

ANNUAL ASSEMBLY

16 MAY 2007

REPORT OF THE GOVERNANCE WORKING PARTY

This report is submitted under Agenda Item 6. The Chair will be asked to decide if it can be considered at the meeting under the provisions of Section 100B(4)(b) of the Local Government Act 1972 as a matter of urgency in order not to delay the implementation of the Working Party's recommendations.

Title: Report of the Governance Working Party	For Decision
<p>Summary:</p> <p>The Corporate Peer Review undertaken last year by the Improvement and Development Agency (IDeA) recommended, amongst other things, that there needed to be greater clarity around the Council's governance arrangements. Assembly established a Governance Working Party to undertake a review and, as part of the process, the opportunity has been taken to benchmark ourselves with other authorities and to consider the extent to which our political structure arrangements are "fit for purpose".</p> <p>The review was also timely in the light of a White Paper last Autumn on "Strong and Prosperous Communities," and a subsequent Local Government and Public Involvement Health Bill, the broad thrust of which is to seek a new approach to local partnerships in order to give local authorities more opportunity to lead their areas, work with other services and better meet the public's needs. These papers have implications for the way that local authorities are made up and operate, and specifically extend the remit of scrutiny. The Police and Justice Act 2006 is also important as it will empower local authorities to scrutinise police services.</p> <p>The Working Party has concentrated mainly on our executive and scrutiny functions but has also carried out a check of all other meetings to ensure that arrangements are still appropriate.</p> <p>Largely, the foundation of our political structure is sound but we do need to respond to impending legislation. Also it is important to reflect on the resources available to support Members in order to maximise the effectiveness of their democratic and community leadership roles.</p> <p>The Membership of the Working Party comprised the Leader and Deputy Leader of the Council, the Chair and Deputy Chair of the Scrutiny Management Board, Councillor Mrs V. Rush as a Member of the Executive and the Leader of the Minority Group. We also had the benefit of a lawyer from another London Borough and an officer from the IDeA to give critical friend advice and assistance.</p>	
<p>Recommendation(s)</p> <p>The Assembly are asked to agree the following proposals:</p> <p style="padding-left: 40px;">Executive Arrangements</p> <p>➤ Pending the final content of the Local Government and Public Involvement in</p>	

Health Bill, that the size of the Executive remains at ten members. Also that based on the proposed models of executive governance, the option of an indirectly elected Leader with a four year term, with provisions for votes of no confidence, be favoured as this matches closest our existing model.

- That a pilot be introduced for six months to trial individual decision-making within the remit of the Deputy Leader's housing portfolio. This will be reported back on with any related recommendations in time for any changes to be implemented for the 2008/09 council year. In agreeing this pilot, however, to reaffirm the principle that cross cutting portfolio decision making should continue to be conducted through the Executive. The administrative arrangements for the pilot to be worked up by officers for implementation at the earliest opportunity.
- That the process of appointing non-Executive members to support portfolio holders be formally approved on an annual basis by the Assembly to maintain integrity and transparency.
- That job profiles for Executive Members be amended to provide for regular portfolio briefings to take place with the wider Council membership at least quarterly.

Scrutiny

- That the Scrutiny Management Board (SMB) adopts a more strategic approach to planning their activity which has regard to knowledge around performance and complaints etc. and which also incorporates ways of holding individual portfolio Members to account for their areas, The approach should also consider ways of scrutinising performance and financial issues
- That the SMB also reviews new ways of working in relation to scrutinising the Local Strategic Partnership (LSP) and the Local Area Agreement (LAA), and to build this into its scrutiny planning process. The implications of the forthcoming legislation in relation to the "Community Call for Action" powers will also need to be built into the Council's scrutiny function
- That the SMB to consider, in advance of legislation, the appointment of a standing Scrutiny Panel, similar to the Health Scrutiny Panel, to scrutinise police activity.
- That the SMB should make sure that scrutiny focuses predominantly on issues that will make a difference to the community, and to that extent there should be more Member engagement with and within the community as a whole. With this in mind further regard will be had as to the effects of the Local Government and Public Involvement in Health Bill in terms of the emphasis being placed on the setting up of Local Involvement Networks (LINKs) which will enhance local authorities' role to scrutinise health provision.
- The Call-In process to (a) lose the challenge element introduced last year, and revert back to a one stage procedure to overcome unnecessary bureaucracy and delays, and (b) relate only to decisions implemented by the Executive.

