

Notice of Meeting of the

ASSEMBLY

**to be held on Wednesday, 15 May 2019
commencing at 7:00 pm in the
Council Chamber, Town Hall, Barking**



To all Members of the Council of the London Borough of Barking and Dagenham

Date of publication: 7 May 2019

Chris Naylor
Chief Executive

Councillors and senior officers are also invited to attend a presentation on Modern Slavery, from Joanna Kitching, Safeguarding Boards Business Manager, Hazel North-Stephens, Commissioning Manager, and Councillor Worby, Cabinet Member for Social Care and Health Integration and Chair of the Health and Wellbeing Board, which will take place in the Council Chamber from 6.00 pm until 6.45 pm

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Please note that this meeting will be webcast, which is a transmission of audio and video over the internet. Members of the public who attend the meeting and who do not wish to appear in the webcast will be able to sit in the public gallery on the second floor of the Town Hall, which is not in camera range.

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AGENDA

1. Appointment of Chair and Deputy Chair

The Chief Executive shall invite nominations and conduct the vote for the position of Chair and Deputy Chair of the Assembly.

2. Apologies for Absence

3. Declaration of Members' Interests

In accordance with the Council's Constitution, Members are asked to declare any interest they may have in any matter which is to be considered at this meeting.

4. Minutes - To confirm as correct the minutes of the meeting held on 27 February 2019 (Pages 3 - 9)

5. Leader's Statement

The Leader will present his statement.

6. Appointments to the Political Structure and Other Bodies 2019/20 (Pages 11 - 24)

7. Review of Council Governance Arrangements and Constitution Updates (Pages 25 - 64)

8. Members' Allowances Scheme 2019/20 (Pages 65 - 74)

9. Report of the Local Government Ombudsman on a matter relating to the Council's charging process for Residential Adult Care (Pages 75 - 96)

10. Appointment of Independent Persons (Pages 97 - 100)

11. Motions

12. Questions With Notice

13. Any other public items which the Chair decides are urgent

14. **To consider whether it would be appropriate to pass a resolution to exclude the public and press from the remainder of the meeting due to the nature of the business to be transacted.**

Private Business

The public and press have a legal right to attend Council meetings such as the Assembly, except where business is confidential or certain other sensitive information is to be discussed. The list below shows why items are in the private part of the agenda, with reference to the relevant legislation (the relevant paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 as amended). ***There are no such items at the time of preparing this agenda.***

15. **Any confidential or exempt items which the Chair decides are urgent**



Our Vision for Barking and Dagenham

ONE BOROUGH; ONE COMMUNITY; NO-ONE LEFT BEHIND

Our Priorities

A New Kind of Council

- Build a well-run organisation
- Ensure relentlessly reliable services
- Develop place-based partnerships

Empowering People

- Enable greater independence whilst protecting the most vulnerable
- Strengthen our services for all
- Intervene earlier

Inclusive Growth

- Develop our aspirational and affordable housing offer
- Shape great places and strong communities through regeneration
- Encourage enterprise and enable employment

Citizenship and Participation

- Harness culture and increase opportunity
- Encourage civic pride and social responsibility
- Strengthen partnerships, participation and a place-based approach

MINUTES OF ASSEMBLY

Wednesday, 27 February 2019
(7:02 - 8:40 pm)

PRESENT

Cllr Elizabeth Kangethe (Chair)

Cllr Andrew Achilleos	Cllr Dorothy Akwaboah	Cllr Saima Ashraf
Cllr Abdul Aziz	Cllr Toni Bankole	Cllr Princess Bright
Cllr Sade Bright	Cllr Laila M. Butt	Cllr Evelyn Carpenter
Cllr Peter Chand	Cllr Josie Channer	Cllr John Dulwich
Cllr Edna Fergus	Cllr Irma Freeborn	Cllr Cameron Geddes
Cllr Syed Ghani	Cllr Kashif Haroon	Cllr Amardeep Singh Jamu
Cllr Jane Jones	Cllr Eileen Keller	Cllr Mohammed Khan
Cllr Donna Lumsden	Cllr Mick McCarthy	Cllr Giasuddin Miah
Cllr Margaret Mullane	Cllr Adegboyega Oluwole	Cllr Glenda Paddle
Cllr Simon Perry	Cllr Moin Quadri	Cllr Foyzur Rahman
Cllr Tony Ramsay	Cllr Chris Rice	Cllr Ingrid Robinson
Cllr Paul Robinson	Cllr Darren Rodwell	Cllr Muhammad Saleem
Cllr Faraaz Shaukat	Cllr Bill Turner	Cllr Dominic Twomey
Cllr Lee Waker	Cllr Maureen Worby	

APOLOGIES FOR ABSENCE

Cllr Simon Bremner	Cllr Rocky Gill	Cllr Olawale Martins
Cllr Dave Miles	Cllr Lynda Rice	Cllr Emily Rodwell
Cllr Phil Waker	Cllr Faruk Choudhury	

52. Declaration of Members' Interests

There were no declarations of interest.

53. Minutes - To confirm as correct the minutes of the meeting held on 30 January 2019

The minutes of the meeting held on 30 January 2019 were confirmed as correct.

54. Minutes of Sub-Committees - To note the minutes of the JNC Appointments, Salaries and Structures Panel held on 29 January 2019

The Assembly received and noted the minutes of the JNC Appointments, Salaries and Structures Panel, held on 29 January 2019.

55. Death of former Councillor Mabel Arnold

The Assembly noted with deep regret that former Councillor Mabel Arnold passed away in a residential home in Stourbridge, West Midlands on 10 February 2019.

Mabel served as a Councillor between 1974 and 1998, representing Manor, Parsloes and Cambell Wards. During her time on the Council, Mabel was on a wide range of committees and also served as Deputy Chair of the Social Services Committee between 1982 and 1998 and the Libraries Committee between 1990 and 1993.

Mabel represented the Council on numerous outside bodies, including the Fostering and Adoption Service, and was Chair of Governors for Barking College of Further Education and a Governor of Cambell, Godwin and Monteagle Schools. She was elected Mayor for the 1987/88 municipal year and was granted the Freedom of the Borough in 1995.

The Assembly stood for a minute's silence as a mark of respect.

56. Leader's Statement

The Leader of the Council presented a verbal statement, updating the Assembly on a range of matters since the last meeting, including:

- **Violent crime and anti-social behaviour-** There had been a shooting and stabbing at Barking Station recently, and whilst the perpetrators and victims were not from the borough, it was important that with the increase in violent crime particularly in London, that the Council needed to keep lobbying for more police resources. The recent anti-social behaviour by young people outside 'Subway' in the Heathway reported to January's Assembly was the subject of further action, including reviewing CCTV to identify those who took part. This would be followed up with letters from the Tri-Borough Police Commander and the Leader, reminding parents of their responsibilities.
- **London's first Youth Zone-** The Youth Zone would be opening in less than 100 days and the Leader had joined students from Robert Clack Upper School and members of the Future Youth Zone team to start the countdown. It was noted that young people had been involved in the design of the Zone which will be a great asset to the borough at a cost of £6.5 million, the first of its kind in London with a wide range of activities and for only 50p per session. Members of the Zone would be between the ages of 8-19 and for those aged up to 25 with additional needs.
- **50m Swimming pool-** This has now opened at the Becontree Heath Leisure Centre.
- **Wall of Shame-** The latest episode of the 'Wall of Shame' was now available on the Council's website. This featured fly tipping hotspots in St Chad's Road in Chadwell Heath and Rowallen Parade, Dagenham. Any fly tippers identified on CCTV are liable to a fixed penalty notice and the Council encouraged residents to get in touch in confidence to report incidents.

57. Appointments

There were none.

58. Budget Framework 2019/20 and Medium Term Financial Strategy 2019/20 - 2020/21

A video highlighting the Borough's key developments and initiatives during the year was shown before the Cabinet Member for Finance, Performance and Core Services introduced the Council's proposed budget framework for 2019/20 which incorporated the following:

- the Medium-Term Financial Strategy (MTFS) for 2019/20 to 2020/21;
- the General Fund budget for 2019/20;
- the level of Council Tax for 2019/20;
- the draft Capital Programme for 2019/20 to 2022/23;
- an update on the Dedicated Schools Grant and Local Funding Formula for Schools; and
- the Flexible Use of Capital Receipts Strategy to support the Council's transformation agenda.

The Cabinet Member advised that a revised Appendix C for the statutory budget determinations setting out the amount of Council Tax, had been tabled to the Assembly, which was a slight adjustment on "rounding" but which made no difference to the Council Tax valuation bands.

With regard to revenue funding, the Cabinet Member outlined the grant funding available to the Council. He explained that the abolition of the Revenue Support Grant (RSG) system meant that the Council's main source of revenue funding now came from business rates, which will see the Council no worse off than previous with an estimated £79.16m coming from new pooling arrangements, representing a small increase of £0.5m, albeit this is dependent on business rates growth in London which in the current economic climate is not guaranteed. As a consequence, it was proposed to increase Council Tax by 2.99%. This included 1.99% for general Council services raising an additional £1.2m, plus an additional 1% specifically ring-fenced for Social Care and Support services, raising an additional £0.6m.

The Cabinet Member commented on the 2019/20 budget consultation that had taken place between November 2018 and January 2019, which included several face-to-face events with the local community, and the key projects, issues and risks associated with Council services in the years ahead. He added that the Council sought to keep the Council Tax as low as possible and the higher amount raised would be ring-fenced for social care and disabilities.

The Cabinet Member referred to the unprecedented financial challenges faced by local authorities as a result of the year-on-year funding cuts by Central Government, which had coincided with increasing demand for services and a growing population. The Council had chosen in 2014 to take a bold and ambitious approach in response to those challenges, focussing on investing in services, maximising economic growth and transforming the way the Council was run by pursuing new and innovative transformation solutions to the delivery of services and as an alternative to outsourcing, ensuring that no one was left behind. He outlined examples of this innovative approach including Community Solutions, (the Service set up to work with people and families in need of early help and support to get back on track), Be First (the Council's Regeneration Company), Reside

(Council owned Affordable Landlord) and Beam (Council Energy Supplier). The Cabinet Member also referred to the proposed Capital Programme for the next four years which would see over £740m of investment in the Borough.

The Cabinet Member advised that the Council's budget had been under sustained pressure since 2010 and local authorities overall had lost 40% of their budgets since that time, which equated to the Council saving £153m since that time. However, owing to the Council's Transformation Programme, no new specific savings would be required in 2019/20.

In accordance with paragraph 10.3.2 of Part 2, Chapter 3 of the Council Constitution, the budget was put to a recorded vote and was **agreed** as follows:

For: Councillors Achilleos, Akwaboah, Ashraf, Aziz, Bankole, Princess Bright, Sade Bright, Butt, Carpenter, Chand, Channer, Dulwich, Fergus, Freeborn, Geddes, Ghani, Haroon, Jamu, Jones, Kangethe, Keller, Khan, Lumsden, McCarthy, Miah, Mullane, Oluwole, Paddle, Perry, Quadri, Rahman, Ramsay, Chris Rice, Ingrid Robinson, Paul Robinson, Darren Rodwell, Saleem, Shaukat, Turner, Twomey, Lee Waker and Worby (42)

Against: None (0)

Abstain: None (0)

The Assembly **resolved** to:

- (i) Approve a base revenue budget for 2019/20 of £148.820m, as detailed in Appendix A to the report;
- (ii) Approve the adjusted Medium-Term Financial Strategy (MTFS) position for 2019/20 to 2020/21 allowing for other known pressures and risks at the current time, as detailed in Appendix B to the report, including the additional cost of borrowing to accommodate the capital costs associated with the implementation of the MTFS;
- (iii) Delegate authority to the Chief Operating Officer, in consultation with the Cabinet Member for Finance, Performance and Core Services, to finalise any contribution required to or from reserves in respect of the 2019/20 budget, pending confirmation of levies and further changes to Government grants prior to 1 April 2019;
- (iv) Approve the Statutory Budget Determination for 2019/20 as set out in the revised Appendix C to the report as tabled at the meeting, reflecting an increase of 2.99% on the amount of Council Tax levied by the Council and the final Council Tax proposed by the Greater London Assembly (8.9% increase), as detailed in Appendix D to the report;
- (v) Note the update on the current projects, issues and risks in relation to Council services, as detailed in section 4 of the report.
- (vi) Approve the Council's draft Capital Programme for 2019/20 to 2022/23 totalling £744.323m of which £498.473m was General Fund schemes, as

detailed in Appendix E to the report;

- (vii) Approve the Flexible Use of Capital Receipts Strategy as set out in Appendix F to the report;
- (viii) Note the briefing on the potential implications of Brexit for the Council as set out in Appendix G to the report;
- (ix) Note the Chief Finance Officer's statutory finance report as set out in section 10 of the report, which included a recommended minimum level of reserves of £12m; and
- (x) Approve the updated Dedicated Schools Budget for 2019/20 including the hourly rate payable to Early Years providers (3-4 year olds) as set out in Section 11 and Appendix A to the report.

59. Pay Policy Statement 2019/20

The Cabinet Member for Finance, Performance and Core Services presented the Council's draft Pay Policy Statement for 2019/20 in accordance with the requirements of the Localism Act 2011. The Cabinet had considered this report and endorsed it at the meeting on 18 February 2019.

The Statement included details of the pay ratios showing the Chief Executive's salary against the median salary figure for all employees and against the lowest paid employees, as well as comparative data compiled from a number of other London Boroughs. The Cabinet Member commented that Barking and Dagenham's favourable position in comparison to the benchmark was reflective of the prudent stance taken by the Council on senior officers' pay levels.

In line with the Council's long-standing commitment to pay its employees no less than the London Living Wage rate, the Cabinet Member referred to the proposed increase to the minimum rate of pay from £10.20 to £10.55 per hour with effect from 5 November 2018. The increase would also apply to a range of apprenticeship posts across the Council and Members were pleased to hear that the pay policy was encouraging apprentices to want to build a career at Barking and Dagenham.

Members welcomed the report and asked that the Council support and celebrate its pay policy. They also requested that the Council continue to lobby the Local Government Association, requesting that Members should be readmitted to the Local Government Pension Scheme which they are not permitted to join.

The Assembly **resolved** to:

Approve the Pay Policy Statement for the London Borough of Barking and Dagenham for 2019/20 as set out at Appendix A to the report, for publication on the Council's website with effect from April 2019.

60. Treasury Management Strategy Statement 2019/20

The Cabinet Member for Finance, Performance and Core Services presented the draft Treasury Management Strategy Statement (TMSS) for 2019/20 which set out the Council's borrowing, investment and funding plans for the year ahead. This report was considered and endorsed by the Cabinet at its meeting on 18 February 2019.

The Cabinet Member referred to the key issues within the TMSS, which included the new requirement for a Capital Strategy, details of borrowing and investments levels at 31 December 2018, cash balances at 31 March each year since 2015/16 and the medium-term capital finance budget. In respect of the latter, the Cabinet Member confirmed that the increasing amount of General Fund interest payable from 2018/19 to 2022/23 and beyond reflected the significant activity under the Council's Investment and Acquisition Strategy.

Reference was made to the importance of effective treasury management in supporting the Council's ambitious plans and the stretched targets for the Treasury section in respect of achieving interest on the Council's General Fund cash balances. In respect of the Housing Revenue Account (HRA) and the announcement by the Prime Minister in October 2018 that the debt cap was to be abolished, the Cabinet Member advised that details were still awaited of when that change of policy would come into effect and the practical implications for local authorities.

Members were pleased that the authority was sustaining a prudent financial approach although were also concerned about the financial viability of the Council in the event of a no-deal Brexit.

The Leader recorded his thanks to the Cabinet Member for his hard work and for presenting this and the other financial and budgetary reports to Assembly at tonight's meeting.

The Assembly **resolved** to adopt the Treasury Management Strategy Statement for 2019/20 and, in doing so, to:

- (i) Note the current treasury position for 2019/20 and prospects for interest rates, as referred to in section 7.2 of the report;
- (ii) Approve the Annual Investment Strategy 2019/20 outlining the investments that the Council may use for the prudent management of its investment balances, as set out in Appendix 1 to the report;
- (iii) Approve the Council's Borrowing Strategy 2019/20 to 2023/24, as set out in Appendix 2 to the report;
- (iv) Note the inclusion of the Capital Strategy 2019/20, incorporating the Investment and Acquisitions Strategy, as set out in Appendix 3 to the report;
- (v) Approve the Capital Prudential and Treasury Indicators 2019/20 – 2022/23, as set out in Appendix 4 to the report;

- (vi) Approve the Minimum Revenue Provision Policy Statement for 2019/20, representing the Council's policy on repayment of debt, as set out in Appendix 5 to the report;
- (vii) Note that a review of the Minimum Revenue Provision Policy Statement was to be carried out and any amendments reported back as part of the Treasury Outturn Report for 2018/19;
- (viii) Approve the Operational Boundary Limit of £1.002bn and the Authorised Borrowing Limit of £1.102bn for 2019/20, representing the statutory limit determined by the Council pursuant to section 3(1) of the Local Government Act 2003, as referred to in Appendix 4 to the report; and
- (ix) Delegate authority to the Chief Operating Officer, in consultation with the Cabinet Member for Finance, Performance and Core Services, to proportionally amend the counterparty lending limits agreed within the Treasury Management Strategy Statement.

61. Motions

There were none.

62. Questions With Notice

There were none.

