendation 8.4f)
- The business panel will take into account a balance between items of business promoting participative democracy and representative democracy. (see recommendation 10.4)
- The business panel is to keep the rules on debate under review and offer changes if they do not elicit good behaviour. (see recommendation 11.2)
- The business panel will need to think carefully about how it works with existing equalities groups to enable wider participation. (see recommendation 15.2)

#### **Recommendations – Part 30: Panels**

- 1) That a council assembly business panel be established to improve how agendas are planned.
- 2) That the changes to Part 30: Panels, set out in Appendix 2, be agreed.

#### **Part 4 – Council Assembly Procedure Rules**

20. The Democracy Commission recommendations require numerous changes to council assembly procedure rules and these are set out by way of additions, deletions and comments in Appendix 3.
21. The constitutional steering panel considered a number of issues in detail and this is summarised as set out below in paragraphs 23 to 27:

##### **Broadcasting and recording (CAPR 1.7)**

22. The Democracy Commission recommended that the rules on the recording of audio are relaxed and all audio recording of the proceedings in council assembly be allowed (see recommendation 13.3). Appendix 3 outlines a proposed rule change to relax the position on audio recording. Photography and filming would remain subject to prior agreement of the chair. A detailed briefing on the implications of relaxing the rule was prepared for the constitutional steering panel. This advice is attached as Appendix 4. The constitutional steering panel agreed to recommend the relaxation in audio recording. It also undertook to review the change in the future, if necessary. The panel felt the briefing, together with the experiences of other local authorities, would provide a useful basis on which to develop a protocol on the issues involved.

##### **Interjections - Rules of Debate (CAPR 1.12 (27 & 28))**

23. The constitutional steering panel considered the proposal to introduce a new rule to allow the Mayor more discretionary power in debates to allow interjections during discussions. The panel heard that interjections could lead to more formality in debates with more political challenges for the Mayor to rule upon and there may not be enough time for this type of debate as speeches are time limited. The panel concluded that the proposed rule seemed to complex and that further work was required by officers before this could be reconsidered.

**Informal session - Order of business at ordinary council assembly meetings**  
(CAPR 2.2)

24. The panel felt that the informal sessions should be officer led to ensure that information is provided to the public on the business of the meeting. The panel noted the importance of providing sufficient information on the way the meeting is conducted. A short addition to the rule on order of business of ordinary meetings is included. The rule states that it would not be obligatory for members to attend.

**Public question time and deputations** (CAPR's 2.5 and 2.6)

25. The constitutional steering panel considered whether the deadlines for receipt of public questions and deputations should be reduced from nine days. This would be in line with commission's recommendations to be more open to public participation. The panel supported a draft rule change that would reduce the deadline to three clear working days. This would allow questions and deputations to be more topical and relevant to agenda items. It would also allow officers time to publish the questions and deputations in a supplemental agenda. However, it was also noted that there would be less time available to prepare responses to questions.

**Deputations speaking rights**(CAPR 2.6 (14))

26. It was noted by the constitutional steering panel that the Democracy Commission had recommended that deputations could present directly for three minutes and ask a question of the cabinet member/leader. Officers advised that current council assembly procedure rules allow the deputation to speak for five minutes. The panel considered that in the spirit of the commission's wish to widen engagement, that the current time limit of 5 minutes should be maintained. This is reflected in Appendix 3.

**Members' Questions** (CAPR's 2.7 and 2.8)

27. The constitutional steering panel considered how best to apply the Democracy Commission's recommendation on allowing the leader of the opposition two supplementary questions. The minority opposition leader will be permitted one supplementary question. The panel decided to recommend that the additional supplemental question be applied to urgent questions only.
28. The Democracy Commission had recommended that as part of members' question time there should be an additional question asked from a councillor on behalf of each community council. The panel considered this and recommended that the order of questions be varied so that the questions on behalf of each community council be taken after the leader followed by cabinet members and followed by others. This recommended change is set out in Appendix 3. The panel expressed no view on how community councils might wish to organise their question; this matter was left to individual community councils to decide.

**Deadlines**

29. The panel considered the potential impact that any change to the time and day on which council assembly is held, i.e. in the daytime or on a Saturday, would have on the following deadlines for the receipt of:
- Amendments

- Questions on reports
  - Urgent questions
30. Officers advised that it would be necessary to change the current deadlines in these limited circumstances as it would not be possible for the requirements in the current rules to be completed in time and for the administrative arrangements to be processed by officers. The panel agreed to recommend that for a daytime or Saturday meeting that the deadlines listed above should be brought forward by one clear working day. Appendix 3 reflects this recommendation. The panel also informed officers that the operation of this rule is something it would like to keep under review.

**Recommendation – Council Assembly Procedure Rules**

- 3) That the proposed changes to council assembly procedure rules as set out in Appendix 3, which includes the specific issues described in paragraphs 22 to 30 be agreed.

**Other Constitutional Issues**

**The Regulation of Investigatory Powers Act 2000 and the role of the Standards Committee**

31. On 13 October 2010 the standards committee considered a report entitled 'The Regulation of Investigatory Powers Act 2000 and the role of the Standards Committee' which explained that the Regulation of Investigatory Powers Act 2000 (RIPA) puts a regulatory framework around a range of investigatory powers used by local authorities. This is done to ensure the powers are used lawfully and in a way that is compatible with the European Convention on Human Rights. It also requires, in particular, those authorising the use of covert techniques to give proper consideration to whether their use is necessary and proportionate.
32. The government consulted on plans to stop investigatory powers being used under the RIPA for trivial purposes. The government was particularly interested in how local authorities use RIPA to tackle local crime and disorder.
33. The report on the consultation ("the Report") makes it clear that the government is satisfied that the public authorities currently listed in RIPA all need to be able to use some or all of the techniques regulated by the Act in order to carry out their statutory functions.
34. The government do not propose to remove any public authority entirely from the RIPA framework. However, they have made a number of changes which will include local authorities. These affect either the techniques the authorities can use, or the statutory purposes for which they can use them and will clarify the test of necessity and proportionality for these techniques. As an example local authorities may not be able to use RIPA for investigation of dog fouling or people putting bins out a day early.
35. The Report further states that the current level of authorising officer in the regulations has resulted in a degree of inconsistency between local authorities. Currently authorisation for a local authority is 'Assistant Chief Officer, Assistant Head of Services, Service Manager or equivalent'.