Policy Commissions

- Reinforce the role and usefulness of Policy Commissions as a tool within the Council's overall political structure to assist with the development of policy, including that influenced through the Local Strategic Partnership .

Other Meetings

- To reaffirm that the existing responsibilities/roles of other meetings should remain as they are with the exception of a number of staffing related matters appertaining to the functions of the Executive and Personnel Board to bring them in line with the requirements of the Local Authorities (Standing Orders) (England) Regulations SI 3384/2001 Board as follows:
 - The composition of Panels to deal with staffing matters relating to Statutory Officers and JNC employees to be agreed at the Assembly as part of the normal appointments process, and having regard to the political balance requirements, the membership to be drawn from a wider selection of Members, with at least one Member of the Executive to include the Leader of the Council and the relevant Lead Member.
 - All decisions regarding the redundancy of non-JNC posts to be managed by the Chief Officers with an appeal line to the Chief Executive as Head of the Paid Service.
 - With the exception of appeals against final written warnings and dismissal which will remain with the Personnel Board, other employment related appeals by non JNC employees will be to the Chief Executive as Head of the Paid Service.

Resources

- To note (a) the need for a review of staffing resources to enhance support for the scrutiny function, but also to support Members generally in their democratic and community leadership roles, and that (b) the Chief Executive will bring forward proposals to relevant meetings in due course.

Constitution

- That appropriate amendments be made to the Council Constitution to give effect to the agreed recommendations including waiving the appropriate sections to enable the six months' individual decision making pilot to proceed.

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1. Terms of Reference

1.1 The terms of reference of the Working Party were:

“To consider the need for any change to the political structure in the light of the related findings from the Corporate Peer Review with particular reference to (a) the role of the Executive and Portfolio Members and (b) the role of Scrutiny (Part B (Articles 4 & 5) and Part C (Sections C & D) within the Council’s Constitution, and to report back to the Assembly, with any recommendations.”

2. Impending Legislation

2.1 The White Paper “Strong & Prosperous Communities” and the subsequent Local Government and Public Involvement in Health Bill, which is expected to become law during the later part of 2007, were considered.

2.2 The White Paper includes amongst other things proposals for new models of leadership where the Government will legislate to require councils in England to choose from one of the following three models of executive governance:

- Directly elected Mayor with a four year term
- Directly elected Executive with a four year term
- Indirectly elected Leader with Executive powers with a four year term

2.3 Other key aspects of the draft legislation as far as governance arrangements are concerned include:

- Allowing Mayoral arrangements without a need for a referendum
- Strengthening of the overview and scrutiny function, particularly in relation to examining partnership arrangements principally around Local Strategic Partnerships.
- Enabling councillors to initiate “Community Call for Actions” through overview and scrutiny.
- Allowing local authorities to opt for whole council elections and enable those holding such elections to move to single member Wards.
- A review of standards (Codes of Conduct etc), including a revised Model Code of Conduct for councillors.
- A removal of the Secretary of State role in confirming bylaws and greater freedom for local authorities
- Streamlining the performance regime.
- The ability for communities in London the option to form parishes.
- A review of the Audit Commission’s powers and functions around governance and performance management

2.4 The view of the Working Party is that much of the content of the White Paper and subsequent Bill relates to powers and functions that are already available to local authorities. In addition, the Working Party took the view that it did not support single member wards and represented a stealth attack on democratic values of local government. A response to the governance aspects of the White Paper was sent to London Councils as reported to the Assembly on 4 April 2007.