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ANNUAL ASSEMBLY

15 May 2019

Title: Appointments to the Political Structure and Other Bodies 2019/20	
Report of the Chief Executive	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: David Symonds, Democratic Services Officer	Contact Details: Tel: 020 8227 2638 E-mail: david.symonds@lbbd.gov.uk
Accountable Strategic Leadership Directors: Fiona Taylor, Director of Law & Governance and Chris Naylor, Chief Executive	
<p>Summary</p> <p>The Assembly is responsible for appointments to the political structure and various other internal and external bodies, except those reserved to the Leader and/or Cabinet Members.</p> <p>Appendix 1 to this report shows the proposed appointments for the 2019/20 municipal year relating to Council committees and other internal and outside bodies which are the responsibility of the Assembly. Appendix 2 shows the appointments made by the Leader and/or Cabinet Members to other internal and outside bodies.</p> <p>The appointment of the Mayor will be dealt with at the Ceremonial Council on 17 May 2019.</p>	
<p>Recommendation(s)</p> <p>The Assembly is recommended to:</p> <ul style="list-style-type: none"> (i) Approve the appointments to various Council committees and other internal and outside bodies, as set out in Appendix 1 to the report; and (ii) Note the appointments made by the Leader and/or Cabinet Members to various internal and external bodies, as set out in Appendix 2 to the report. 	
<p>Reason(s)</p> <p>To meet the statutory and constitutional requirements and to ensure relevant positions are appointed to.</p>	

1. Introduction and Background

- 1.1 Chapter 4, Part 2 of the Constitution sets out the Assembly's responsibilities in respect of appointments to the political structure and various other internal and external bodies.
- 1.2 The appointments meet statutory and constitutional requirements and ensure the Council is able to proceed with the business reserved to the committees.
- 1.3 The nomination process for the various positions to which appointments are required for the municipal year 2019/20 is dealt with through party groups.

2. Proposal and Issues

- 2.1 Attached at Appendix 1 is the provisional schedule of nominations from the Labour Group for the 2019/20 municipal year in respect of appointments which the Assembly has responsibility for appointing to. These appointments relate to main Council committees and other internal and outside body meetings
- 2.2 Appendix 2 shows the appointments made to other internal and external bodies which are the responsibility of the Leader and/or Cabinet Members.
- 2.3 Any changes / additions to the information contained in the appendices will be reported at the meeting.

3. Options Appraisal

- 3.1 Any delay in reappointing Members to the various meetings and other bodies puts the normal decision-making process and business of the Council at risk.

4. Consultation

- 4.1 Consultation has taken place with Members and officers as appropriate.

5. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager, Service Finance

- 5.1 There are no financial implications associated with this report. This concerns the annual appointment of elected Members to Boards and Committees. Where an appointment carries an allowance the financial impact of this is set out in another report to this meeting.

6. Legal Implications

Implications completed by: Paul Feild, Senior Corporate Governance Lawyer

- 6.1 The Assembly is a meeting of full Council for the purposes of Section 8 and Schedule 12 of the Local Government Act 1972. This meeting of the Assembly is the annual meeting where the Council decides on the overall political structure and makes the necessary appointments

6.2 Part 2 (the Articles) of the Council's Constitution sets out the membership requirements and terms of reference for the various Council committees. The appointments in this report meet statutory and constitutional requirements and ensure the Council is able to proceed with the business reserved to each committee.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1 - Nominations to main Council committees other internal and outside body meetings 2019/20

Appendix 2 - Appointments made to other internal and external bodies by the Leader and/or Cabinet Members

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Main Council Committees to be appointed to – May 2019

(Appointments are for one year unless otherwise stated)

Committee (and typical meeting arrangements)	Appointments Required	Nominations
Assembly	Chair Deputy Chair	Chair – Cllr Kangethe Deputy Chair – Cllr Choudhury
Audit and Standards Committee	Chair Deputy Chair Plus 6 additional members	Councillors P. Bright (Chair), Oluwole (Deputy Chair), Bankole, Bremner, Channer, Gill, Khan and Shaukat
Health Scrutiny Committee	Chair Deputy Chair Plus 4 additional members	Councillors Keller (Chair), P. Robinson (Deputy Chair), Khan, Lumsden, C. Rice and E. Rodwell
JNC Appointments, Structures and Salaries Panel	6 non-Cabinet members (to form a pool)	Councillors Alasia, Aziz, Haroon, Jones, Oluwole and P. Waker
Licensing & Regulatory Committee	Chair Deputy Chair Plus 8 additional members	Councillors Quadri (Chair), L. Waker (Deputy Chair), Butt, Chand, Haroon, Lumsden, Martins, Oluwole, Paddle and Rahman
Overview & Scrutiny Committee	Chair Deputy Chair Plus 8 additional members	Councillors Jones (Chair), Achilleos (Deputy Chair), Akwaboah, Bankole, Butt, Gill, I. Robinson, P. Robinson, Turner and P. Waker
Pensions Committee	2 members to fill vacancies	Councillors Jamu and Ramsay

Committee (and typical meeting arrangements)	Appointments Required	Nominations
Personnel Board	Chair Deputy Chair Plus 7 additional members (to form a pool)	Councillors Bremner (Chair), E. Rodwell (Deputy Chair), Alasia, Choudhury, Jones, Keller, Rahman, I. Robinson and P. Waker
Planning Committee	Chair Deputy Chair Plus 6 additional members (Cabinet Members for Regeneration & Social Housing and Finance, Performance & Core Services automatically appointed as ex-officio voting members)	Councillors Saleem (Chair), Dulwich (Deputy Chair), Achilleos, Choudhury, Fergus, Geddes, McCarthy, Perry, Rahman and Twomey

Other Internal / Outside Bodies to be appointed to – May 2019

(Appointments are for one year unless otherwise stated)

Body / Committee	Appointment required (shown in bold)	Nominations
<p>Barking Riverside Community Interest Company (CIC)</p> <p>Bi monthly meetings max of 2 hours at Barking Town Hall or the Rivergate Centre, Barking Riverside.</p>	<p>1 Thames Ward Member as substitute representative</p> <p>plus Cabinet Member for Regeneration & Social Housing and the Leader automatically appointed</p>	<p>Councillor Channer as Thames Ward rep and Councillor Turner as substitute representative.</p> <p>Councillors Geddes and Rodwell</p>
<p>Chadwell Heath Community Trust Board</p>	<p>3 councillors (preferably with strong connections to the area and/or the Trust)</p>	<p>Councillors Jamu, Khan and Perry</p>
<p>East London Waste Authority</p> <p>Quarterly on a Monday at 9.30 am at Barking Town Hall</p>	<p>1 Councillor</p> <p>plus Cabinet Member for Public Realm automatically appointed</p>	<p>Councillor Akwaboah</p> <p>Councillor Ghani</p>
<p>Elevate Strategic Partner Board</p> <p>Quarterly at Barking Town Hall usually on a Tuesday at 2pm</p>	<p>1 non-Cabinet Councillor</p> <p>plus Cabinet Member for Finance, Performance & Core Services (Chair)</p>	<p>Councillor Oluwole</p> <p>Councillor Twomey</p>
<p>Employee Joint Consultative Committee</p> <p>Quarterly: Pre-meeting 2.15pm; Main meeting 3pm</p>	<p>5 Councillors</p> <p>plus Cabinet Member for Finance, Growth & Investment automatically a Member)</p>	<p>Councillors Alasia, Ghani, Keller, Saleem and P. Waker</p> <p>Councillor Twomey</p>

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**Appointments made by Leader and/or Cabinet Members
(which do not require Assembly approval)**

Body / Committee	Appointment required (shown in bold)	Membership
Elevate Limited Liability Partnership Board	Cabinet Member for Finance, Performance & Core Services automatically appointed plus 1 Councillor as deputy appointed by the Cabinet Member	Councillor Twomey Deputy: Councillor Oluwole
Health and Wellbeing Board	Cabinet Member for Social Care & Health Integration is automatically the Chair plus four Cabinet Members to be appointed by the Leader	Councillor Worby (Chair) Councillor Ashraf Councillor S. Bright Councillor Carpenter Councillor L. Rice
LGA General Assembly	Leader and Deputy Leader (Cabinet Member for Community Leadership and Engagement) automatically appointed Plus 2 Councillors appointed by the Leader	Councillor Rodwell Councillor Ashraf Councillor S. Bright Councillor Twomey
London Councils Grants Committee	Relevant Cabinet Member – Community Leadership & Engagement plus up to 4 named deputies (who must be Cabinet Members) to be appointed by the Cabinet Member	Councillor Ashraf Deputy: Councillor S. Bright (3 vacancies)

London Councils Greater London Employment Forum	Relevant Cabinet Member – Employment, Skills and Aspiration plus 1 deputy appointed by the Leader	Councillor S. Bright Deputy: Councillor Freeborn
London Councils Leaders' Committee	Leader of the Council plus 2 deputies to be appointed by the Leader	Councillor Rodwell Deputies: Councillor Ashraf and Councillor S. Bright
London Councils Pensions CIV (Sectoral Joint Committee)	Relevant Cabinet Member – Finance, Performance & Core Services plus 1 deputy appointed by the Leader	Councillor Twomey Deputy: Councillor Miles
London Councils Transport and Environment Committee	Cabinet Member for Public Realm Up to 4 named deputies to be appointed by the Cabinet Member	Councillor Ghani Deputies: Councillor Geddes (3 vacancies)
Policy Task Group	Chair and Deputy Chair plus eight Members appointed by the Leader	Chair: Councillor Haroon Deputy Chair: Councillor Shaukat Councillors Dulwich, Fergus, Freeborn, Khan, Miah, Quadri, Paddle and C. Rice
Public Transport Liaison Group	Cabinet Member for Regeneration & Social Housing plus 1 Councillor to be appointed by the Cabinet Member	Councillor Geddes Councillor Turner
Registered Provider Forum	Cabinet Member for Regeneration & Social Housing plus 2 Councillors to be appointed by the Cabinet Member	Councillor Geddes Councillor Perry (one vacancy)

Other Bodies not requiring appointments in 2019/20 - For information only

Admissions Forum	The Cabinet Member for Educational Attainment & School Improvement plus 4 Councillors (4 year appointments) Current membership: Councillors Carpenter (Chair), Dulwich, Keller, Martins and Oluwole
Ceremonial Council	The Mayor is automatically Chair and the newly appointed Chair of the Assembly is Deputy Chair
Cabinet	The Leader of the Council is automatically the Chair who then appoints Deputy Leader(s) plus further Cabinet Members Current membership: Councillors Rodwell (Chair), Ashraf (Deputy Chair), Twomey (Deputy Chair), S. Bright, Carpenter, Geddes, Ghani, Mullane, L. Rice and Worby
Members' Corporate Parenting Group	2 Councillors to be appointed by the Leader and one Councillor to be appointed by the Cabinet Member for Social Care & Health Integration (four-year appointment to May 2022) – Councillors Carpenter, Paddle and P. Robinson
Pensions Committee	7 Councillors - Two-year appointments to May 2020. Current membership: Councillors Miles (Chair), Miah (Deputy Chair), S. Bright, Butt (resigned May 2019), Haroon, Oluwole (resigned May 2019) and Rahman
Barking and Dagenham Adoption and Permanence Panel	1 Councillor - 4 year appointment to 2022 Current membership: Councillor Lumsden
Barking & Dagenham Citizens' Advice Bureau	2 Councillors - 4 year appointments to 2022 Current membership: Councillors I. Robinson and Saleem
Barking and Dagenham Fostering Panel	2 Councillors - 4 year appointments to 2022 Current membership: Councillors Lumsden and I. Robinson
Barking and Dagenham Reside	Cabinet Appointment - Cabinet Members for Finance, Performance & Core Services, Community Leadership & Engagement and Regeneration & Social Housing

Barking and Dagenham Safeguarding Adult's Board	1 Councillor – Cabinet Member for Social Care & Health Integration automatically appointed
Barking and Dagenham Safeguarding Children Board	1 Councillor – Cabinet Member for Social Care & Health Integration automatically appointed
Barking and Ilford United Charities	2 Councillors - 4 year appointments (to 2022) Current membership: Councillors Lumsden and Quadri
Barking Riverside Limited Board	1 Councillor – Cabinet Member for Regeneration & Social Housing automatically appointed (observer status only)
Colin Pond Bursaries for Higher Education	Cabinet Member for Educational Attainment & School Improvement, the statutory Chief Financial Officer, the statutory Director of Children's Services and the Director of Law and Governance
Community Safety Partnership	Cabinet Members for Enforcement & Community Safety and Social Care & Integration automatically appointed
Dagenham United Charity	4 councillors - 4 year appointments (to 2022) Current membership: Councillors Chand, Keller, Mullane and L. Waker
East London Housing Partnership	1 Councillor – Cabinet Member for Regeneration & Social Housing automatically appointed
East London Solutions Leaders' Group	Leader of the Council
Housing Forum - Barking	All Councillors from the following Wards are invited (one voting right per Ward): Abbey, Becontree, Eastbury, Gascoigne, Goresbrook, Longbridge, Mayesbrook and Thames
Housing Forum - Dagenham	All Councillors from the following Wards are invited (one voting right per Ward): Alibon, Chadwell Heath, Eastbrook, Heath, Parsloes, River, Village, Valence and Whalebone

Joint Health Overview and Scrutiny Committee	Three Councillors to be appointed by the Health Scrutiny Committee
Kallar Lodge and Fews Lodge Trust Fund	2 Councillors - 4 year appointments to 2022 Current membership: Councillors Chand and Keller
King George V Silver Jubilee Trust Fund	The Mayor and the statutory Director of Children's Services
Local London Joint Committee (established by Cabinet on 19/04/16)	Leader of the Council and Chief Executive
Local Plan Steering Group	The Leader of the Council and Cabinet Members for Regeneration & Social Housing and Social Care & Health Integration (voting Members) plus Chair and Deputy-Chair of the Planning Committee (non-voting)
London Councils Children and Young People Lead Member	Relevant Cabinet Member – Educational Attainment & School Improvement
London Councils Crime and Public Protection Lead Member	Relevant Cabinet Member – Enforcement & Community Safety
London Councils Culture & Tourism Lead Member	Relevant Cabinet Member – Community Leadership & Engagement
London Councils Economic Development / Regeneration Lead Member	Relevant Cabinet Member – Regeneration & Social Housing
London Councils Employment & Skills Lead Member	Relevant Cabinet Member – Employment, Skills and Aspiration
London Councils Health and Adult Services Lead Member	Relevant Cabinet Member - Social Care & Health Integration

London Councils Housing Lead Member	Relevant Cabinet Member – Regeneration & Social Housing
London Councils Planning/Infrastructure Lead Member	Relevant Cabinet Member – Regeneration & Social Housing
London Road Safety Council	2 Councillors - 2 year appointments to 2020 Current membership: Councillors Oluwole and Saleem
London-wide Business Rates Group (Strategic Investment Pot) (Cabinet 23.01.18)	Leader of the Council
May & Baker Eastbrook Community Club	3 Eastbrook Ward Councillors (4 year appointments to May 2022)
Newable (formerly Greater London Enterprise)	Leader of the Council
OFSTED Report Panel	Cabinet Member – Educational Attainment & School Improvement- automatic appointment 9 Councillors - appointments to 2022 Current membership- Councillors Akwaboah, Fergus, Lumsden, Oluwole, Paddle, Rahman, I. Robinson and P. Waker (one vacancy- to be appointed)
Reserve Forces and Cadets Association for Greater London	The Deputy Leader(s) of the Council (Community Leadership and Engagement)
Shareholder Panel	Relevant Cabinet Members for Finance, Performance & Core Services and Social Care & Health Integration Plus 1 non-Cabinet Member (vacancy)

(Note: All four-year appointments are co-terminus with Local Elections)

ANNUAL ASSEMBLY

15 May 2019

Title: Review of Council Governance Arrangements and Constitution Updates	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: Alan Dawson, Democratic Services Manager	Contact Details: Tel: 020 8227 2348 E-mail: alan.dawson@lbbd.gov.uk
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance (and Monitoring Officer)	
<p>Summary</p> <p>By Minute 56 (28 February 2018) and Minute 8 (23 May 2018), the Assembly approved a range of new committee structure and governance arrangements that took effect from the start of the 2018/19 municipal year.</p> <p>The new arrangements have been kept under review during the first year and are working very well. The review process has, however, highlighted some aspects that need refinement which include:</p> <ol style="list-style-type: none"> 1) Revisions to the terms of reference of the Audit and Standards Committee, the Overview and Scrutiny Committee and the Health Scrutiny Committee to clarify the respective committees' responsibilities; 2) Increasing the programme of Assembly and Health Scrutiny Committee meetings to six per year; and 3) Reinstating the provision within the public speaking rules to allow the Chair to exercise discretion. <p>A schedule of all proposed changes to the Council Constitution (which includes other changes that do not require the approval of the Assembly in line with the Constitution review / revision arrangements) is attached at Appendix 5.</p>	
<p>Recommendation(s)</p> <p>The Assembly is recommended to:</p> <ol style="list-style-type: none"> (i) Agree the revised Articles of the Audit and Standards Committee, as set out at Appendix 1 to the report; (ii) Agree the revised Articles of the Overview and Scrutiny Committee, as set out at Appendix 2 to the report; 	

<ul style="list-style-type: none"> (iii) Agree the revised Articles of the Health Scrutiny Committee, including an increase to the meeting frequency to six meetings each municipal year, as set out at Appendix 3 to the report; (iv) Agree the increase to the meeting frequency of the Assembly to six meetings each municipal year; (v) Agree the revised 'Meeting Rules - General' Article, as set out at Appendix 4 to the report; (vi) Note the full schedule of amendments to the Constitution as set out at Appendix 5 to the report; and (vii) Note that the new Council Constitution shall be published on the Council's website once all the agreed changes have been made.
<p>Reason(s)</p> <p>To meet the requirements of the Local Government Act 2000 relating to maintaining and reviewing a Council Constitution.</p>

1. Introduction and Background

- 1.1 In July 2014, the Local Government Association (LGA) was invited to carry out a Corporate Peer Challenge of the Council, to assess the organisation's ability and capacity to deliver on its plans, proposals and ambitions. Following on from that, the Council commissioned an independent Growth Commission to review the Council's ambition to be London's growth opportunity, and to recommend how to maximise the contribution of the Borough and our people to the London economy.
- 1.2 A number of recommendations arose from those pieces of work which related to the Council's governance arrangements. These included:
- Reducing the cost of democracy in the context of the Council's Ambition 2020 transformation programme;
 - The need for clearer Member and officer roles;
 - Enabling Members to spend more time in their communities through a reduction in Council meetings; and
 - Aligning the Council's work programme with the Ambition 2020 transformation programme and Growth Commission recommendations.
- 1.3 To take that work forward a Cabinet Task Group, chaired by Councillor Haroon, was established in late 2015 to consider how Members' roles would change by 2020 through the creation of new Council service blocks and Council-owned companies, and in response to a reinvigorated growth agenda. The main priorities considered by the Task Group were:
- the findings of the LGA Peer Review in 2014;
 - the need to align the new Council's new structures with Members' roles, including more involvement in developing Council policy; and
 - a more strategic focus on growth and development (i.e. planning matters).