36. The Report proposes to raise the rank of authorising officers in local authorities to senior executive, specifically 'Director, Head of Service, Service Manager or equivalent'. This proposal would prevent any junior officers authorising RIPA techniques.
37. This change has been reflected in the latest version of the council's policy.
38. In addition, the government proposes that each local authority should have a single officer to ensure that all designated authorising officers meet the standards required by the Office of Surveillance Commissioners (OSC). The single officer is to be a member of the corporate management team and CMT have confirmed this will be the monitoring officer.
39. The Report agrees that the involvement of elected members of local authorities can be helpful in terms of transparency and accountability. It goes on to say that the overwhelming consensus of this consultation is that councillors should have oversight of a councils' use of covert investigative techniques authorised under RIPA, that this oversight should be strategic not operational, and that individual local authorities should have some degree of local flexibility to determine the exact form and frequency of that oversight.
40. The government amended the relevant codes of practice to include the requirement for local authorities to involve elected members in strategic oversight, including setting the policy and reviewing use at least once a year, and considering reports on use on at least a quarterly basis.
41. The report to the 13 October 2010 standards committee proposed that the cabinet member for resources should be responsible for setting the strategic direction and agreeing the RIPA policy and that the standards committee should receive the quarterly reports as this fits within its general remit of probity. It was also proposed that the standards committee should consider reports on use of RIPA on at least a quarterly basis and that role and function of the standards committee be amended in the constitution to include:
- To provide strategic oversight on the use of the powers regulated by the Regulation of Investigatory Powers Act 2000 and to receive reports on operational use at least once a quarter.
42. Having considered the report the standards committee recommended the following:
1. That the standards committee noted the issues outlined in the report.
  2. That the standards committee recommended the proposed change in the terms of reference as stated in paragraph 39 above to the constitutional steering panel.
  3. That a quarterly report be presented at the next meeting of the standards committee.



### **Recommendation 2 – Standards Committee**

That the role and function of the standards committee be amended to include:

‘To provide strategic oversight on the use of the powers regulated by the Regulation of Investigatory Powers Act 2000 and to receive reports on operational use at least once a quarter’.

### **Consequential Changes**

43. As a result of the changes suggested within this report officers will be required to update the constitution. Therefore council assembly is requested to authorise officers to undertake these consequential changes.

### **Recommendation 3 – Consequential Changes**

That officers be authorised to undertake any consequential and cross referencing changes arising from recommendations 1 and 2.

### **Policy implications**

44. A number of constitutional changes may arise from these recommendations and will require changes to the council’s constitution which will need to be agreed by council assembly. The key changes are set out in appendix

### **Community impact statement**

45. The work of the democracy commission has received significant feedback from the community which was empowered with the aim of increasing public engagement with the council and enhancing the community leadership role of the council. The work of the commission has included public consultation and involvement including

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

#### **Council’s constitution**

46. This comment advises the constitutional steering panel of the legal procedure relating to changes to the council’s constitution.
47. Section 37 of the Local Government Act 2000 requires the council to “prepare and keep up-to-date” a constitution. Statutory guidance from the Department for Communities and Local Government states that constitutions “should be drafted as a flexible document” but leaves it up to local authorities to determine how the constitution is to be changed. It is also recognised that council constitutions cannot cover every eventuality.
48. Article 1.5(a) of Southwark’s constitution states that changes to the constitution which “can only be approved by the council assembly will require the prior consideration of the proposal by the constitutional steering panel”.

49. Council assembly may approve any amendment to the constitution where the issue in general has previously been considered by the constitutional steering panel. Further, there is a distinction between changes to the constitution which clarify existing roles and functions and those which raise completely new matters which have not been considered in accordance with Article 1.5.

### **Recording/reporting of Council Assembly proceedings**

50. It will need to be ensured that the proposed relaxation of recording/reporting of Council Assembly proceedings complies with the requirements set out in section 100A of the 1972 Act which states:

*100A.- Admission to meetings of principal councils.*

*(7) Nothing in this section shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.*

This raises the issue of how and to what extent the Mayor will give consent to the recording/reporting of proceedings as well as whether the consent of members of the public who speak at council assembly ought to be sought. A fuller legal briefing on the implications is set out in Appendix 4.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Cabinet report and minutes	Tooley Street, London SE1 2TZ	Paula Thornton 020 7525 4395
Democracy Commission reports and agenda	Tooley Street, London SE1 2TZ	Julie Timbrell 020 7525 0514

### **APPENDICES**

<b>No.</b>	<b>Title</b>
Appendix 1	Democracy Commission - Recommendations approved by council assembly on 20 October 2010
Appendix 2	Part 3O – Panels – Amendment to Constitution
Appendix 3	Council Assembly Procedure Rules – Proposed Amendments and Comments
Appendix 4	Briefing on Recording/Reporting of Council Assembly proceedings

## AUDIT TRAIL

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Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
<b>Cabinet Member</b>	Yes	Yes
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