



# Constitution Improvement Working Group

## Fifth Report February 2016

(General Purposes & Licensing Committee 22<sup>nd</sup> March 2016/  
Executive 23<sup>rd</sup> March 2016/Council 11<sup>th</sup> April 2016)



# Constitution Improvement Working Group - 5<sup>th</sup> Report

## 1. Introduction

- 1.1 The Constitution Improvement Working Group (CIWG) was originally established by the Council's General Purposes and Licensing Committee on 25<sup>th</sup> June 2008. Subsequently, the Working Group was made a sub-group of the Executive. The CIWG has produced 4 Reports and in addition various ad-hoc recommendations to the Council at its meetings on 19<sup>th</sup> January 2009 (1<sup>st</sup> Report), 16<sup>th</sup> March 2009 (2<sup>nd</sup> Report), 27<sup>th</sup> April 2009, 26<sup>th</sup> October 2009, 15<sup>th</sup> December 2009 (3<sup>rd</sup> Report), 29<sup>th</sup> March 2010, 28<sup>th</sup> June 2010, 26<sup>th</sup> March 2012, 12<sup>th</sup> November 2012 (4<sup>th</sup> Report) and 15<sup>th</sup> May 2013.
- 1.2 This, the 5<sup>th</sup> Report of the Working Group to Council, recommends a trial of a radical change to the way the Council develops policy and scrutinises the working of the Council.
- 1.3 Other recommendations are of a more minor nature and seek, in the main, to ensure that the constitution contains no anomalies and that procedures are improved.



**Councillor Nicholas Bennett JP**  
**Chairman, Constitution Improvement Working Group**

## **2. Executive Summary – Recommendations**

### **Scrutiny and Decision Making**

- 2.1 That a trial of a “select committee” approach be undertaken by the Education PDS Committee in 2016/17.**
- 2.2 That, based on the outcome of the trial, further consideration be given to new scrutiny and decision making structures at the appropriate time.**
- 2.3 The procedures for referral for scrutiny set out in Section 5 of this report be agreed.**

### **Call-in**

- 2.4 Where Executive decisions have been submitted for pre-decision scrutiny at full Council there should not be a further right of call-in provided the Executive decision accords with the views of Council.**
- 2.5 A Member who is party to the call-in shall not chair the PDS meeting considering the call-in.**
- 2.6 The relevant PDS Committee must meet to consider a call-in within ten working days of the call-in being received by the Proper Officer (including the day of the call-in and the day of the meeting) unless the parties agree to extend the date to the next ordinary meeting of the PDS Committee, if this is later.**
- 2.7 A decision which has been referred back to the Executive following a call-in must be considered within 20 working days of the call-in meeting, or it will fall.**

### **Minor Constitutional Changes**

- 2.8 The Constitutional Conventions (Appendix 1 to the Constitution) should be deleted and key points incorporated into the main Constitution.**
- 2.9 Public questions to be put on the same basis as Member questions, i.e. all first questions to be taken then second and third questions.**
- 2.10 To enshrine in the Constitution the rule that if a Member is not present for all of an item they are unable to vote on it.**
- 2.11 That evening meetings should normally start at 7.00 p.m. – this should be written into the Constitution.**

- 2.12 Executive Members should only to be able to substitute for other Executive Members at regulatory and general Committees.**
- 2.13 A recorded vote will be taken where five Members rising in their seats indicate their support.**

**Contracts Sub-Committee**

- 2.14 That a Contracts Sub-Committee be established in 2016/17 by Executive and Resources PDS Committee with scope to examine contracts and commissioning issues across the Council.**

**Councillor Numbers**

- 2.15 No changes be made to Councillor numbers at present.**

### **3. Scrutiny and Decision Making**

- 3.1 Until 2002, the Council decision making structure was based on a system of committees covering the different areas of the Council's operations. This was replaced by the Leader and Executive structure in 2002 and the creation of six Policy Development and Review (PDR), later Policy Development and Scrutiny (PDS), Committees. In addition, separate meetings were held in public on a regular cycle for Portfolio Holders to consider recommendations for their executive decision. The need for these regular meetings, which seldom lasted more than a few minutes and which very few people attended, was often limited. This approach was discontinued in 2009 following the first report of the CIWG which introduced the current pre-decision scrutiny sessions at the PDS committees. Since then there have been very few 'call ins' of decisions for further scrutiny. Minor amendments to the system were introduced subsequently to enable a Portfolio Holder to circulate to members by email a 'minded to' proposed decision on relatively minor matters, whereby if members have no objection the decision is implemented after five days. This has been used for such items such as the appointment of school governors and minor revisions to the highway.
- 3.2 The Working Group has considered extending this system to allow scrutiny members to focus on a "select committee" approach. Subject to safeguards, we propose that this is introduced on a pilot basis in 2016/17 to one of the PDS Committees (Education PDS Committee) and potentially, after that, to all scrutiny committees. This will save considerable time and paper at meetings - experience has shown that most recommendations for decision by Portfolio Holders are approved with little or no debate.
- 3.3 We recognise that the policy making structure needs revision. With a number of notable exceptions most policy development has not emanated from the PDS committees but has come about through initiatives led by the Executive and the Portfolio Holders. We have considered how backbench members can still contribute to the development of policy through the new ways of working. The role of scrutiny is essential to any organisation, but particularly in a democratically elected and accountable one like the Council. Through the 'call for evidence' proposal for the select committee it is hoped that the residents of the Borough may make a contribution to the process with their expertise and knowledge. Such "select committee" scrutiny will not only help to ensure that the Council and its contractors are more efficient, economic and effective in the provision of services but will also play keep role in suggesting improvements and policy changes to the Executive.