- 2.5 In relation to the options of executive models, the Working Party supported an indirectly elected leader with a four year term with the provision for removal with in term i.e. votes of no confidence, this being the closest aligned option to the existing model. The precise details around the operation of a vote of no confidence will come forward in the light of the final legislation.
- 2.6 The Bill also has an emphasis towards greater partnership working particularly around the Local Strategic Partnership (LSP) and in that respect the delivery of the Local Area Agreement (LAA) which is closely linked to an enhanced role for overview and scrutiny, something which is touched on further within this report.

3. Executive Arrangements

- 3.1 The Working Party considered a report focusing on the current Executive functions, specifically the new models of leadership, delegating power to individual portfolio holders to make them more accountable, better support to portfolio holders and the size of the existing Executive.
- 3.2 As the White Paper and subsequent Bill has remained silent on the proposed changes to the size of the Executive, and bearing in mind the current workload for portfolio holders it is being recommended that the size of the Executive should remain as at present - ten Members (the maximum number allowed).
- 3.3 The Working Party sought to uphold two particular aspects around decision making namely making portfolio holders more accountable and ensuring decision making remains open and transparent. Members were unanimous that any changes to the existing structure of decision making will need to have regard to appropriate Call-in mechanisms being in place and to maintain the present integrity of cross cutting portfolio responsibilities.
- 3.4 To inform the debate a review of Executive decisions taken in the six month period between May and October 2006 was undertaken.
- 3.5 It was clear from the exercise that up to 50% of all decisions made by the Executive could possibly be exercised by a single portfolio holder.. The Working Party had regard to likely advantages and disadvantages of operating individual decision making and initially felt that whilst it could provide greater individual accountability and wider opportunity for engaging with other members and the community before decisions are taken, the system worked well currently and was not unmanageable.
- 3.6 The Working Party concluded on balance that it would be worth operating a six months pilot on individual decision making but was quite clear that we should retain the integrity of cross cutting portfolio issues coming to the Executive. It was felt that the remit of the Deputy Leader's Housing portfolio offered the simplest opportunity , on the basis of reporting back the success or otherwise of the pilot to the Assembly. The administrative arrangements including maintaining the integrity of the call in process will be worked up with a view to implementation at the earliest opportunity.
- 3.7 They also felt there was merit in looking at decision making around contracts through reviewing existing thresholds, and noted that this would be addressed as part of the overall review of procurement arrangements.

3.8 The Working Party also considered proposals for assistance and support to portfolio holders, on the basis of developing the role of non-Executive members as a means of achieving greater involvement, succession planning and generally providing members with a general knowledge base. It was agreed that while such support roles would need to be formally established, and reviewed annually, they would not be designated as deputy portfolio holders, and that any such positions would not be eligible for a special responsibility allowance. Further work is required to formalise the constitutional nature of such roles.

3.9 In addition although evidence suggests that briefings are taking place with wider membership across all portfolios, there is no specific requirement to do so within the existing Executive job profile, and therefore an appropriate reference should be made within the profile on the basis that briefings should take place at least quarterly.

4. **Scrutiny Arrangements**

4.1 The Working Party received separate reports focusing on the existing scrutiny function of the Council and the proposed changes being brought about by the White Paper and Bill as well as other external influences.

4.2 The legislation aims to achieve greater involvement by non-executive members including a new role under "Community Call for Action," scrutiny of crime & disorder responsibilities new measures for which are contained in the Police & Justice Act 2006, an enhanced role for health scrutiny, better ways of holding the Executive to account, more strategic planning around the business of scrutiny taken on board all performance, complaints etc, and overall support and resources for Members including the Council's scrutiny function.