- 1.4 The Task Group considered information including Member Role Profiles, benchmarked committee sizes across London and examined terms of reference for all committees, including attendance rates and outcomes (such as the number of reports produced). It also reflected on the evolving changes to the Council senior management structures and the internal governance arrangements, including the assurance and performance boards. It was subsequently decided that any new arrangements would be implemented for the 2018/19 municipal year.
- 1.5 A new Transformation Task Group, also chaired by Councillor Haroon, was established by the Leader in the summer of 2017 to review the committee structure and wider governance proposals put forward by the earlier Task Group.
- 1.6 The recommendations from that Transformation Task Group formed the basis of a report to the Assembly on 28 February 2018 where a range of changes to the Council's committee and governance arrangements were approved, the main aspects being:
- the creation of a single Overview and Scrutiny Committee, supported by Task and Finish Groups, to replace the existing structure of five themed Select Committees;
 - the creation of an Audit and Standards Committee, which combined the current responsibilities of the Standards Committee and the audit functions held by the Public Accounts and Audit Select Committee;
 - the renaming of the Development Control Board to the Planning Committee and a reduction in the membership from 19 to 10 Members, aimed at enabling more in-depth critical analysis of major development proposals;
 - the establishment of Policy Task Groups and the role of Member Champions under the remit of the Cabinet; and
 - reducing the term of Member appointments to the Pensions Committee from four years to two years.
- 1.7 A follow-up report to the Assembly meeting of 23 May 2018 put forward further revisions to the Council's committee and governance arrangements which included:
- The re-establishment of a separate Health Scrutiny Committee; and
 - New arrangements for public participation in the Council's main decision-making meetings.

2. Proposals and Issues

- 2.1 Following their introduction from the start of the 2018/19 municipal year, the new arrangements have been closely monitored to ensure that they are fit-for-purpose. The arrangements appear to be working very well and the only issues that have arisen are of an administrative nature.
- 2.2 **Revisions to the terms of reference of the Audit and Standards Committee**
- 2.2.1 Under the new arrangements agreed by the Assembly in February 2018, the scrutiny-related functions of the former Public Accounts and Audit Select Committee (PAASC) transferred to the new Overview and Scrutiny Committee (OSC), while

PAASC's audit-related responsibilities transferred to a new Audit and Standards Committee (ASC).

2.2.2 Although work was undertaken at the time to reallocate responsibilities to reflect the new governance arrangements, the subsequent review work and a separate assessment by the ASC of its workload and future work programme highlighted that ASC's terms of reference still alluded to some aspects of scrutiny that had transferred. It also became apparent that some other elements that had remained in ASC's terms of reference were no longer relevant or would benefit from rewording.

2.2.3 At its meeting on 3 April 2019, the ASC considered and endorsed the proposed changes to its terms of reference and the updated Article is set out at Appendix 1, with the amendments shown in 'revision mode'.

2.3 Revision of the Articles for the Overview and Scrutiny Committee and the Health Scrutiny Committee

2.3.1 The material changes proposed to the Articles of the OSC and HSC are:

- (i) amendments in relation to scrutinising performance and financial matters stemming from the proposed changes to the ASC's terms of reference, as referred to above;
- (ii) the transfer of the responsibility for scrutinising adult social care from HSC to OSC (to correct a drafting error);
- (iii) the inclusion of wording (previously included in the Articles of the Safer & Stronger Community Select Committee) to reflect OSC's responsibilities for culture, libraries, heritage and arts, community safety, social inclusion, equalities, cohesion and faith and engaging with the community and voluntary services operating in the borough.

2.3.2 The Articles for both OSC and HSC have also been updated to improve their structure and wording has been added / amended in certain areas to better explain the working practices and procedures.

2.3.3 The opportunity has also been taken to consolidate the scrutiny procedure rules solely within the OSC's Articles, with appropriate cross-referencing in the HSC Articles – previously, almost identical scrutiny procedure rules appeared in the Articles for both OSC and HSC. The updated Articles for OSC and HSC are attached at Appendices 2 and 3 respectively, with the amendments shown in 'revision mode'.

2.3.4 In May 2018, the Assembly agreed to re-establish the HSC on the understanding that the position would be reviewed for the 2019/20 municipal year due to the potential, at that time, for developing stronger arrangements with neighbouring boroughs to integrate health and social care services and scrutiny arrangements into the Joint Overview and Health Scrutiny Committee (JHOSC) arrangements.

2.3.5 The joint health scrutiny arrangements with neighbouring Boroughs are generally the same now as they were in 2018 and, with that in mind, it is intended to retain the Health Scrutiny Committee in its present form for the foreseeable future. It has become apparent, however, that the current quarterly meeting cycle of the HSC is

not sufficient to enable the Committee to properly fulfil its terms of reference and implement its proposed work programme. Therefore, it is proposed that the meeting frequency of HSC be increased to six meetings each year.

2.4 Meeting Frequency of the Assembly

2.4.1 Prior to 2018, the Assembly was scheduled to meet six times a year. As part of the governance changes, that meeting frequency was reduced to five times a year.

2.4.2 It became apparent during the 2018/19 municipal year that a six-meeting programme was more appropriate to ensure the smooth and timely running of Council business (an extraordinary meeting was added to the programme in July 2018 to deal with business that could not reasonably wait until the next scheduled meeting in September 2018).

2.4.3 With that in mind, it is proposed to return the Assembly to a meeting frequency of six meetings each year.

2.5 Arrangements for public participation in the Council's main decision-making meetings

2.5.1 At the Assembly in May 2018, new provisions aimed at improving public participation in Council meetings were introduced. These new provisions omitted a previous clause that gave the Chair of the meeting the discretion to allow members of the public to speak, outside of the formal 'Submitting a Question' arrangements.

2.5.2 In order to reinstate provision for the Chair to use his/her discretion, it is proposed that a new clause 12.13 be incorporated into the 'Meeting Rules – General' section of the Constitution (Part 2, Chapter 3) to the effect that "*The Chair may, at his/her discretion, allow a member of the public who has not submitted a valid question to speak at a meeting (subject to any overriding provisions in relation to quasi-judicial meetings) but that shall not extend to asking a question*". The updated Article is attached at Appendix 4.

2.6 Other Amendments to the Council Constitution

2.6.1 Attached at Appendix 5 is a schedule of all proposed changes to the Council Constitution. This schedule includes the proposals referred to above as well as details of other changes that do not require the approval of the Assembly and which have been approved by the Monitoring Officer, in line with the review / revision arrangements set out in Part 7 of the Constitution.

3. Options Appraisal

3.1 The proposals in this report build on the wide range of options that were considered by the 2015 and 2017 Task Groups and arrangements approved by the Assembly on 28 February 2018 and 23 May 2018.

4. Consultation

4.1 The Audit and Standards Committee proposals were considered and endorsed by the Committee at its meeting on 3 April 2019. The Chairs of the OSC and HSC

have been consulted on the revisions to those committees' Articles and the relevant portfolio holder has been consulted on the wider arrangements.

5. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager, Service Finance

- 5.1 There are no direct financial implications associated with the proposals in this report. Any costs associated with the increase in the meeting frequency of the Assembly and Health Scrutiny Committee will be met from within existing resources.

6. Legal Implications

Implications completed by: Dr. Paul Feild, Senior Governance Solicitor

- 6.1 All of the Council's statutory functions will continue to be fulfilled under the proposed new arrangements.
- 6.2 The Local Government Act 2000 requires Councils to produce, maintain and review the Constitution document as part of their good governance arrangements. The Constitution must contain the Council's Code of Conduct, as required by the Localism Act, together with standing orders, any other information as the Secretary of State may direct and such other information as the Council considers necessary.
- 6.3 It is a legal requirement that the Council ensures that copies of its constitution are available at its principal office for inspection by members of the public at all reasonable hours. Finally, the Council must supply a copy of its Constitution to any person who requests a copy and who pays to the authority such reasonable fee as the Council may determine.

Public Background Papers Used in the Preparation of the Report:

- "Review of Council Governance Arrangements" report to Assembly, 28 February 2018 (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=179&MId=9405&Ver=4>)
- "Review of Council Governance Arrangements Update Report" to Assembly, 23 May 2018 (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=179&MId=9404&Ver=4>)
- "Review of the Committee Terms of Reference" report to Audit & Standards Committee, 3 April 2019

List of appendices:

- Appendix 1 – Audit & Standards Committee Articles (May '19)
- Appendix 2 - Overview & Scrutiny Committee Articles (May '19)
- Appendix 3 - Health Scrutiny Committee Articles (May '19)
- Appendix 4 - Meeting Rules – General Articles (May '19)
- Appendix 5 – Schedule of all Constitutional Amendments (May '19)

Part 2 - The Articles

Chapter 13 – Audit and Standards Committee

1. Status, Membership, Quorum and Meeting Frequency

- 1.1 The Audit and Standards Committee is a committee established under Section 102 of the Local Government Act 1972 and Section 28 of the Localism Act 2011.
- 1.2 The membership of the Committee shall be eight Councillors and the quorum shall be three.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Cabinet Members and the Chairs of the Overview and Scrutiny Committee and the Health Scrutiny Committee shall not be members of the Audit and Standards Committee. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.4 The Assembly shall also appoint up to three Independent Persons, pursuant to the Localism Act 2011 requirement, to give a view to the Committee or Sub-Committee on issues relating to complaints made regarding alleged breach of the Councillors' Code of Conduct.
- 1.5 The Committee shall appoint an Independent Adviser to advise on matters relating to the Council's audit functions.
- 1.6 The Committee shall meet on a quarterly basis with an additional meeting held, if necessary, to approve the publication of the Council's Statement of Accounts prior to 31 July each year.

2. Responsibility for Functions:

- 2.1 The Audit and Standards Committee shall have the following roles and functions:

2.1.1 Audit functions

Internal Audit

- i) Considering regular update reports concerning the work of Internal Audit, including progress on delivering the annual programme of work, emerging themes, risks and issues, and officer responsiveness in implementing recommendations and responding to Internal Audit.
- ii) Considering and agreeing an Annual Audit Report from the Chief Financial Officer and a summary of Internal Audit activity (actual and proposed), and the level of assurance it can give over the Council's corporate governance, internal control, and risk management arrangements.
- iii) Considering summaries of specific Internal Audit reports as requested.

- iv) Considering reports dealing with the management and performance of the providers of Internal Audit services.

Statutory and External Audit Functions

- v) Considering the Annual Governance Report (both main and pension) and other relevant reports.
- vi) Considering the Annual Audit Letter, and other relevant reports.
- vii) Considering the Summary of Grant Certifications.
- viii) Considering other specific reports as agreed with the external auditor.

Performance

~~Considering the Council's performance monitoring reports and to closely monitor and evaluate the performance of the services and functions which fall within its remit.~~

~~Periodically reviewing the Council's capital spending.~~

~~Reviewing the performance of any major contracts entered into by the Council.~~

~~Reviewing performance of the arm's length entities created by and owned by the Council.~~

~~Considering the findings of any reports from any inspection agencies concerning the Council.~~

Governance

- ix) Receiving reports and making appropriate recommendations concerning corporate governance, risk management, decision-making and information governance and ensuring compliance with best practice.
- x) Receiving reports and making appropriate recommendations concerning customer complaints and Local Government Ombudsman enquiries.
- xi) Considering regular updates concerning Council policies relating to internal governance (including whistle-blowing, bribery and anti-fraud) and ensuring the implementation of relevant legislation relating to governance, fraud and corruption.
- xii) Maintaining an overview of ~~Considering proposed changes to~~ the Council's ~~Constitution in respect of the~~ Financial Regulations and Rules, ~~as they relate to audit functions.~~
- xiii) Approving the Council's Annual Governance Statement which accompanies the Annual Statement of Accounts.
- xiv) ~~Considering the Council's compliance with its own and other published standards and controls.~~

Finance

~~xv) Considering regular reports concerning the financial management of the Council, including in-year expenditure against budgets and use of reserves.~~

~~xvi)~~xiv) Considering and approving the Annual Statement of Accounts and all related documents.

~~xvii) Considering the robustness of the Council's annual budget setting process.~~

2.1.2 Standards functions

- i) Promoting and maintaining high standards of conduct by Members and Co-Opted Members of the authority;
- ii) Appointment of a Hearing Sub-Committee to hear and make recommendations to the Monitoring Officer concerning complaints about Members and Co-opted Members referred to it by the Monitoring Officer (the composition, Terms of Reference and responsibility of functions for the Sub-Committee are referred to in paragraphs 3 and 4 below);
- iii) Receiving periodic reports from the Monitoring Officer on dispensations granted / refused, complaints received against Members, complaints resolved informally, complaints resolved after an investigation by the Hearing Sub-Committee and assessing the operation and effectiveness of the Members' Code of Conduct;
- iv) Advising on training or arranging to train Councillors and Co-opted Members on matters relating to the Councillors' Code of Conduct;
- v) Assisting Councillors and Co-opted Members to observe the Councillors' Code of Conduct;
- vi) Receiving referrals from the Monitoring Officer into allegations of misconduct, in accordance with the Council's assessment criteria;
- vii) Advising on the contents of and requirements for codes / protocols / other procedures relating to standards of conduct throughout the Council;
- viii) Maintaining oversight of the Council's arrangements for dealing with complaints;
- ix) Informing the Assembly and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;
- x) On referral by the Monitoring Officer, granting dispensations pursuant to S33(2) (b), (c) and (e) of the Localism Act 2011 to enable a Councillor or Co-opted Member to participate in a meeting of the Authority;

- xi) Hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to S33(2)(a) and (d) of the Localism Act 2011.

3. Hearing Sub-Committee

- 3.1 In accordance with Section 28(6) and (7) of the Localism Act 2011, the Audit and Standards Committee shall appoint a Hearing Sub-Committee to conduct hearings and determine complaints.
- 3.2 The Hearing Sub-Committee shall consist of three Members, drawn from the membership of the Committee on a rota basis by the Chief Executive. The Chair shall be elected by the Sub-Committee at each meeting. Due regard shall be given to the political balance principles when drawing the membership of a Sub-Committee.
- 3.3 The quorum shall be two Members.
- 3.4 The Hearing Sub-Committee shall meet as and when required.

4. Responsibility for Functions of the Hearing Sub-Committee

- 4.1 The Hearing Sub-Committee shall be responsible for:
 - (i) Hearing allegations that a Councillor or Co-opted Member has breached the Councillors' Code of Conduct.
 - (ii) Following a hearing, making one of the following findings:
 - (a) that the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the hearing;
 - (b) that the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the hearing;
 - (c) that the Member has failed to comply with the Code of Conduct and that a sanction and/or an informal resolution should be imposed.
 - (iii) Imposing any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.
 - (iv) After making a finding, providing written notice of its findings and the reasons for its decision to the Member and complainant.

5. Management of Complaints

- 5.1 The management of complaints shall be the responsibility of the Monitoring Officer in accordance with the procedure set out in Part 5, Chapter 1, paragraph 15 of this Constitution.

6. Rights and Responsibilities of Independent Persons (for Standards functions)

- 6.1 The role of an Independent Person is wholly advisory, providing advice to the Council on any allegation being considering of a failure of a Councillor or Co-opted Member, and to such a Councillor facing an allegation who has sought the views of the Independent Person.
- 6.2 An Independent Person may attend meetings of the Audit and Standards Committee and act in an advisory capacity only, with no voting rights.
- 6.3 An Independent Person shall have an advisory role in the decision-making process regarding complaints against Councillors and Co-opted Members in that his/her views must be sought and taken into account before decisions are made on allegations which the Monitoring Officer has decided to investigate.
- 6.4 An Independent Person may be consulted by the Monitoring Officer before a decision has been taken to investigate.
- 6.5 An Independent Person shall have an advisory role in any meeting of the Hearing Sub-Committees' decision-making process regarding complaints against Councillors and Co-opted Members. The views of an Independent Person must be sought and taken into account before decisions are made by the Hearing Sub-Committee.
- 6.6 An Independent Person may be consulted by a Councillor or Co-opted Member who is the subject of an allegation.
- 6.7 An Independent Person shall declare any interests, respect confidentiality and observe the Council's Procedures, Codes and Protocols in his/her workings with the Council.

7. Rights and Responsibilities of Independent Advisor (for Audit functions)

- 7.1 The role of the Independent Advisor is to provide advice to the Committee in respect of the audit functions described in paragraph 2.1.1 above.
- 7.2 The Independent Advisor shall be invited to attend all meetings of the Audit and Standards Committee to act in an advisory capacity only, with no voting rights.
- 7.3 The Independent Advisor shall declare any interests, respect confidentiality and observe the Council's Procedures, Codes and Protocols in his/her workings with the Council.