### **4. Portfolio Holder Decision Making**

- 4.1 Portfolio Holders can make decisions without the need to call a formal meeting advertised under the "Access to Information" rules. Pre-decision scrutiny is a local rather than a legal requirement. Therefore, there is flexibility to revise the Constitution to streamline Portfolio Holder decision making at Bromley.

- 4.2 The following structures could be used for Portfolio Holder decision going forward, and on a trial basis in 2016/17 for Education Portfolio decisions, to allow space for the PDS Committee to concentrate on taking a “select committee” approach, with most decisions taking the route in column 1 below, rather than column 4 as happens now:

### **PORTFOLIO HOLDER DECISION MAKING**

Portfolio Holder and Director agree forthcoming decisions and produce a Forward Plan



Director produces report and draft decision



Portfolio Holder considers, revises decision if necessary and either -

1. Circulates a ‘minded to’ decision	1. Refers to the Executive for decision	1. Decides to take decision at public meeting	1. Refers to Select Committee for pre-decision scrutiny
2. The report is circulated to all Members. A 5 day period for referral for scrutiny is allowed, except in cases of urgency, where agreed, by PDS Chairman and Leader. PDS Chairman, Group Leader and one other Member, any 5 Members or, where a matter affects one Ward, all Ward Councillors (except Darwin where it is the Ward Councillor and one other Member) may refer the decision in for pre-decision scrutiny. Items referred for scrutiny shall be heard within 10 working days.	2. No change to present procedure	2. No change to present procedure	2. No change to present procedure

## **5. Referral for Scrutiny**

- 5.1 If the revised decision making arrangements set out above are adopted, then there will be a need to establish clear procedures. To distinguish this from call-in, which will still remain, we propose to name this process “referral for scrutiny.” The process for the referral for scrutiny could be as follows –

- 5.2 A referral for scrutiny can be triggered by –

- The Chairman of the relevant Select Committee;

- A group leader and one other Member;
- Where a decision affects a particular ward, all ward members (or the ward member plus one other member in the case of Darwin Ward);
- Any 5 members.

5.3 Except in cases of urgency, Members will be given 5 days to refer a decision for scrutiny.

5.4 The referral for scrutiny must be heard by the relevant PDS Committee within 10 working days of the decision being referred.

## **6. Call-in**

6.1 Members considered the call-in process and propose four changes that will overcome recent concerns and clarify the timings in the Constitution. These are -

- As has happened occasionally, Executive decisions have been submitted for pre-decision scrutiny before full Council and in these cases it is considered that there should not be a further right of call-in.
- A Member who is party to the call-in shall not chair the PDS meeting considering the call-in.
- The relevant PDS Committee must meet to consider a call-in within ten working days of the call-in being received by the Proper Officer (including the day of the call-in and the day of the meeting) unless the parties agree to extend the dates to the next ordinary meeting of the PDS Committee, if this is later.
- A decision which has been referred back to the Executive following a call-in must be considered within 20 working days of the call-in meeting, or it will fall.

## **7. Minor Constitutional Changes**

7.1 The Constitutional Conventions (Appendix 1 to the Constitution) should be deleted and key points incorporated into the main Constitution – Reason: to reduce the potential for conflict between documents and to shorten the Constitution.

7.2 Public questions to be put on the same basis as Member questions, i.e. all first questions to be taken then second and third questions – Reason: to maximise the opportunity for different residents to have their question put.

7.3 To enshrine in the Constitution the rule that if a Member is not present for all of an item they are unable to vote on it – Reason: to support proper decision making processes.

- 7.4 The Council agreed at its meeting on March 26<sup>th</sup> 2012 a recommendation from the General Purposes and Licensing Committee on March 14<sup>th</sup> 2012 that evening meetings should normally start at 7.00 p.m. – this should be written into the Constitution.
- 7.5 Executive Members should only to be able to substitute for other Executive Members at regulatory and general Committees – Reason: to remove an anomaly in the Constitution and prevent two Executive Members serving by substitution.
- 7.6 The Council Procedure Rules currently allow for a recorded vote (effectively, a roll-call) when one third of Members present request it. We considered whether the requirement for one third of Members present was too high, and concluded that it should only be necessary for five Members to indicate support for a recorded vote by rising in their seats.

## **8. Contracts Sub-Committee**

- 8.1 A Contracts Working Group was established by Executive and Resources PDS Committee in 2015. We consider that there is a need for this Working Group to be formalised for 206/17 as a Sub-Committee of the Executive and Resources PDS Committee with scope to examine issues relating to contracts and commissioning across the Council.

## **9. Councillor Numbers**

- 9.1 No changes are proposed to the number of councillors.
- 9.2 The Working Group has considered this matter in depth. On the basis that Bromley already has the largest number of electors per councillor in London, and the future responsibilities that might be imposed on the Council, we have decided that this would not be the right to time to reduce councillor numbers.