➤ **Community Call for Action**

4.3 The new legislation looks to support local government in delivering a more responsive service with extended choice and control and giving individuals and community groups a real say over the way services are delivered. The specific area identified for greater involvement with the community is being labelled "Community Call for Action" which will give potentially greater powers to all Councillors to bring forward issues from the community which scrutiny will then have a duty to review. This is expected to raise significant capacity issues for the scrutiny function as well as impact on the way scrutiny reviews are planned.

4.4 The Bill envisages an enhanced role for local authorities in relation to scrutinising health services. There is a particular emphasis on the Government framework around setting up Local Involvement Networks (LINKs) which will replace the Patient Forums and will be established for every local authority area with social services responsibilities. LINKs will have the power to refer matters to the Health Scrutiny Panel and receive appropriate responses

➤ **Crime and Disorder**

4.5 The Police & Justice Act 2006 is likely to include proposals to establish a similar standing scrutiny panel to that of the Health Scrutiny. At the present time there are 17 Safer Neighbourhood Police Teams whose priorities are driven through

corresponding community ward based panels. The idea in the legislation will be how scrutiny can overview this work without cutting across the wishes of the community. The overall look and feel of the legislation is for overview and scrutiny to scrutinise police activities and not the community and therefore the real challenge will be to ensure that the community feel that scrutiny supports them through scrutinising all service providers such as the Health Authority, the Police and also the LSP through the LAA.

- 4.6 The Working Party considers that the Council should think about establishing its own scrutiny model for policing and community safety ahead of any subsequent regulations that may follow.

➤ **Local Area Agreement (LAA)**

- 4.7 The legislation as well as the Sir Michael Lyons Review into the future of Local Government finance places considerably emphasis on the role that local authorities will play in bringing partners together in helping to implement the priorities through the LAA. The guidance for the LAA sets out a clear role for the Council as the Accountable Body and the responsibility for ensuring that there are clear leads for each of the targets in the LAA with individual partners within LSP being held responsible and accountable to government for delivering against those targets. The expectation is that the Public Service Board of the Local Strategic Partnership and the SMB will need to jointly ensure that cross cutting themes are being implemented through the LAA.
- 4.8 There are a number of ways that scrutiny of the LAA can be implemented. The Working Party recommends that the council does not establish processes that duplicate internal mechanisms and that the outcomes of scrutiny should be focused on what is going to make a difference in the community. The Working Party is opposed to the setting up of standing scrutinies for each of the LAA blocks to mirror the Sub Group structure (currently five) and favours a more flexible approach as we have currently whereby some topic-related scrutinies can be time limited but others warrant a longer-term approach
- 4.9 As part of the review of how the LSP and the LAA will be scrutinised, the Working Party took the opportunity to review the operation of Policy Commissions which were originally designed to compliment the overview and scrutiny function. Their membership includes Executive Members and it was felt that they can continue to play a useful role in assisting with the development of policy and should therefore remain within the overall political structure.
- 4.10 The Working Party also considered the role of scrutiny in relation to performance and financial management. Models in other boroughs such as Brent show the existence of standing scrutiny committees to undertake this role, currently administered through this authority by way of SMB, the Audit Committee and the Resource Monitoring meeting. In favouring the overall principle of approaching monitoring through task and finishing rather than establishing standing scrutiny, it was agreed that a future report should be presented to SMB to see how better the Council could undertake performance and financial monitoring, including contracts.

➤ **Call-in**

- 4.11 This existing call-in process was agreed by the Assembly in May 2006 as part of the annual review of the Constitution and is therefore coming to the end of the first year of operation. The Working Party reviewed the call-ins that had occurred and considered that the revised arrangements had been a source of unnecessary bureaucracy.
- 4.12 The Working Party therefore recommends that the system should revert back to a one stage formal procedure involving two or more members. In addition matters that are reserved to the Assembly but which pass through a preliminary Executive stage should not be part of this process.