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Part 2 - The Articles

Chapter 8 – Overview and Scrutiny Committee and Call-in

1. Status, Membership, Quorum and Meeting Frequency

- 1.1 The Overview and Scrutiny Committee is a committee established under Section 21 of the Local Government Act 2000, as amended by the Localism Act 2011.
- 1.2 The membership of the Committee shall be 10 Councillors and the quorum shall be three.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.4 The Assembly shall also appoint four Co-opted Members to the Overview and Scrutiny Committee, representing the bodies listed below, to scrutinise education matters only. The Co-opted Members shall have voting rights in respect of educational matters, and non-voting **rights** in respect of all other matters:
- i) One Church of England Diocesan Board of Schools representative;
 - ii) One Roman Catholic Brentwood Diocesan Schools Commission representative;
 - iii) One secondary school parent governor representative;
 - iv) One primary school parent governor representative.
- 1.5 The Committee may also co-opt a representative(s) of the BAD Youth Forum, in a non-voting capacity.
- 1.6 The Overview and Scrutiny Committee shall meet approximately every four weeks. Additional meetings may be arranged to deal with specific matters such as the Cabinet's budget proposals, Call-in's etc. if considered necessary.
- 1.7 Informal meetings of the Overview and Scrutiny Committee, such as task and finish groups and site visits, may be arranged as appropriate; however, only one group may be in place at any one time.

2. Functions and Responsibilities

- 2.1 The Overview and Scrutiny Committee has the following functions and responsibilities:

(a) Statutory Functions

- i) **Call-in** - The Overview and Scrutiny Committee will be responsible for addressing any Call-in that is received, unless the subject **primarily** relates to health matters in which case it will be dealt with by the Health Scrutiny Committee. The Call-in Procedure is detailed in paragraph 6 of this Article.

- ii) **Councillor Call for Action** - The Overview and Scrutiny Committee will be responsible for considering Councillor Calls for Action (CCfA) (section 119, Local Government Act 2000), unless the subject primarily relates to health matters in which case it will be dealt with by the Health Scrutiny Committee. A CCfA shall be dealt with in accordance with the relevant best practice guidance jointly issued by the Centre for Public Scrutiny and the Improvement & Development Agency. The CCfA procedure is detailed in paragraph 7 of this Article.
- iii) **Crime and Disorder scrutiny** - The Overview and Scrutiny Committee shall:
 - a. Act as the Crime and Disorder Committee within the meaning of Section 19 of the Police and Justice Act 2006;
 - b. Review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
 - c. Make reports or recommendations to the local authority with respect to the discharge of those functions;
 - d. Make recommendations to the Cabinet and/or Assembly with respect to any matter which is a local crime and disorder matter in relation to a Member of the authority; and
 - e. Consider any crime and disorder matters referred by any Member of the Council.
- iv) **Education** - The Council shall, in accordance with Section 499 of the Education Act 1996 and Section 9F of the Local Government Act 2000, appoint co-opted members to the Overview and Scrutiny Committee to scrutinise education matters only.
- v) **Flood risk management** - In accordance with the Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011, the Overview and Scrutiny Committee has the power to request information and scrutinise the local flood risk authority's plans to mitigate flooding.

(b) Functions Determined by Assembly

- (i) Scrutiny of matters relating to the provision of services to children and young people living or using services within the borough;
- (ii) Working with the Council and other partners to secure the continuous improvement of services for children and young people and assisting in improving outcomes for the borough's young people;
- (iii) Scrutiny of the provision, planning, management and performance of services relating to adult social care;
- (iv) Scrutiny of the provision, planning, management and performance of housing, ~~environment~~, regeneration, economic development, ~~street scene~~, public realm, transport and related matters;

(v) Scrutiny of matters relating to the provision of business, jobs and skills within the Borough;

(vi) Scrutiny of the provision, planning, management and performance of public services related to culture, libraries, heritage and arts, and community safety;

(vii) Scrutiny of issues relating to social inclusion, equalities, cohesion and faith; engaging with the community and voluntary services operating in the borough and, where appropriate, holding them to account for their performance.

(c) General Role

- (i) Review and scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) Assist the Assembly and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues, as required;
- (iii) Review and scrutinise the performance of the Council, other public bodies and partner organisations in the area, invite them to address the Overview and Scrutiny Committee, and prepare reports about their initiatives and performance;
- (iv) Conduct pre-decision scrutiny to test the robustness and impact of budget savings and other key decisions to be considered by the Cabinet;
- (v) Engage with and represent local people and create opportunities to involve them in the scrutiny process;
- (vi) In all of the above, make reports and recommendations to the Cabinet and/or Assembly and/or any Committee in connection with the discharge of any functions; and
- (vii) Produce an annual report which the Chair of the Overview and Scrutiny Committee shall present to the Assembly.

3. Petitions

- 3.1 The Overview and Scrutiny Committee will be responsible for receiving and debating petitions, unless the subject relates primarily to health scrutiny matters, in which case they will be dealt with by the Health Scrutiny Committee. Petitions shall be dealt with in accordance with the Council's Petition Scheme which can be found on the Council's website <http://www.lbbd.gov.uk/petitions>

4. Overview and Scrutiny Sub Committee

- 4.1 The Overview and Scrutiny Committee shall appoint a Sub-Committee which shall be convened as necessary to consider Call-Ins and petitions, upon receipt and validation.
- 4.2 The Sub-Committee shall consist of the Chair of the Committee and four other Members of the Committee. The quorum shall be two Members.

5. Scrutiny Procedure Rules

(Note: These provisions shall apply to both the Overview and Scrutiny Committee and the Health Scrutiny Committee.)

5.1 Work Programme

- 5.1.1 The Committee shall be responsible for setting and maintaining the work programme, which will be agreed at the start of the municipal year in consultation with the Council's Designated Scrutiny Officer. ~~Meetings of the Committee will be themed.~~
- 5.1.2 The Committee may receive suggestions from the following for particular topics to be scrutinised:
- Members of the public
 - Relevant partner organisations
 - Officers of the Council
 - Co-optees
 - Cabinet
 - Individual Members of the Council
- 5.1.3 The Committee shall typically go through a topic selection process in order to shortlist the areas for review.

5.2 Scrutiny Reviews

- 5.2.1 A Scrutiny Review is an in-depth investigation into local policy and performance issues. Topics chosen for in-depth investigation are developed in consultation with Councillors, officers, partners and members of the public with a view to making recommendations to improve a particular service area. The Committee may undertake scrutiny reviews on any matter that is consistent with its functions and responsibilities.
- 5.2.2 Before conducting a scrutiny review, The Committee will ensure the topic selected meets the **PAPER** criteria:
- Public Interest;
 - Ability to Change;
 - Performance;
 - Extent of the Issue; and
 - Replication.
- 5.2.3 The Committee shall not undertake a scrutiny review on any matter directly or indirectly linked to work being undertaken by the Cabinet or a Policy Task Group.

5.2.4 The Committee may take all reasonable steps ~~conduct research, consultation and anything which is reasonable~~ to assist or inform its deliberations, including a general call for evidence, commission research, site visits, public surveys, public meetings and the involvement of the local community.

5.2.5 The Committee may appoint advisers and call witnesses to assist in its work and pay reasonable fees and expenses for such assistance within available budgets.

5.2.6 Scrutiny reviews and reports will follow the process below, subject to any variation agreed with the Chair in consultation with the Designated Scrutiny Officer:

- Gather evidence from Council officers, Members, statutory authorities and other consultees;
- Identify where processes, policies or services could be improved;
- Develop formal draft recommendations to deliver these improvements and discuss them with the relevant portfolio holder(s) and, if appropriate, relevant statutory authorities either at a committee meeting or in writing;
- Submit the draft final report, with recommendations, to the relevant portfolio holder(s) and, if appropriate, relevant statutory authorities for comment;
- Present the final report (including portfolio holder comments) to the Committee for approval;
- Publish the approved report on the Council's website and circulate to relevant stakeholders, including those who gave evidence to the Committee;
- Present an action plan to the Committee for approval, allocating the recommendations to the decision-maker (as determined by the Scheme of Delegation) and agree a timeframe for their implementation;
- ~~Report back to the committee within six months with a progress update on implementation of the recommendations.~~
- Decision-maker reports back to the Committee within six months with a progress update on the implementation of the recommendations; and
- Further follow-up reports requested, if the Committee deems it necessary.

5.2.7 Where the Overview and Scrutiny Committee produces a report and/or makes recommendations on matters relating to local crime and disorder it will provide a copy of the report to the relevant responsible authorities, notifying them of their duty (under section of the Police and Justice Act 2006) to:

- i) consider the report or recommendations;
- ii) respond to the Overview and Scrutiny Committee in writing within 28 days indicating what (if any) action it proposes to take, and;
- iii) have regard to the report or recommendations in exercising its functions.

5.3 Public Participation

5.3.1 In relation to Scrutiny Reviews which include members of the public, the general rules shall not apply (Part 2, Chapter 3, Paragraph 12). The following rules shall apply instead.

- 5.3.2 Residents of the London Borough of Barking and Dagenham and those working, studying or with a business interest in the area are able to participate in the scrutiny review process by:
- a) Suggesting topics for review by the Scrutiny Committees;
 - b) Attending meetings;
 - c) Presenting petitions;
 - d) Asking a question;
 - e) Making a statement or forming a deputation (lobbying) to the Scrutiny Committee;
 - f) Being involved in a scrutiny investigation;
 - g) Responding to surveys.
- 5.3.3 When there is a scrutiny investigation that would benefit from public participation, the officer supporting the investigation will ensure such participation is facilitated.
- 5.3.4 ~~Members of the public~~ **Those** interested in participating in a particular scrutiny investigation can do so by contacting staff in Democratic Services or the Chair directly.

5.4 **Accountability and Attendance**

- 5.4.1 The Committee may scrutinise and review any decisions made or actions taken in connection with the discharge of any Council function or other matter that is within their respective terms of reference. As well as reviewing documentation, the Committee in fulfilling the scrutiny role, may require any Member of the Cabinet, Chief Officer and/or senior Officer to attend (only when invited) before them to explain, in relation to matters within their remit:
- a) Any particular decision or series of decisions;
 - b) The extent to which the actions taken implement Council policy;
 - c) The performance of relevant services.

and it is the duty of those persons to attend if so required.

- 5.4.2 The Committee may also require any Council Member to attend before them to answer questions on any function which the Member has power to exercise.
- 5.4.3 Any Councillor or member of the public shall be entitled to attend meetings of the Committee and to speak on any agenda item at the discretion of the Chair.
- 5.4.4 Where any Cabinet Member, Ward Member or Officer is required to attend a Committee meeting, Scrutiny Officers will, within reasonable time, inform that Member or Officer in writing of the Committee meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee.

- 5.4.5 Where the account to be given to the Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 5.4.6 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then a substitute may be asked to attend or the Committee may, in consultation with the Member or Officer, arrange an alternative date for attendance, which shall be no later than the next scheduled meeting.
- 5.4.7 The Committee may invite people other than those people referred to above to address it, to discuss issues of local concern and/or answer questions. For example, it may wish to hear from residents; other interested parties, officers in other parts of the public sector, or experts.
- 5.4.8 In undertaking its respective functions, the Committee may invite representatives of local organisations to address them, discuss the issues of local concern and/or answer questions. Representatives of such organisations must attend meetings to provide information needed by the Committee to discharge its functions. However, reasonable notice must be given.

5.5 Rights to Information

- 5.5.1 The Committee will have access to the Forward Plan of key decisions of the Cabinet / Health and Wellbeing Board and the timetable for decisions and intentions for consultation.
- 5.5.2 In addition to their rights as Councillors, Members of the Committee have the additional right to documents and to notice of meetings as set out in the Access to Information rules (Part 2, Chapter 17) and in line with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 5.5.3 Nothing in this paragraph shall prevent more detailed liaison between the Cabinet / Health and Wellbeing Board and the Committee if considered appropriate for the particular matter under consideration.

6. Call-in

- 6.1 Call-in is the exercise of the Committee's statutory powers under Sections 9F(2)(a) and 9F(4) of the Local Government Act 2000 (as amended by the Localism Act 2011) to review an executive key decision that has been made but not yet implemented. Where a decision is called-in and the Committee decides to refer it back to the relevant decision-maker for reconsideration, it cannot be implemented until the Call-in Procedure is complete.
- 6.2 Any key decision is subject to Call-in ([subject to the exclusions in paragraph 6.15 below](#)). A decision may be called-in only once. A recommendation to the Assembly may not be called-in.
- 6.3 ~~The Call-in Procedure and the powers to refer a decision back for reconsideration may be exercised by the Overview and Scrutiny Committee, provided the decision that is subject to the Call-in is within the remit of its respective terms of reference.~~ [The powers to call-in a decision and to refer a decision back for reconsideration shall be exercised by the relevant Scrutiny](#)

Committee whose terms of reference most closely relate to the subject matter of the decision being called-in.

- 6.4 Requests for Call-in will only be accepted as valid if there is evidence that the decision maker did not take the decision in accordance with the principles of decision making as set out in Part 2, Chapter 16, paragraph 2 of this Constitution.
- 6.5 Call-in of decisions which may be contrary to the Budget and Policy Framework shall be governed by the provisions of the Budget and Policy Framework Procedure Rules in Part 2, Chapter 18, paragraph 6 of this Constitution.
- 6.6 Call-in should be regarded as a measure that is only needed in exceptional circumstances.

The Call-In Procedure

- 6.7 Once made, an executive decision shall be published in the form of a Decision Notice and sent to all Members of the Council within two working days.
- 6.8 The Decision Notice will specify that the decision will be effective on the expiry of five clear working days after the publication of the decision and may then be implemented, unless called-in under this provision within that five-working day period.
- 6.9 Any two (or more) Councillors (excluding Cabinet Members), or statutory co-opted Members where the matter relates to education, individually or collectively, may call-in a key decision by submitting a written notification to the Chief Executive within the five-working day period. A call-in form is available on the Council's website <https://www.lbbd.gov.uk/scrutiny>. Any Councillor who has a prejudicial and/or pecuniary interest in a particular issue should not instigate or take part in any Call-In related to that issue.
- 6.10 The form must include:
- i) the names of the Members requesting the Call-in (at least two are required), one of whom should be identified as the lead;
 - ii) the subject matter being called-in;
 - iii) the decision including, where relevant, whether all or part of the decision is being called-in; and
 - iv) clear reasons for the Call-in, with reference to any evidence that the decision-maker did not take the decision in accordance with the principles set out in Part 2, Chapter 16, paragraph 2 of this Constitution.
- 6.11 The Call-in request will be deemed valid unless either:
- i) the procedures set out in paragraphs 6.8 to 6.10 have not been properly followed;
 - ii) the grounds for Call-in as referred to in paragraph 6.4 above have not been met;

- iii) the decision has been recorded as urgent in accordance with paragraphs 6.15 to 6.18 below;
 - iv) the Call-in is considered to be frivolous, vexatious or not a proper use of the Call-in provisions taking into account the following factors:
 - a. Whether the matter has been considered as part of pre-decision scrutiny by the Committee or any sub-committee, task group or panel.
 - b. Whether there has been any substantive change in the nature of the decisions being made since any pre-decision scrutiny of the proposals.
 - c. Whether the recommendations or alternative course of action identified in the Call-in request have been previously considered and rejected, in whole or part, as part of pre-decision scrutiny.
 - d. Whether the Call-in request can be dealt with through the clarification of matters.
 - e. Any other relevant factor.
 - v) The Call-in would, in the opinion of the Monitoring Officer, result in the Council failing to discharge its legal duties.
- 6.12 Before deciding on (a) to (e) above, the Chief Executive may seek clarification of the Call-in request from the Member(s) concerned. The Chief Executive shall also consult with the Chair of the Committee prior to making a determination on the validity of the Call-in. The decision of the Chief Executive shall be final and there is no right of appeal.
- 6.13 Upon deciding on its validity, the Chief Executive shall forthwith notify the Member(s) concerned, the Leader and Portfolio Holder, the Chair and Deputy Chair of the Committee, the relevant Strategic and other Directors, and the Council's Designated Scrutiny Officer.
- 6.14 In the absence of the Chief Executive, the Monitoring Officer shall exercise the Chief Executive's functions in respect of the Call-in.

Decisions not subject to Call-In

- 6.15 The following categories of decision are not subject to Call-in:
- i) recommendations from the Cabinet to the Assembly for final determination, such as the Budget and Policy Framework;
 - ii) decisions for urgent implementation under the Access to Information Procedure Rules set out in Part 2, Chapter 17 of the Constitution;
 - iii) urgent decisions outside the Budget or Policy Framework taken in accordance with paragraph 4 of the Budget and Policy Framework Rules in Part 2, Chapter 18 of the Constitution; and
 - iv) decisions to award a contract following a lawful procurement process.

Call-In and Urgency

- 6.16 The Call-in procedure set out above shall not apply where the decision being taken is urgent. A decision is urgent if:
- i) A Call-in would prevent the Council reaching a decision that is required by statute or otherwise within a specified timescale;
 - ii) Any delay likely to be caused by the Call-in process would seriously prejudice the Council's or the public's interests and the reasons for urgency are reported to the decision-making body or person before the decision is taken;
 - iii) Any delay likely to be caused by the Call-in process may expose the Council, its Members or its constituents to a significant level of risk, loss, damage or disadvantage.
- 6.17 In the case of the above, the Decision Notice shall state whether a decision is an urgent one, and therefore not subject to Call-in. The consent of the Chair of the relevant Scrutiny Committee is required before a decision is treated as urgent.
- 6.18 Where the Cabinet / Health and Wellbeing Board has recorded a decision as urgent, the Committee may retrospectively review actions arising from that decision but cannot delay its implementation.

Consideration of the Call-In

- 6.19 The Chief Executive will ensure that any valid Call-in is reported to the appropriate meeting.
- 6.20 At least one of the Members submitting the request for Call-in will be expected to attend the meeting to explain their reasons for the Call-in and the alternative course of action or recommendations they wish to propose. Appropriate representation from the Cabinet / Health and Wellbeing Board will be required to explain the reasons for the Cabinet / Health and Wellbeing Board's decision and to answer any questions. Similarly, the relevant Chief Officer shall attend to clarify any aspects associated with the issue in question.
- 6.21 Having considered the Call-in and the reasons given, the Committee (or convened Sub-Committee) may either:
- i) Refer it back to the decision-making person or body for reconsideration, normally in time for its next scheduled meeting, setting out in writing the nature of its concerns and any alternative recommendations;
 - ii) If it considers that the decision is outside the Council's Budget and Policy Framework, refer the matter to the Assembly after seeking the advice of the Monitoring Officer and/or Chief Financial Officer; or
 - iii) Decide to take no further action, in which case the original Cabinet / Health and Wellbeing Board decision will be effective immediately.

Decisions referred back to the Decision-Maker

- 6.22 If a decision is referred back to the original decision maker, that person or body shall then reconsider the matter, taking into account any concerns and recommendations of the Committee (or convened Sub-Committee), and make a final decision, amending the decision or not, and give reasons for the decision.
- 6.23 If a decision relates to an executive function, only the Cabinet / Health and Wellbeing Board can ultimately decide the matter, provided that it is in accordance with the Council's Budget and Policy Framework.

7. Councillor Call for Action

- 7.1 A Councillor Call for Action (CCfA) allows councillors to refer matters of concern within the community to scrutiny. The aim of this measure is to provide councillors with additional powers that enable them to respond to local community concerns which have proved difficult to resolve.
- 7.2 CCfA should relate to matters:
- That are of a genuine and persistent local concern
 - That are not subject to ongoing legal processes, and
 - Where other courses of action have failed to resolve the matter
- 7.3 Any Councillor may request the Chief Executive to include a Councillor Call for Action on the agenda of a scrutiny Committee meeting. A Councillor Call for Action request must be made to the Chief Executive. A form is available on the Council's website which sets out the requirements for a Councillor Call for Action request to be considered valid by the Chief Executive.
- 7.4 Upon receipt of a valid Councillor Call for Action, the Chief Executive shall ensure that the item is included on the agenda of the next appropriate meeting of the relevant scrutiny committee, and ensure that the Chair of the committee, relevant Cabinet / Health and Wellbeing Board Members, senior officers and any other members from the ward(s) in question, are informed that a valid Call for Action has been received.
- 7.5 Any Councillor who submits a valid Call for Action will have the right to attend the meeting at which the item is to be considered, to explain the reasons for the Call for Action and to have the item discussed. The Committee will decide either:
- i) To request officers to prepare a report for the next meeting;
 - ii) To request the Councillor submitting the Call for Action to provide further evidence or information to a future meeting;
 - iii) To set up a task and finish group to investigate the matter and report back to the Committee or to agree to undertake a scrutiny review on the matter at the appropriate time;
 - iv) To refer the matter to the appropriate person or body be it a senior Officer, another committee such as the Cabinet / Health and Wellbeing Board or an external body, either for information or calling for specific action;

v) To take no further action on the request, for stated reasons.

7.6 A Councillor Call for Action will be deemed invalid in the following circumstances, and shall not be taken forward:

- i) The procedures set out in paragraphs 7.3 and 7.4 have not been properly followed;
- ii) It does not affect all or part of the ward for which the referring Member is elected, or any person who lives or works in that ward;
- iii) It is a matter that has been excluded by Order of the Secretary of State (e.g. planning or licensing appeals and other quasi-judicial matters); or
- iv) The Chief Executive, in consultation with the Designated Scrutiny Officer, considers it to be vexatious, not reasonable, discriminatory or outside the Councillor Call for Action provisions.

7.7 Before deciding on its validity, the Chief Executive may seek clarification of the Call for Action from the Councillor concerned.

Part 2 - The Articles

Chapter 8a – Health Scrutiny Committee

1. Status, Membership, Quorum and Meeting Frequency

- 1.1 The Health Scrutiny Committee is a committee established under Section 21 of the Local Government Act 2000, as amended by the Localism Act 2011.
- 1.2 The membership of the Committee shall be six Councillors and the quorum shall be two.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.4 The Health Scrutiny Committee shall meet ~~quarterly~~ six times a year. Additional meetings may be arranged to deal with specific matters such as the Cabinet's budget proposals, Call-in's etc. if considered necessary.
- 1.5 Informal meetings of the Health Scrutiny Committee, such as task and finish groups and site visits, may be arranged as appropriate, however only one group may be in place at any one time.

2. Functions and Responsibilities

- 2.1 The Health Scrutiny Committee has the following functions and responsibilities:

(a) Statutory Functions

- i) The Health Scrutiny Committee shall carry out health scrutiny in accordance with Section 244 (and Regulations under that section) of the National Health Services Act 2006 as amended by the Local Government and Public Involvement in Health Act 2007 relating to local health service matters. Where a proposal to substantially vary a health service relates to more than one local authority area, it must be considered by a Joint Health Overview and Scrutiny Committee appointed by each of the local authorities in question (in accordance with Part 2, Chapter 14, paragraph 2).
- ii) The Health Scrutiny Committee shall have all the powers of an Overview and Scrutiny Committee as set out in section 9F of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Social Care Act 2001 (including associated Regulations and Guidance).

(b) Functions as determined by Assembly

- (i) Scrutiny of the work of the NHS bodies serving Barking and Dagenham in accordance with the Health and Social Care Act 2001 and associated Regulations and Guidance ~~and the provision, planning, management and performance of services relating to adult social care.~~

- (ii) Scrutiny of the planning, provision and operation of the health service in the borough or accessed by Barking and Dagenham residents.
- (iii) Requesting information from NHS bodies and any health service provider. Exempt from this power are requests for information that are confidential (i.e. information that identifies a living person or is prohibited under any enactment) or relate to NHS Trusts in special administration (this function may be carried out by the Joint Health Overview and Scrutiny Committee in accordance with Part 2, Chapter 14, paragraph 2).
- (iv) Requesting attendance from any member or employee of a relevant NHS body or health service provider to attend before it to answer any questions; provided those questions do not relate to confidential information or information that they would be entitled to refuse to provide in a court of law. The request for attendance may also be refused if reasonable notice has not been given (this function may be carried out by the Joint Health Overview and Scrutiny Committee in accordance with Part 2, Chapter 14, paragraph 2).
- (v) Acting on behalf of the Council as the statutory consultee where NHS bodies propose substantial developments or variations in the provision of services and thus have a duty to consult with the local authority before taking a decision. When being consulted with, the Health Scrutiny Committee must notify the relevant NHS body of its response to the consultation and any intention to refer the matter to the Secretary of State within the timescales agreed by both parties (this function may be carried out by the Joint Health Overview and Scrutiny Committee in accordance with Part 2, Chapter 14, paragraph 2).
- (vi) Exercising the Council's right of referral to the Secretary of State on substantial variations to local health services. The Health Scrutiny Committee will have regard to the criteria and process for making a referral to the Secretary of State which are prescribed in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- (vii) Acting on behalf of the Council to make all arrangements for establishing and participating in Joint Health Overview and Scrutiny Committees, including the appointment of three Members to the membership of the JHOSC. Any such JHOSC shall have such terms of reference and shall exist for so long as the appointing authorities may agree.
- (viii) Receiving referrals from the local Healthwatch on matters relating to the planning, provision, and operation of health services in the borough, acknowledging receipt within five working days. Further to the regulations, Healthwatch can expect a referral to be discussed at the next formal meeting of Health Scrutiny Committee, or at a formal meeting within three months (whichever is most timely). In accordance with the regulations the Health Scrutiny Committee is obligated to keep the referrer informed of any action taken in relation to the matter.

- (ix) Holding to account the Health and Wellbeing Board for the delivery of its functions, and in doing so, having particular regard to the robustness of the Joint Strategic Needs Assessment and Health and Wellbeing Strategy as effective documents to ensure commissioning of health and social care services is reflective of local need.
- (x) Monitoring progress of implementation of recommendations in accordance with the Council's agreed processes, ensuring that decision-makers have due regard to findings and recommendations arising from scrutiny investigations.
- (xi) Representing local people and bringing local concerns and feedback about health and social care services to the attention of leaders within the local health and social care economy, and formally advising the Health and Wellbeing Board of any such concerns in the process.
- (xii) Monitoring of performance indicators that fall within the remit of the Health Scrutiny Committee.
- (xiii) Addressing any Call-ins as allocated by the Designated Scrutiny Officer (to be carried out in accordance with Part 2, Chapter 8, paragraph 6). Where the decision called-in is owned by the Health and Wellbeing Board the Health Scrutiny Committee will, by default, be the receiving Committee of that Call-in regardless of the subject of the decision.

(c) General Role

- (i) Review and scrutinise decisions made or actions taken in connection with the discharge of the Council's functions in relation to health;
- (ii) Assist the Assembly and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues, as required;
- (iii) Review and scrutinise the performance of the Council, other public bodies and partner organisations in the area, invite them to address the Health Scrutiny Committee, and prepare reports about their initiatives and performance;
- (iv) Conduct pre-decision scrutiny to test the robustness and impact of health-related key decisions to be considered by the Cabinet;
- (v) Engage with, and represent local people and create opportunities to involve them in the scrutiny process;
- (vi) In all of the above, make reports and recommendations to the Cabinet and/or Assembly and/or any Committee in connection with the discharge of any functions;
- (vii) Produce an annual report which the Chair of the Health Scrutiny Committee shall present to the Assembly.

2.2 Where the Health Scrutiny Committee produces a report and/or makes recommendations on health services, it will provide a copy of the report to the relevant responsible authorities, notifying them of their duty (under the Local Government and Public Involvement in Health Act 2007) to:

- i) consider the report or recommendations;
- ii) respond to the Health Scrutiny Committee in writing within 28 days indicating what (if any) action it proposes to take, and;
- iii) have regard to the report or recommendations in exercising its functions.

3. Petitions

- 3.1 The Health Scrutiny Committee will be responsible for receiving and debating petitions relating to health matters in accordance with the Council's Petition Scheme which can be found on the Council's website <http://www.lbbd.gov.uk/petitions>

4. Scrutiny Procedure Rules

- 4.1 The Scrutiny Procedure rules in Part 2, Chapter 8, paragraph 5 shall apply to the Health Scrutiny Committee.

5. Call-in

- 5.1 The Call-in rules in Part 2, Chapter 8, paragraph 6 shall apply to the Health Scrutiny Committee.

6. Councillor Call for Action

- 6.1 The Councillor Call for Action rules in Part 2, Chapter 8, paragraph 7 shall apply to the Health Scrutiny Committee.

7. Health Scrutiny Sub Committee

- 7.1 The Health Scrutiny Committee shall appoint a Sub-Committee which shall be convened as necessary to consider relevant Call-Ins, petitions, and Councillor Calls for Action upon receipt and validation.
- 7.2 The Sub-Committee shall consist of the Chair of the Committee and two other Members of the Committee. The quorum shall be two Members.

Part 2 – The Articles

Chapter 3 – Meeting Rules - General

1. Introduction

- 1.1 Unless otherwise stated in the specific rules for the Assembly and other committee meetings, the arrangements below will apply to all meetings of the Council.

2. Programme of Council Meetings

- 2.1 The Chief Executive shall be responsible for agreeing the programme of Council meetings for the municipal year following consultation with the Leader. The programme of meetings shall follow a similar pattern each year unless changes are agreed by the Chief Executive. The annual programme of meetings may be varied to take account of Parliamentary, Local or other elections occurring during the period covered.
- 2.2 Council meetings shall typically take place at the Town Hall, Barking due to the availability of webcasting facilities and public accessibility issues. Other venues, such as the Barking Learning Centre, may also be used in certain circumstances where meetings are not webcast and/or where there are availability issues at the Town Hall. The Chief Executive shall be responsible for agreeing those arrangements.
- 2.3 As a general rule, meetings shall take place on a Monday, Tuesday or Wednesday, commencing at 7.00pm or such other time as agreed by the majority of the membership of a Committee. Meetings on Thursdays should finish by 5.00 pm (to accommodate councillors' ward surgery commitments) and there are usually no meetings on Fridays, with the exception of the Ceremonial Council.

3. Notice of Summons and Cancellation / Postponement of Meetings

- 3.1 The Chief Executive will give notice to the public of the date, time and place of any meeting in accordance with the Access to Information Rules.
- 3.2 At least five clear working days before a meeting, the Chief Executive will send a summons to every Councillor giving the date, time and place of each meeting and specify the business to be transacted, in accordance with the requirements of the Local Government Act 1972. The summons will be accompanied by such reports as are available at that time.
- 3.3 The Chief Executive may cancel or postpone any meeting prior to the issue of public notice of the meeting where, after consultation with the Chair, he/she considers that there is insufficient business to transact or where an event occurs which he/she considers would make it inappropriate to hold the meeting on the intended date.

3.4 The Chief Executive may also cancel or postpone any meeting after the issue of public notice but only in exceptional circumstances and subject to any statutory requirements.

3.5 In all instances where a meeting is cancelled or postponed the Chief Executive shall give appropriate notice to Councillors, the public and local press.

4. Person Presiding

4.1 In this procedure, reference to the Chair shall include reference to the person presiding at the meeting or part of the meeting where the Chair, and/or the Deputy Chair, is absent or unable to act, and the person presiding shall have all the powers of the Chair for the purpose of the conduct of the meeting or item of business.

4.2 This applies when neither the Chair nor the Deputy Chair are present or able to act in respect of any meeting or particular item of business, and it is necessary to elect a person to preside in their absence.

4.3 The Chief Executive, or in his/her absence an officer on behalf of the Chief Executive, shall exercise the powers of the Chair in respect of the election of a Member to preside (but shall not have a first or casting vote) and shall invite nominations from Members and conduct an election for a person to preside at the meeting or in respect of the particular item, as necessary.

4.4 Where there is an equality of votes on such election, the Chief Executive or his/her representative may adjourn the meeting for up to 15 minutes. If after such adjournment there is still an equality of votes, the matter shall be determined by the drawing of lots.

4.5 The Chair shall be responsible for:

- upholding and promoting the purposes of the Constitution;
- interpreting the Constitution where necessary, having regard to advice from officers as appropriate;
- ensuring that the business is carried out efficiently and with regard to the rights of Councillors and the interests of the community.

5. Quorum

5.1 A quorum is the number of Members needed to enable a meeting to proceed. Unless specified in the relevant Articles, the quorum shall be one quarter of the membership (rounded up) or a minimum of two Members, whichever is the greater.

5.2 If the meeting is not quorate 15 minutes after the published start time, the business shall be adjourned to the next scheduled meeting or to a date to be arranged.

5.3 If a quorum is lacking at any time after a meeting has started, the meeting shall be suspended for up to 15 minutes, after which time if a quorum is still

not achieved, the meeting will end. Any items of business remaining on the agenda for that meeting will be held over to the next scheduled meeting or to a date to be arranged.

- 5.4 Members present at an inquorate meeting can, if they feel there is any merit in doing so, discuss issues but strictly on an informal basis only. The minutes will make only brief reference to any such discussions.

6. Order of Business

- 6.1 The Chair may, at his/her discretion, vary the published order of business at a meeting if it is considered to be in the best interests.

7. Duration of Meetings

7.1 Termination of Meetings

- 7.1.1 If the business of the meeting has not been concluded after two hours of its commencement, the proceedings may be extended for a reasonable further period, with the agreement of a majority of the Members present. Any unfinished business will be referred to the next meeting.

- 7.1.2 A 'reasonable further period' is suggested as 15 minutes although the Members present may agree to extend the meeting for a maximum of 30 minutes. There is no provision to extend the meeting for a second, further period.

- 7.1.3 These arrangements do not apply to quasi-judicial meetings such as the Planning Committee, Licensing Sub-Committee and the Personnel Board, although every effort should be made to conclude the business in an efficient manner in order to minimise potential additional costs associated with the late closure of Council buildings.

7.2 Disposal of remaining business

- 7.2.1 The proceedings of the meeting may be concluded earlier with the agreement of the majority of the Members present. Any unfinished business will be referred to the next meeting.

8. Minutes

8.1 Signing the minutes

- 8.1.1 The Chair will, at the next suitable meeting, move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy. If approved by the meeting, the Chair will then sign the minutes.

8.2 Form of Minutes

- 8.2.1 Minutes will be a concise and accurate record of the essence of the discussions and the decision, in a form that can be clearly understood by a member of the public.
- 8.2.2 The form of minutes may vary depending on the type of meeting but shall not be a verbatim record, save for motions and amendments which shall be recorded in the exact form in which they are put to the meeting.
- 8.2.3 Minutes will be made available for public inspection in accordance with statutory requirements.
- 8.2.4 The minutes will be the formal record of attendance at meetings by Members.

9 Point of Order

- 9.1 A Member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of the Council Procedure Rules or the law. In relation to a breach of the law, the Member must indicate the Rule or law and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final.

10. Voting

10.1 Majority

- 10.1.1 Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members eligible to vote and present in the room at the time.

10.2 Method of Voting

- 10.2.1 Unless a recorded vote is required under paragraph 10.3 or 10.4 below, voting shall be by the show of hands or, if there is no dissent, by the affirmation of the meeting.
- 10.2.2 At his/her discretion, the Chair may require that any available electronic voting system is used.