➤ **Resources**

- 4.13 Presently political structured meetings including the Executive and Scrutiny are administered through Democratic Services. The Council was particularly concerned when the new political arrangements were formed in 2000 not to set up a separate scrutiny function to rival support for the Executive as this had potential implications for staff resources. The Peer Review however did comment that dedicated resources may help Scrutiny and as a consequence the level and placement of resources now needs reviewing, particularly with Democratic Services currently working below full capacity with the loss of key officers and the potential increase in the work of scrutiny brought about by the impending legislation.
- 4.14 The Working Party feel that the scrutiny policy and research role is different to the administrative support provided by Democratic Services to both the Executive and Scrutiny, and that whilst additional resources are clearly merited, they might better sit elsewhere. Consideration will be given to the level of resources required in the light of the changing remit of scrutiny brought about by existing and impending legislation. This will need to take onboard the requirements to scrutinise the LSP and LAA, the requirements under the Police and Justice Act 2006, the effects of the “community call for action” and the implications of an enhanced health scrutiny role brought about through the development, amongst other things, of LINKs. This will require further reports to be submitted in the first instance to SMB, and subject to funding requirements, the Executive.
- 4.15 There is also clearly a need to review the level of support provided to Members generally to enhance their political role which will be assessed and reported upon separately.

5. Review of Other Meetings

- 5.1 The Local Government Act 2000 brought about major changes to the way the Council conducts its business away from the traditional committee structure to a new Executive/Scrutiny model. Section 13 of the Act provides the mechanism to determine which local authority functions should be the responsibility of the Executive. Regulations accompanying the Act specified those functions which may or did not need to be the sole responsibility of the Executive as well as those that cannot be their responsibility. The presumption of the legislation is that all functions of the Authority are to be the responsibility of the Executive unless specified in

Regulations. Certain functions such as quasi-judicial and planning were always intended not to be part of the Executive function.

- 5.2 Since the 2000 Act, the government has legally required local authorities to establish other committees to deal with specific issues, namely a Standards Committee to deal with areas of probity governance and a Licensing Committee to address the implications of the Licensing Act 2003 and the Gambling Act 2005.
- 5.3 More recently CIPFA Guidance building on the Accounts and Audit Regulations 2003 saw the establishment of a separate Audit Committee.
- 5.4 The Council's Constitution established which committees can deal with which matters and under which legislation they refer to. It also sets out in Part C those functions which cannot be delegated and then goes on to identify a scheme of delegation including those functions and decisions exercised by Chief Officers.
- 5.5 The Working Party, having considered the existing roles of the meetings outside the Executive and Scrutiny, have decided that at the present time there is no need for any changes with the exception of a number of staffing matters relating to appointments, dismissals, disciplinaries, redundancies grievances and performance which appertain to the existing functions of the Executive and Personnel Board, to bring them in line with the requirements of the Local Authorities (Standing Orders) (England) Regulations SI 3384/2001.
- 5.6 The terms of reference of the Executive and Personnel Boards will require amendment, the overall affect of which will place greater responsibilities upon the Chief Executive as the Head of Paid Service and Chief Officers to deal with a wider range of staffing matters.

6 Conclusion

- 6.1 The governance review was driven by two factors namely the impending new legislation and the IDeA Peer Review which recommended the Council's governance arrangements be reviewed for clarity. Overall the Council has received a score of three, equivalent to a "good", Comprehensive Performance Assessment rating with no particular adverse remarks regarding governance arrangements. That said the review and associated recommended changes are seen as appropriate and timely and puts the Council in a strong position as it looks to achieve an excellent CPA rating by 2008.

Background papers used in the production of this report

- Agendas and minutes of meetings of the Governance Working Party held on 6 November 2006, 30 January, 22 February, 27 March and 24 April 2007.

Consultees:

Chief Executive

Corporate Director of Resources

Assistant Chief Executive (Democracy & Partnerships)

Divisional Director of Legal Services

External support (Terry Osborne and Sandie Dunne)