10.3 Recorded vote

- 10.3.1 Notwithstanding Rule 10.4, any five Members present at the meeting may require the individual votes on a decision to be recorded in the minutes of the meeting. The procedure for a recorded vote shall be as follows:
- The Chair shall put the motion and the Chief Executive (or his/her representative) shall call out the names of Members and record their votes or abstentions.
 - The Chair shall declare the result of the vote and the vote of each Member shall be recorded in the minutes.

10.3.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 require that immediately after any vote on the budget or council tax is taken at a budget decision meeting of an authority, the individual votes on a decision must be recorded in the minutes of the meeting

10.4 Right to require individual vote to be recorded

10.4.1 This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations 1993 and cannot therefore be waived. Where any Councillor requests it immediately after the vote is taken, his/her vote shall be recorded in the minutes.

10.5 Voting on appointments

10.5.1 If there are more people nominated for any position(s) than there are position(s) to be filled and there is not a clear majority of votes in favour of the required number of people, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. Where there is an equality of votes for a person to continue in the appointment process, a vote shall be taken between those candidates having an equality of votes to determine which candidate shall continue in the appointment process.

10.6 Chair's casting vote

10.6.1 If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

11. Attendance and Speaking at Meetings by Councillors not Formally Appointed to the Meeting

11.1 A Councillor may attend any Member-level meeting to which they have not been appointed, but they cannot vote at that meeting. Unless otherwise stated or provided for in the rules for particular meetings, a Councillor may speak at the meeting at the discretion of the Chair.

11.2 Similarly a Councillor may stay for the whole meeting, unless asked to leave for specific reasons (ie. consideration of confidential or exempt information) which will be explained by the Chair and recorded in the minutes. Councillors must respect the confidentiality of the discussions in any non-public part of any meeting and of any papers which are restricted from publication.

12. Public Participation in Council meetings

12.1 The public have the right to ask questions and receive answers at meetings of the Council. The arrangements below shall apply to all public meetings of the Council, with the exception of quasi-judicial meetings that relate to planning and licensing which have their own speaking / public involvement arrangements as set out in the respective Articles within this Constitution.

Arrangements for Submitting Public Questions

12.2 Questions must be submitted to the Chief Executive by no later than midday 3 working days prior to the meeting in question (e.g. for a meeting taking place on a Tuesday, the deadline for the receipt of questions shall be midday on the Thursday before).

12.3 Questions must relate to a substantive item on the agenda for that meeting.

12.4 An individual may submit only one question per meeting and must include his/her home address when submitting the question (this information will not be disclosed by the Chief Executive).

12.5 The Chief Executive may reject a question if in his/her opinion:

- (i) The question has not complied with the requirements of paragraphs 12.2 – 12.4 above;
- (ii) it is of a vexatious or derogatory nature or otherwise considered improper or inappropriate;
- (iii) it is contrary to any provision of any code, protocol, legal requirement or rule of the Council; and/or
- (iv) the same or similar question has already been submitted by another member of the public for the same meeting or been considered in the previous six months.

12.6 Prior to the Chief Executive rejecting a written question on any of the above grounds, he/she shall consult with the relevant Chair. The Chief Executive shall inform the member of the public who submitted the question of his/her decision as soon as possible.

Procedure for Questions at Council Meetings

12.7 Where the member of the public who submitted the question is present at the meeting, he/she shall be invited to introduce the question (as submitted) or it shall be read out on his/her behalf.

12.8 The relevant Cabinet Member under whose name the report is presented or the relevant Chair (as appropriate) shall provide a verbal response to the question without discussion (which may include an undertaking to provide a more detailed answer in writing).

12.9 The Member of the public who submitted the question may ask one supplementary question arising directly out of the initial response, without notice, and the relevant Cabinet Member / Chair shall respond to the supplementary question wherever possible, without discussion. Where the relevant Cabinet Member / Chair is unable to respond to the supplementary question, an undertaking may be given to provide a response in writing. A

supplementary question may only be asked by the original questioner and not by a substitute.

- 12.10 Where the member of the public who submitted the question is not present at the meeting, the relevant Cabinet Member / Chair may, at his/her discretion, provide a written response to the question which shall be published.
- 12.11 A period of up to 30 minutes in total shall be available for public questions.
- 12.12 Questions will be asked in the order in which they are received by the Chief Executive. This order will be presented to the meeting and those in attendance at the start of the meeting. At the Chair's discretion, this order may be varied by a simple majority vote of the Members present. Questions and supplementary questions will be asked in accordance with this order, until all contributions have been made or 30 minutes elapsed. Any question not raised and answered within the allotted 30 minutes will receive a written answer, which shall also be published on the Council's website.
- 12.13 The Chair may, at his/her discretion, allow a member of the public who has not submitted a valid question to speak at a meeting (subject to any overriding provisions in relation to quasi-judicial meetings) but that shall not extend to asking a question.

13. Conduct / Disturbance at Meetings

- 13.1 It is the responsibility of the Chair to keep order at meetings.
- 13.2 Councillors are expected to behave in a professional manner and to respect the ruling of the Chair.
- 13.3 If a Councillor persistently misconducts him or herself by behaving irregularly, offensively or improperly, or using inappropriate language, or by disregarding the Chair and knowingly or deliberately obstructing the business, in breach of the Councillors' Code of Conduct, the Chair, or any other Councillor, may move that the Councillor be no longer heard. If seconded, the matter will be put to the vote and determined without discussion. The Councillor concerned cannot vote in these circumstances.
- 13.4 If the Councillor concerned continues his/her misconduct, the Chair may either move that the Councillor leaves the meeting or that the meeting be adjourned for a period which the Chair feels will be appropriate to contain the problem. Such motions must be seconded and determined as above.
- 13.5 If a member of the public interrupts a meeting, the Chair will ask them not to do so and warn them that if the interruption continues, the person will be required to leave. If the person continues to interrupt, the Chair can order him/her to leave the meeting. If necessary, the assistance of staff will be sought to escort the person out of the building.
- 13.6 Where there is a general disturbance in any part of the room where a meeting is being held, the Chair may, at his/her discretion, order that it be cleared. If the general disturbance is considered by the Chair to be such that the meeting cannot reasonably continue, he/she shall adjourn the meeting for a certain period or until another day, whichever is felt to be most appropriate in the circumstances.

13.7 The Council's security staff and/or the Police will be called to assist in any situation if necessary.

14. Exclusion of the Public and Press

14.1 Members of the public and press may only be excluded from a public meeting in accordance with the Access to Information Rules at Part 2, Chapter 17 of this Constitution and/or Rule 13 above.

15. Filming, Photography and the Use of Social Media at Council Meetings

15.1 The Council welcomes the filming, photography and the use of social media at its meetings as a means of reporting on its proceedings because this helps to make the Council more transparent and accountable to the local community.

15.2 The overriding principle is that the proceedings of any meetings should not be disrupted by filming, photography or the use of media tools by members of the press and public, or by Councillors.

15.3 Chapter 6 of Part 5 of the Constitution sets out the procedures in respect of filming, photography and the use of social media at Council meetings.

16. Delegation of functions to sub-committees and officers

16.1 Committees may arrange for the discharge of any of their functions by a sub-committee or an officer, and a sub-committee may delegate any of its functions to an officer, subject to any overriding provisions.

16.2 Committees may also consider any matter which has been delegated to a sub-committee or to officers, subject to any overriding provisions.

**COUNCIL CONSTITUTION
SCHEDULE OF AMENDMENTS - May 2019**

AMENDMENT	REASON	ASSEMBLY APPROVAL REQUIRED?
<p>Part 2, Chapter 3 – Meeting Rules - General</p> <p>Inclusion of new para 12.13 to enable the Chair, at his/her discretion, to allow a member of the public to speak at a meeting who has not submitted a valid question in accordance with the public speaking arrangements in paragraphs 12.2 – 12.4.</p>	<p>To reinstate the provision for the Chair to exercise discretion regarding public speaking at meetings.</p>	<p>Yes</p>
<p>Part 2, Chapter 4 – The Assembly</p> <p>Inclusion of new para 4.2 to clarify that the Assembly shall be programmed to meet six meetings each municipal year.</p>	<p>To re-establish a meeting in July each year to avoid a four-month gap following the Annual meeting and ensure the smooth and timely running of Council business.</p>	<p>Yes</p>
<p>Part 2, Chapter 6 – The Cabinet</p> <p>Amendment of paragraph 2.1(xi) to include reference to further delegations regarding the naming of buildings and roads as approved by Cabinet under Minute 91 (17 January 2012).</p>	<p>To clarify extent of officer delegations.</p>	<p>No. Monitoring Officer implemented to 'give effect to any decisions of the Council'.</p>
<p>Part 2, Chapters 8 and 8a – Overview & Scrutiny Committee and Health Scrutiny Committee</p> <p>The transfer of responsibility for scrutinising adult social care from HSC to OSC.</p>	<p>To properly reflect the committees' responsibilities.</p>	<p>Yes</p>

<p>Inclusion of wording (previously included in the Articles of the Safer & Stronger Community Select Committee) to reflect OSC's responsibilities for culture, libraries, heritage and arts, community safety, social inclusion, equalities, cohesion and faith and engaging with the community and voluntary services operating in the borough.</p> <p>Amendment of para 1.4 of HSC Article to reflect a programme of six meetings each municipal year.</p>	<p>To reinstate wording omitted at the drafting stage.</p> <p>To better enable the Committee to implement its work programme.</p>	<p>No. Monitoring Officer implemented as a minor amendment.</p> <p>Yes</p>
<p>Part 2, Chapter 9 – Planning Committee</p> <p>(i) Amendment of paragraph 4.1 to clarify that a member of the public wishing to speak at the Planning Committee must have made a valid representation in respect of the application;</p> <p>(ii) Inclusion of “within the relevant ward” at paragraph 4.2 to clarify that ward councillors who are not Members of the Planning Committee may also address the meeting without the need to give prior notice.</p>	<p>To clarify the arrangements for speaking at the Planning Committee.</p>	<p>No. Monitoring Officer implemented as a minor amendment.</p>
<p>Part 2, Chapter 13 – Audit & Standards Committee</p> <p>Amendments to reflect the following:</p> <ul style="list-style-type: none"> a) Deletion of the ‘Performance’ elements, as the Cabinet already receives regular monitoring reports and the responsibility to scrutinise any matters should rest with the Overview and Scrutiny Committee; b) The revision to the ‘Governance’ element relating to the Council’s Financial Regulations and Rules to clarify that the Committee’s remit extends to audit-related matters only; c) The deletion of the ‘Governance’ element relating to “Considering the Council’s compliance with its own and other published standards and controls”, as the wording is unclear 	<p>To reflect changes to the terms of reference as recommended by the Audit & Standards Committee at its meeting on 3 April 2019 following a reassessment of its work programme and responsibilities.</p>	<p>Yes</p>

<p>and its intended purpose is already covered by the Committee's existing terms of reference;</p> <p>d) The transfer of the 'Finance' elements that relate to financial management, as the Cabinet already receives regular monitoring reports and the responsibility to scrutinise any matters should rest with the Overview and Scrutiny Committee.</p>		
<p>Part 2, Chapter 16 – Decision Making Part 2, Chapter 17 – Access to Information Part 2, Chapter 18 – Budget & Policy Framework</p> <p>Replacement of references to "Lead Member" and "Select Committee" with "Chair" and "Scrutiny Committee" as appropriate.</p>	<p>Correction of drafting error.</p>	<p>No. Monitoring Officer implemented as a minor amendment.</p>
<p>Part 3, Chapter 1 – Officer Scheme of Delegation</p> <p>Inclusion of new paragraph 4.13 as follows: "These areas of responsibility include some statutory and other functions that are directly delivered by Council-owned companies and / or other third-party providers. In such circumstances, the relevant Chief Officer's responsibilities shall extend to holding the service provider(s) to account via any and all appropriate means, including via internal governance arrangements and /or other "dotted line" arrangements as designated by the Chief Executive."</p> <p>Inclusion of responsibility under paragraph 9.1(e) to reflect that the Director of Inclusive Growth is responsible for building and road naming matters that are not otherwise reserved to the Cabinet.</p>	<p>To clarify the extent of Chief Officers' responsibilities for services / functions that they are not directly responsible for delivering.</p> <p>To reflect delegations approved by Cabinet under Minute 62 (29 September 2009) and Minute 91 (17 January 2012).</p>	<p>No. Monitoring Officer implemented to 'give effect to any decisions of the Council'.</p> <p>No. Monitoring Officer implemented to 'give effect to any decisions of the Council'.</p>

<p>Part 3, Chapter 2 – Officer Scheme of Delegation – Statutory Functions</p> <p>Amendment to section on the Building Act 1984 to include dangerous buildings and structures and change of responsibility from Director of Inclusive Growth to Director of Law and Governance.</p>	<p>To reflect a change in responsibilities.</p>	<p>No. Monitoring Officer implemented as a minor amendment.</p>
<p>Part 4, Chapter 2 – Financial Regulations & Rules</p> <p>Deletion of wording within ‘Section 1: Roles, Responsibilities and Accountability - Audit & Standards Committee’ relating to scrutiny responsibilities and maintaining overview of Financial Regulations and Rules.</p>	<p>Linked to proposed changes to ‘Part 2, Chapter 13 – Audit & Standards Committee’ referred to above</p>	<p>No. Monitoring Officer implemented to ‘give effect to any decisions of the Council’</p>
<p>Part 5, Chapter 1 – Councillors’ Code of Conduct</p> <p>Amendment of paragraph 15.1 to reflect that complainants must use the prescribed form and include their name and address on the complaint form.</p>	<p>To fully reflect the requirements for making a complaint against a councillor.</p>	<p>No. Monitoring Officer implemented as a minor amendment.</p>
<p>Part 5, Chapter 2 – Councillors’ Code of Conduct for Planning Matters</p> <p>Amendment of paragraph 7.3 to clarify that ward councillors who are not Members of the Planning Committee may also address the meeting without the need to give prior notice</p>	<p>To reflect the arrangements for speaking at the Planning Committee.</p>	<p>No. Monitoring Officer implemented as a minor amendment.</p>
<p>Part 6 – Members’ Allowances Scheme</p> <p>Publication of new Scheme (effective from 16 May 2019) as approved by the Assembly.</p>	<p>To publish the new scheme.</p>	<p>No. Monitoring Officer implemented to ‘give effect to any decisions of the Council’.</p>

ANNUAL ASSEMBLY

15 May 2019

Title: Members' Allowances Scheme 2019/20	
Report of the Leader of the Council	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: Alan Dawson, Democratic Services Manager	Contact Details: Tele: 020 8227 2348 Email: alan.dawson@lbbd.gov.uk
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance	
<p>Summary:</p> <p>This report sets out proposals in relation to Members' allowances for the 2019/20 municipal year.</p> <p>Following a review of the Members' Allowances Scheme last year, which resulted in allowance levels increasing for the first time in 10 years, it is proposed that all basic and special responsibility allowances (SRAs) remain at the levels agreed by the Assembly on 18 July 2018.</p>	
<p>Recommendation(s)</p> <p>The Assembly is recommended to:</p> <ul style="list-style-type: none"> (i) Agree that no increase be applied to Members' basic and special responsibility allowances for the 2019/20 municipal year; and (ii) Adopt the Members' Allowances Scheme 2019/20 at Appendix A to the report, to be effective from 16 May 2019. 	
<p>Reason(s)</p> <p>To accord with the Local Authorities (Members' Allowances) (England) Regulations 2003.</p>	

1. Introduction and Background

- 1.1 The Local Authorities (Members Allowances) (England) Regulations 2003 require local authorities to make an annual scheme of allowances.
- 1.2 In setting its annual scheme, the Council must have regard to any recommendations of an independent remuneration panel (IRP). The exceptions to this requirement are where allowances are to be increased in accordance with an

approved index or where no increase is proposed, subject to a review every four years.

- 1.3 In June 2014, the Council disbanded its own IRP due to a number of the Panel Members stepping down and the decision was taken that, from that point, the Council would have regard to the London Councils Independent Remuneration Panel (LCIRP) recommendations when considering its annual allowances. The LCIRP was established by London Councils in 2001 to exercise the function on behalf of London Boroughs and produces a report every four years, the latest being its 2018 report.
- 1.4 At the Annual meeting on 23 May 2018, the Assembly agreed an interim Members' Allowances Scheme for 2018/19 which kept the majority of allowances at the same levels since 2008/9. The changes to the Scheme were confined, at that time, to the SRAs relating to those roles that were revised / introduced as a direct result of the new Council governance and committee structure arrangements that had been approved by the Assembly at its 28 February and 23 May 2018 meetings.
- 1.5 It was also noted at the Annual meeting that a further review of allowances would be carried out during the year. The purpose of the review was to properly assess the impact of the new governance arrangements, Members' new responsibilities under those arrangements and the appropriate level of allowances having regard to the recommendations of the LCIRP Report 2018 and benchmarking against all other London Boroughs' allowances.
- 1.6 That review report was presented to an extraordinary meeting of the Assembly on 18 July 2018. The Assembly acknowledged that the basic allowance paid to all councillors had remained frozen since 2008/09 at £10,006 and SRAs were also at the same levels as they were 10 years ago, except for the interim changes agreed at the 23 May 2018 meeting. With that in mind and having regard to the LCIRP recommendations and the benchmarking data, the Assembly agreed to increase the basic allowance from £10,006 to £11,000 and to increase the SRAs payable to a range of Chair and Deputy Chair positions, Cabinet Members and the Leader and Deputy Leader positions. The combined effect of the changes resulted in an increase of £149,000 to the Members' Allowances budget, giving a total budget of £987,000.
- 1.7 The Members' Allowances Scheme forms part of the Council Constitution (Part 6).

2. Proposal and Issues

- 2.1 Following last year's detailed review of the Members' Allowances Scheme, it is proposed that the basic allowance and SRAs will remain at those levels for the foreseeable future. It is anticipated that the next review will be undertaken in 2022, following the publication of the next LCIRP report.
- 2.2 Furthermore, there are no proposed changes to the positions that shall qualify for a special responsibility allowance or the rates applicable to travelling, subsistence and other allowances.
- 2.3 The proposed Members' Allowances Scheme for 2019/20 is set out at **Appendix A**.

3. Options Appraisal

- 3.1 As the detailed review of the Scheme was only undertaken last year and the intention is for the existing Scheme to continue until at least 2022, no alternative options have been considered for 2019/20.

4. Consultation

- 4.1 The proposals in this report have been discussed with relevant Cabinet Members and officers.

5. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager, Service Finance

- 5.1 The Members' Allowances budget for 2019/20 is £987,000 and is sufficient to meet all projected costs during the year. Any proposed increase in allowances would need to be funded within the current budget through other efficiencies, such as reducing the number of positions attracting an SRA, or via an approved growth bid or additional funding.

6. Legal Implications

Implications completed by: Dr Paul Feild, Senior Governance Lawyer

- 6.1 The Local Authorities (Members Allowances) (England) Regulations 2003 require local authorities to make an annual scheme of allowances, which must be approved by the Assembly.

Public Background Papers Used in the Preparation of the Report:

- London Councils Independent Panel Report "The Remuneration of Councillors in London 2018" (<https://www.londoncouncils.gov.uk/who-we-are/about-us/financial-information/leadership-and-expenses/remuneration-councillors-london>)
- "Members' Allowances Scheme 2018/19" report to Assembly 23 May 2018 (Minute 10) (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CIId=179&MIId=9404&Ver=4>)
- "Revised Members' Allowances Scheme 2018/19" report to Extraordinary meeting of the Assembly 18 July 2018 (Minute 19) (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CIId=179&MIId=10257&Ver=4>)

List of appendices:

- **Appendix A** – Proposed Members' Allowance Scheme 2019/20

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Part 6 - Members' Allowances Scheme 2019/20

The Council of the London Borough of Barking and Dagenham, pursuant to the Local Authorities (Members' Allowances) (England) Regulations 2003 ("the Regulations"), hereby makes the following scheme.

1. Introduction

- 1.1 The Members' Allowances Scheme ("the Scheme") is approved each year by the Assembly at its annual meeting. The Assembly shall have regard to any recommendations made by an independent remuneration panel before making or amending the Scheme, except where allowances are to be increased in accordance with an approved index or where no increase is proposed, subject to a review every four years.

2. Types of Allowances

- 2.1 The allowances payable are:
- a) Basic Allowance;
 - b) Special Responsibility Allowance;
 - c) Co-opted Members' Allowance;
 - d) Travelling and Subsistence Allowance;
 - e) Dependants' Carers' Allowance;
 - f) Other allowances as described in the Scheme.

3. Effective Date

- 3.1 This Scheme has effect from 16 May 2019.

4. Definitions

- 4.1 "Approved duties" means attendance by a Councillor or Co-opted Member at any:
- a) formally convened meeting of any committee or body to which the individual has been appointed or nominated by the Authority, including any sub-committees or working parties thereof;
 - b) conference, training session and presentation organised by or on behalf of the Authority which the individual is required to attend;
 - c) meeting with a Strategic or other Director where the Councillor's attendance has been requested in writing or by e-mail or where the Councillor is a member of the Cabinet.

- 4.2 “Co-opted Member” means any co-opted, added or independent Member of a Committee or other body to which this scheme relates regardless of whether or not the Co-opted Member receives a Co-opted Members’ Allowance.

5. Basic Allowance

- 5.1 A Basic Allowance shall be paid to each Councillor in accordance with Appendix 1 to this Scheme.

6. Special Responsibility Allowances

- 6.1 Special Responsibility Allowances shall be paid in accordance with Appendix 1 to this Scheme.
- 6.2 Where a Councillor would otherwise be entitled under the Scheme to more than one Special Responsibility Allowance, the entitlement shall only be to the highest allowance.
- 6.3 In the event of a person receiving a Special Responsibility Allowance being absent or substantially unable to act for a period of at least three months, the Council may resolve to reduce the level of Special Responsibility Allowance payable to that person and instead resolve to pay the allowance, or part of it, to any person appointed as a deputy or vice-chair for such period as it determines.

7. Travelling and Subsistence Allowances

- 7.1 Travelling and subsistence allowances in respect of Approved Duties undertaken by Councillors and Co-opted Members are payable in accordance with Appendix 1 to this Scheme.
- 7.2 The provisions relating to eligibility to Travelling and Subsistence Allowances apply only to Approved Duties undertaken outside the Borough. Councillors and Co-opted Members are not permitted to claim Travelling and Subsistence Allowances for any activities undertaken within the Borough.

8. Dependants' Carers' Allowances

- 8.1 Dependants’ Carers’ allowances in respect of Approved Duties undertaken by Councillors and Co-opted Members are payable in accordance with Appendix 1 to this Scheme.
- 8.2 The carers’ allowance may be claimed towards the cost of care for children or other dependants within the household who have a recognised need for care.
- 8.3 The allowance will not be payable to a member of the immediate family or household.
- 8.4 The maximum period of the entitlement will be the duration of the approved duty and reasonable travelling time.

9. Co-opted Members

9.1 Co-opted Members shall be paid in accordance with Appendix 1 to this Scheme.

10. School Appeal Panel Members

10.1 School Appeal Panel (Admissions and Exclusions) members shall be entitled to an allowance as set out in Appendix 1 to this Scheme but shall not be eligible to receive travelling, subsistence or Dependants' Carers' allowances.

11. National Insurance and Income Tax

11.1 Payment of allowances shall be subject to such deductions as may be statutorily required in respect of national insurance and income tax.

12. Local Government Pension Scheme (LGPS)

12.1 In accordance with the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, Councillors are not eligible to be members of the LGPS.

13. Renunciation

13.1 A Councillor and/or Co-opted Member may, by notice in writing to the Chief Executive, elect to forgo all or any part of his/her entitlement to an allowance under this Scheme.

14. Payments and Claims

14.1 Payment of Basic and Special Responsibility Allowances shall be made in instalments of one-twelfth of the amounts specified on a monthly basis, with the exception of the Mayor's Allowance which shall be paid quarterly in advance.

14.2 Where an individual takes office part way through a year, a proportionate part of any applicable allowance is payable, unless the allowance is a Special Responsibility Allowance for serving on a committee which is appointed for a period of less than a year.

14.3 The Council may determine that an allowance or a rate of allowance will not come into effect until a date other than the effective date of this Scheme. In such circumstances, the alternative date that the allowance shall be payable from shall be specified in Appendix 1 to this Scheme.

14.4 Claims for travelling, subsistence and dependants' carers' allowance should be completed monthly and no later than three months from the date that the expenditure was incurred.

15. Councillors who are Members of another Authority

15.1 Any Councillor who is also a Member of another Authority shall only receive allowances from one Authority in respect of the same duties.

15.2 In such instances, the Councillor shall be required to nominate the Authority from whom he/she wishes to receive the allowance(s) and advise the Chief Executive accordingly.

16. Record of Allowances Paid

16.1 A record of the payments made by the Authority to each Councillor and Co-opted Member shall be maintained and published in accordance with the Regulations.

17. Publication of Scheme

17.1 As soon as practicable after the making or amendment of this Scheme, arrangements shall be made for its publication within the Authority's area in accordance with the Regulations.

**London Borough of Barking and Dagenham
Schedule of Allowances for 2019/20**

Type	Allowance (per annum unless otherwise stated)
BASIC ALLOWANCE (for all Councillors)	£11,000
SPECIAL RESPONSIBILITY ALLOWANCES	
Leader of the Council	£46,429
Deputy Leader(s) of the Council	£25,535
Other Cabinet Members	£19,000
Chair, Overview and Scrutiny Committee	£10,000
Deputy Chair, Overview and Scrutiny Committee	£5,000
Chair, Planning Committee	£8,000
Deputy Chair, Planning Committee	£4,000
Chair, Assembly Chair, Audit and Standards Committee Chair, Health Scrutiny Committee Chair, Licensing and Regulatory Committee Chair, Pensions Committee Chair, Personnel Board Chair, Policy Task Group Member Champions	£5,000
Deputy Chair, Assembly Deputy Chair, Audit and Standards Committee Deputy Chair, Health Scrutiny Committee Deputy Chair, Licensing and Regulatory Committee Deputy Chair, Pensions Committee Deputy Chair, Personnel Board Deputy Chair, Policy Task Group	£2,500
Leader(s) of the Minority Groups	£342 per seat (with a minimum of £1,110 per Leader)
Mayor's Allowance (payable under section 3(5) of	£12,000 (with effect from 18

Type	Allowance (per annum unless otherwise stated)
Part I of the Local Government Act 1972)	May 2019)
CO-OPTED MEMBERS' AND OTHER ALLOWANCES	
Independent Adviser (to Audit and Standards Committee for audit functions)	£500 per meeting
Independent Persons (to Audit and Standards Committee for standards functions)	£500
School Appeal Panel Members (Admissions and Exclusions)	£20 per session (up to four hours)
TRAVELLING ALLOWANCES	
Mileage Rates	<ul style="list-style-type: none"> • Car: 45p per mile • Motorcycle: 24p per mile • Bicycle: 20p per mile
SUBSISTENCE ALLOWANCES	
Meal Allowances	<ul style="list-style-type: none"> • Breakfast (away between 7.00am and 11.00am) - £4.92 • Lunch (away between 12.00 noon and 2.00pm) - £6.77 • Tea (away between 3.00pm and 6.00pm) - £2.67 • Evening (away between 7.00pm and 11pm) - £8.35
Overnight (continuous period of 24 hours involving absence overnight)	<ul style="list-style-type: none"> • Normal - £79.82 • Greater London, AMA Annual Conference or other approved Association conferences - £91.04
DEPENDANTS' CARERS' ALLOWANCE	£10.20 per hour

ANNUAL ASSEMBLY

15 May 2019

Title: Report of the Local Government Ombudsman on a matter relating to the Council's charging process for Residential Adult Care	
Report of the Cabinet Member for Social Care & Health Integration	
Open Report	For Decision
Wards Affected: All	Key Decision: No
Report Author: Mark Tyson, Commissioning Director, Adults' Social Care & Support	Contact Details: Tele: 020 8227 2875 E-mail: mark.tyson@lbbd.gov.uk
Accountable Strategic Leadership Director: Elaine Allegretti, Director of People & Resilience	
<p>Summary</p> <p>A complainant approached the Local Government Ombudsman (LGO) to ask them to investigate the handling of payments with a provider of residential care, Moreland House Care Home. During their investigation, the Ombudsman used their discretion to also focus the investigation on the way in which the Council makes payments for residential care.</p> <p>The matter principally concerns the practice of the Council making payment to the residential care home for only the Council's contribution and expecting the care home to pursue the service user contribution directly with them. The LGO holds, and has set out clearly, that this is contrary to the Care Act guidance. There were also related issues about the approach taken when third parties contribute to the cost of an individual's care, and some deficiencies in the care planning process in this instance.</p> <p>The resulting report finds fault on the part of the Council, and that this had caused injustice to the complainant. There are a number of councils operating similar processes, and the Ombudsman has therefore chosen to issue a report in the public interest detailing the outcome of this complaint.</p> <p>As a result, the Council has repaid the complainant the third-party top-ups that have been made, and half of the contributions of the service user. In the longer term, this has substantial implications for the way the Council currently undertakes its social care finance processes, and the necessary changes are being made to the systems and processes around how payments are made for residential care. It has also prompted a thorough look across all social care finance processes.</p> <p>This report summarises the findings and the action for Members' consideration.</p>	

Recommendation(s)

Assembly are recommended to note:

- a) the report as issued by the Local Government Ombudsman, its publication, and the notice that has been published in local news sources;
- b) the remedies that have been offered to the complainant in this case; and
- c) the system improvements that are being worked on to prevent further recurrence of these issues.

Assembly is further recommended to:

- d) Refer the matter to Overview & Scrutiny Committee, to review progress in six months' time so that the Council can be assured that the system changes are being applied and will remove the risk of further such incidents occurring.

Reason(s)

It is a requirement of the Local Government Ombudsman that the report is laid before the appropriate body of the Council within three months of being issued. The report contains a number of remedies for the issue that the LGO has raised, and it is appropriate that Members have the opportunity to review the prompt response of the Council in this respect. This is one of a number of emerging issues that has prompted a full review of the business processes that support adult social care services, including the charging and financial assessment process.

1. Overview of the report

- 1.1 The LGO's final report is attached at Appendix 1.
- 1.2 In summary, the LGO's findings in this case were injustice caused by the Council's policy of paying care home fees net of the service user contribution and any third -party top-up.
- 1.3 A third-party top-up is where, for example, a relative or friend makes additional payments for the cost of care provision in order to make possible a more expensive placement than the Council would normally fund. It is permissible, under Care Act 2014 Statutory Guidance, to pay the home net of third party top-up, if that is the choice of the service user and third party. The view of the Ombudsman is that there is no such permission explicitly granted by the Care Act to pay the home net of the service user contribution.
- 1.4 The injustice in this case was exacerbated by:
 - Poor provision of information and advice around finances and social care;
 - Delays in invoicing by Moreland House;
 - Lack of clarity over setting a personal budget based on needs, and although the new social care recording system requires this step, we had previously not termed it the personal budget in the context of residential care planning;

- Lack of recording of the offer of a suitable placement within the personal budget, so that the Council could not absolutely guarantee in retrospect, that placements were available that would not have required the third party to make additional payments; and
- A format of top-up agreement that was not Care Act compliant (the statutory guidance lays out specific items that should be included).

1.5 It is important to record that this is not a report into the quality or safety of care services. It solely concerns the further anxiety caused to the family member by the Council and care home failing to properly administer the payment and charging regime for social care.

Remedy proposed by the Ombudsman

1.6 Importantly, in arriving at their conclusions, the Ombudsman recognises the constructive response of the Council to their findings, and further recognises that this will be a significant change of systems, which will require some time to implement.

1.7 In respect of the complainant, the Ombudsman has recommended the reimbursement of half of the service user contribution and the third party top-up. This will amount to around £5k, and payment has been arranged.

1.8 Moreland House have also been recommended to pay the complainant £250 for their part in the difficult situation arising.

2. Assessment of the extent to which the situation is more widely replicated

2.1 The service has assessed the various aspects raised by the Ombudsman in their investigation of this case, and in particular, has looked at how widespread they are in other casework.

2.2 It should be noted that the complainant had a particular set of circumstances which compounded the problems identified. As the report details, the service user moved into a care home as a self-funder, choosing a home that would not accept contracts at the Council 'usual rate' of payment. When she subsequently moved to local authority support, a family member agreed to make a "third party top-up" to allow her to continue to live in that home. This followed a 12-week period in which the Council paid the fees (minus the "top-up") due to the legal requirement to disregard property-related assets for the first 12 weeks of care. During this period, the third party was required to make the 'top-up', but not the service user. Then she moved to payment by the Council, alongside her own service user contribution and that of the third party. During these changes of arrangement, the usual system of assessment, personal budget, support plan, identification of options, contracting and financial assessment was not followed in the 'typical' linear way.

2.3 This should not, in itself, have meant that the important steps in the journey were missed, but it must nevertheless be acknowledged in this case that there were lapses in the process followed by the Council. In addition, the complexities of the

funding system are part of the case made by the Local Government Ombudsman about the importance of the Council paying the full amount and recharging service users. To 'contract out' the income collection to the care home transfers some of this financial complexity to individuals and their families, at a time in their lives when there are many other issues causing them concern and anxiety. It is the Ombudsman's contention that avoiding this confusion is the intention of the Care Act when it comes to financial aspects of social care provision, and this is certainly consistent with the Care Act's emphasis on good information and advice, and provision of support to service users on making informed choices.

2.4 An overview of the issues as they present more widely in the service is as follows:

Issue	Estimated prevalence in B&D
Paying net of service user contribution for residential care	All service users as standard
Paying net of third-party contribution for residential care	A very small number of third-party contributions are in place (ca. 30, and we continue to be informed about more arrangements made by care homes) In all of these cases, we pay net
Information and advice provision about charging and third-party top-up	Inconsistent and needs review. Record of having provided I&A not currently taken
Personal budgets recorded for residential care cases	The system requires a budget in order to make the payment, but we do not currently term this the 'personal budget'. Need, therefore, to be consistent on language and terminology.
No support plan in place for residential care placements (reliant on the care home holding the plan)	Support plan is required in the new LiquidLogic system to progress to the next stage of the care planning process. Checks suggest that this non-compliant case was an exception migrated from the old system.
Recording of offer of alternative place within the personal budget amount where a third party top-up is in place	Not currently recorded in all cases with a third party top up.
Top-up agreements currently between care home and third party, not between Council and third party	Currently non-compliant for all third party top-up arrangements

- 2.5 The actions being taken in respect of these issues are detailed in section 3, below.

Publication of the report

- 2.6 The report was published on 17 April 2019. A notice, as required, was published in the Barking & Dagenham Post on 24 April. It is then a further requirement that the details of the judgment is laid before Council, which is the subject of this report.

3. Proposed actions

- 3.1 The LGO's observations in this case sit alongside some other work internally which has highlighted that we need to review and strengthen the arrangements for business support to the social care function. It is therefore fortunate that the Council has the opportunity to build the changes required by the LGO into a larger piece of work on the social care finance and business function, including all aspects of financial assessment, charging, payment and contracting for care. This will have significant benefits for both service users and providers when implemented, and the consistency and ease with which people go through the system. The LGO accepts entirely that the shift in systems is not something that can be achieved overnight. We are therefore proposing to go to gross payment from 1 April 2020.
- 3.2 We are currently scoping the resource implications of implementing these changes but are confident it can be managed within the wider transformation activity. We are also aware that there may be enhanced demand on the income recovery function, but on first assessment we anticipate that, relative to the scale of income recovery activity corporately, this is unlikely to be a significant additional burden.

The proposed action plan

- 3.3 For the wider criticism levelled at the Council, much of the actions are about data recording improvements and some practice development. Immediate communications have been undertaken about the issues involved, and there are workstreams on assessment processes and practice that will provide opportunities to strengthen this. Work is already underway to redesign the whole information and advice offer in adult social care, working with Community Solutions and other partners.
- 3.4 Actions being worked on are currently:

Action	Proposed date
Move to payment of gross fees instead of net	<i>Arrangements being scoped now, linked to a wider programme of improvements in business support in social care. Aiming for introduction on 1 April 2020, together with a number of other modifications to charging arrangements</i>

<p>New form of third-party top-up agreement between council and third party, clearly setting out the amounts involved, compliant with Care Act requirements, and including record of third party's request to pay the provider directly, where this is desired</p>	<p><i>Underway, currently finalising review by Legal Services, aiming for introduction from 1 July 2019</i></p>
<p>Revise the contract for residential care to be compliant with these changes</p>	<p><i>Some amendments have already been drafted for introduction in early 2019/20, but we will need to keep it under review ready for the change of payment arrangements from 1 April 2020</i></p>
<p>System change to explicitly agree a personal budget equal to the 'usual rate' for every residential care placement</p>	<p><i>Whilst we believe this is, in practice, what is happening, the system changes required to more explicitly record it will be introduced from July 2019</i></p>
<p>Review all residential care placements on LiquidLogic to ensure that a support plan is included.</p>	<p><i>On first assessment, there are relatively few placements where this is not the case, and the review work (and resolutions as needed) will be completed by July 2019</i></p>
<p>System change to ensure that clear record is made of the offer of at least one placement within the personal budget rate whenever there is a third-party top-up agreement</p>	<p><i>Again, it is our contention that no-one is forced into a third-party top-up by our inability to provide choices at the 'usual rate'/personal budget for residential care; however, we will introduce improved recording of the choices offered from April 2019</i></p>
<p>Confirmation of removal of all direct third- party payment arrangements by care homes, and prohibition of such under the terms of the contract with the Council</p>	<p><i>This is underway, having asked all residential/nursing homes to confirm the third-party top-up arrangements that they have in place. We are working through the remaining providers who are yet to provide information in response to our request. Once we have clear understanding, we will transfer them to an agreement between the Council and the third party by July 2019.</i></p>
<p>Revision of information and advice provided at the point of choosing a care home, and linked to the final agreement(s) as follows</p>	<p><i>As part of a wider piece of work in revising all of our suite of information and advice, we are prioritising the stages in the support planning process around choice of residential care home and the associated finances.</i></p>

- 3.5 These actions are all broadly straightforward in their link back to the findings in the report but, obviously, with the wider programme under development there may need to be some flexibility to apply timescales and exact activity.
- 3.6 For this reason, it is proposed that Assembly refer the matter to the Overview & Scrutiny Committee for consideration of the impact of the changes, to be considered in the first quarter of 2020, at which point many actions will be completed and the preparations will be in place to move to gross payment from 1 April 2020.

4. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager- Service Finance

- 4.1 This report sets out the findings of the Local Government Ombudsman on a matter relating to Residential Care contributions. The direct financial implication of the report is the requirement to repay a sum of around £5,000 to the complainant. This will be found from with the Council's Adult Social Care budget.
- 4.2 The Ombudsman has also made a range of other findings and recommendations that will have an indirect financial impact on the council including the need to change processes for care contributions and third party top up. There is currently already a review of related systems and processes underway for which funding and resources have been identified which will include this work.
- 4.3 The move to paying providers gross and collecting client contribution will have a small adverse impact on Council cashflow and increase its financial risk. However, this is hard to quantify and is not likely to be significant in the context of the Council's overall budget.

5. Legal Implications

Implications completed by: Dr. Paul Feild, Senior Governance Lawyer

- 5.1 The Councils Constitution (Part 2 Chapter 4 (xvi)) provides that the Assembly shall receive reports and recommendations from the Ombudsman and Government or other Inspectorates.
- 5.2 The Local Government Ombudsman was established by the Local Government Act 1974. Its role is to investigate complaints about 'maladministration' and 'service failure' by councils and certain other bodies. This includes individuals, organisations or companies providing services on the Council's behalf. The Ombudsman will also consider whether any fault has had an adverse impact ('injustice').
- 5.3 If fault has caused an injustice, the Ombudsman will make a report which the Council must consider and provide evidence to that effect and it shall confirm to the Ombudsman within three months the action it has taken or proposes to take. In this report to the Assembly the fault has been identified and accepted by officers and a proposed way forward identified.

- 5.4 Finally, to ensure service improvement officers have recommended that the Assembly refer this matter in due course of six months to the Overview and Scrutiny Committee to review and ensure best practice is implemented.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix 1: Report of the Local Government & Social Care Ombudsman, Investigation into a complaint against London Borough of Barking & Dagenham and Moreland House Care Home, 11 March 2019

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
London Borough of Barking & Dagenham
and Moreland House Care Home**

(reference numbers: 18 002 772 and 17 012 203)

11 March 2019

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mrs A	the complainant
Mrs B	her mother

Report summary

Adult Social Care – charging

Mrs A complains about London Borough of Barking and Dagenham (the Council) and Moreland House Care Home (the Care Home). She says there were errors in charging which meant her mother Mrs B paid more than she should have done.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- repays half the client contribution for Mrs B;
- ensures all clients have a care and support plan which contains a personal budget and offers a placement within the client's personal budget;
- ensures written top-up agreements between a third party and the Council are in place in all cases where a person is paying a top-up; and
- reviews its fee collection arrangements and ensures they are in line with the law and guidance described in this report.

The Council has accepted our recommendations.

We recommend the Care Home:

- pays Mrs A £250 to reflect her avoidable distress;
- stops entering into third-party top-up agreements where a council has arranged the placement; and
- removes references to third-party top-ups in its private contract.

The complaint

1. Mrs A complains about care home charges for her mother Mrs B at Moreland House Care Home (the Care Home). The charges relate to a period when London Borough of Barking and Dagenham (the Council) funded the placement and a later period of self-funding.
2. Mrs A considers there may have been errors in payments at the end of 2016. If there has been an overpayment, she would like a refund.

The Ombudsman's role and powers

Complaints about councils and organisations acting for councils

3. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
4. We investigate complaints about 'maladministration' and 'service failure' by councils. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A (1), as amended*)
5. The Council must consider this report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Complaints about adult social care providers

6. We also investigate complaints about adult social care providers from people who arrange and pay for their care privately (self-funders). We decide whether the care provider's actions have caused an injustice, or could have caused injustice, to the person making the complaint. (*Local Government Act 1974, sections 34B and 34C*)
7. If an adult social care provider's actions have caused an injustice, we may recommend a remedy. (*Local Government Act 1974, section 34H (4)*)
8. The adult social care provider must consider our findings in this report and notify us within one month (or longer if we agree) of the action it decides to take, including whether it accepts any recommendations. If we are dissatisfied with a care provider's response, we may require it to publish an adverse findings notice. If we receive no response from an adult social care provider, we may publish an adverse findings notice. (*Local Government Act, 1974, section 34I*)

How we considered this complaint

9. We produced this report after examining relevant documents and speaking to the complainant.
10. We gave the complainant, the Council and the Care Home a confidential draft of this report and invited their comments. The comments received were considered before the report was finalised.

What we found

Relevant law and guidance

11. Where a council assesses a person's needs and agrees to provide care, it should set a personal budget in a care and support plan. A personal budget is a statement which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. *(Care Act 2014, section 26)*
12. Councils can charge people towards the cost of a care home placement. They complete a financial assessment, applying charging rules in regulations and guidance to determine how much a person pays. People who have over £23,250 (including property) pay the full cost. However, once their capital has reduced to under £23,250, they pay an assessed contribution towards their fees. *(The Care and Support (Charging and Assessment of Resources) Regulations 2014; Care and Support Statutory Guidance 2014 (CSSG))*
13. Guidance requires councils to make sure there is information and advice available in an appropriate format to ensure residents and their representatives understand charges. *(CSSG paragraph 8.3)*
14. When carrying out a financial assessment, a council must ignore the value of a care home resident's property for the first 12 weeks after their stay becomes permanent. This means the council will assist with funding of the placement for the first 12 weeks. Funding in this period is called a "12-week property disregard". *(CSSG paragraph 45(a), Appendix B)*
15. A council must arrange or provide a person with a placement in their preferred care home if:
 - the care and support plan specifies the adult's needs are to be met by accommodation of a specific type;
 - the preferred care home is of the same type specified in the care and support plan, is suitable and available;
 - the care provider is not the council and it (the care provider) agrees to provide the service on the council's terms.

If the preferred care home costs more than the adult's personal budget, then there must be another person willing and able to pay the extra cost ('top-up'). Guidance emphasises the requirement for real choice and that the council must ensure at least one care home is affordable within the personal budget. *(Care Act 2014, section 30 and Care and Support and After-Care (Choice of Accommodation) Regulations 2014, regulations 2 and 3(2), CSSG Annex A paragraph 12)*

16. Guidance requires a council to ensure the top-up payer can afford to meet the cost. It must enter into a written agreement with the payer. The agreement must include:
 - the additional amount to be paid;
 - the amount specified for the accommodation in the person's personal budget;
 - the frequency of the payments;
 - to whom the payments are to be made;
 - provisions for reviewing the agreement;
 - a statement on the consequences of ceasing to make payments;

- a statement on the effect of any increases in charges that a provider may make;
 - a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'. (CSSG, Annex A, paragraph 23)
17. Before making the top-up agreement, the council must provide the top-up payer with sufficient information so they understand it. (CSSG, Annex A, paragraph 24)
 18. Councils should avoid making care providers collect top-ups. Guidance explains *"if the arrangements for a 'top-up' were to fail for any reason, the local authority would need to meet the cost or make alternative arrangements, subject to a needs assessment Local authorities should therefore maintain an overview of all 'top-up' agreements and should deter arrangements for 'top-up' payments to be paid directly to a provider"*. (CSSG, Annex A, paragraph 25)
 19. Where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is also responsible for paying the full amount, including where a 'top-up' fee is being paid. However, where all parties are agreed it may choose to allow the person to pay the provider directly for the 'top-up' where this is permitted. In doing so it should remember that multiple contracts risk confusion and that the local authority may be unable to assure itself that it is meeting its responsibilities under the additional cost provisions in the Care Act. Local authorities must ensure they read the guidance at Annex A on the use of 'top-up' fees. (CSSG, paragraph 8.33)
 20. Guidance does not directly address responsibility for making payments of the client contribution. In the context of third-party top-ups, Guidance says *'the local authority is responsible for the total cost of the placement'*. (CSSG, Annex A paragraph 28)
 21. Any money owed to a council (whether a top-up or client contribution) is recoverable as a debt due to it. (Care Act 2014, section 69)
 22. Our focus report [Counting the Cost of Care](#) (September 2015) about our experience of handling complaints about care home funding highlighted common problems including poor or no information in writing, lack of choice of placements and councils abdicating responsibility for top-ups. We issued the focus report to remind councils of their legal responsibilities.

What happened

23. Mrs B moved into Moreland House (the Care Home) on 2 September 2016 for respite care following an illness. Until going into Moreland House for respite, Mrs B had been getting home care funded by the Council. Mrs A manages her mother's (Mrs B's) finances as her attorney. Mrs A arranged Mrs B's respite care in Moreland House without input from the Council and paid for it privately out of Mrs B's funds. The Care Home told us the weekly fee was £850, although its contract with Mrs A says £900.
24. Mrs A signed the Care Home's standard contract on 8 September. The Council was not a party to this. The contract says:

'where a service user is funded by a local authority, and the amount paid by the local authority is less than the weekly fee, the shortfall must be met by a top up payment... the third-party contributor will be required to enter into a third-party agreement with the service provider [the Care Home] if the third-party ceases payment of the third party top up, the service provider reserves the right to terminate the contract'.

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25. Mrs A also signed a third-party top-up agreement on 8 September. This was between the Care Home and Mrs A and the Council was not a party to it.
26. At some point in September, Mrs A approached the Council about Mrs B's future care as she felt her mother was not safe to return home. The Council carried out an assessment of Mrs A's care needs and a financial assessment, with the outcome being to provide Mrs B with funding for Moreland House under the property disregard rule described in paragraph 14. The gross weekly fee for the placement remained £850.
27. The Care Home entered into a contract with the Council. The Care Home sent us a copy of the signature sheet: it is not clear whether the Care Home received a full copy of the contract. The Council sent us a blank copy. Relevant clauses are summarised below.
- Clause 13.2: the client pays the Care Home the client contribution. If there are eight weeks' arrears, it tells the Council and can invoice the Council for the arrears.
 - Clause 13.3: if the client does not agree to pay the contribution to the Care Home, the Council pays the total price and will reclaim the contribution from the client. The third-party contribution is recorded as a separate contract between the third party and the Care Home. The contribution, with the client's agreement, is paid by the third party directly to the Care Home.
 - Clause 13.5: The Council will create a separate third-party contract with the person(s) making the third-party contribution. That contract will say:
 - that the third party will pay the top-up to the Care Home;
 - that the Council retains the right to terminate the contract, subject to consultation with the Care Home, if the third-party contribution is not kept up;
 - that the third party will continue to pay during any periods of temporary absence from the Care Home (such as the client going into hospital).
 - Clause 13.8: the Care Home will notify the Council in writing if payment of a third-party contribution has not been made within 14 days of the due date.
28. The Council told the Care Home it was contracting for Mrs B's care at £575 a week with a third-party top-up of £285 to be paid directly to the Care Home. The letter did not say anything about the client contribution.
29. The Council wrote to the Care Home again in October, saying the placement was £565 (this was an error, it should have been £575) a week and the Care Home would need to collect the client contribution. The letter did not say how much the client contribution was or anything about the top-up. The Council also wrote to Mrs A saying the gross fee for Mrs B's placement was £565 (again, this is an error, it should have been £575) with a breakdown of how it calculated Mrs B's client contribution of £382.01.
30. The Council wrote to Mrs A on 7 October explaining there had been an error in its letter and Mrs B's client contribution was £245.71 (as Attendance Allowance should not have been included in the financial assessment because it had stopped). The Council told the Care Home it would pay the fees net of the £245.71 client contribution and the Care Home would need to collect the client contribution from Mrs B.

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31. In January 2017, the Council wrote to Mrs A explaining Mrs B would become a self-funder after the property disregard period. It offered a deferred payment agreement, under which the payment of care fees is delayed and the debt accrues, with a legal charge on the person's home allowing the council to reclaim the money when it is sold. Mrs A declined a deferred payment agreement.
32. On 30 January, the Council wrote to the Care Home saying '*we will be paying the net care fees and you will need to collect the client contribution as follows: From 28 September to 12 February at £245.71 a week*'.
The letter instructed the Care Home to invoice Mrs B for the client contribution. The letter did not say anything about a third-party top-up.
33. The 12-week property disregard period ended on 31 January 2017. This was when council funding should have stopped according to the property disregard rule. However, the Council extended its funding to 12 February and sent Mrs A an invoice for '*residential care property debt of £2916.57 for the period 13 December to 12 February*'. (It is not clear what the phrase 'property debt' means in this case as there was no deferred payment agreement.) The invoice was on Council headed paper. It appears the Council was expecting Mrs A to pay this invoice directly to the Council.
34. Mrs A and a finance officer spoke on the phone. The finance officer confirmed in an email that the Council was extending council funding for Mrs B's placement to 12 February.
35. On 31 January, the Care Home sent an invoice for £4,844 to Mrs A, for Mrs B's client contribution of £245.71 a week for the period 28 September to 12 February.
36. From 13 February, Mrs B became self-funding. The total weekly fee for the placement was £850.
37. Mrs A completed paperwork in February to set up a standing order for Mrs B's charges, but the Care Home did not action it so the weekly fee was not paid for several months.
38. In April 2017, the Care Home emailed the Council's finance officer with queries:
- Mrs A was confused about the invoice for £2,916.57 she had received from the Council (see paragraph 33);
 - the Care Home was unclear about what client contribution to collect as it had received letters with different amounts.
39. The finance officer replied saying he had cleared up the confusion about the invoice with Mrs A directly and it had been resolved. He confirmed the weekly client contribution was £245.71.
40. In May, the Care Home wrote to Mrs A, enclosing a fresh standing order mandate. The outstanding balance was £14,650.
41. In September, the Care Home wrote to Mrs A. The letter:
- confirmed receipt of a payment for the first four weeks of Mrs B's stay (when she self-funded);
 - explained it collected the client contribution from 28 September to 12 February;
 - explained a contract for the third-party contribution had been signed and this had been paid;
 - said Mrs B became a self-funder again on 13 February at a fee of £850.

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42. In October, a Council finance officer emailed the Care Home confirming the total client contribution for the period of council funding was £4,844 and the total payment from the Council was £6,491.72. The email also said '*if you had a third party top up agreement with the family then this must be paid in addition to the £4844 client contribution*'.
43. Mrs A complained to the Care Home in October. The Care Home acknowledged its error and said there had been a delay of four months in setting up the standing order mandate so no payments had been made. It apologised and suggested Mrs A paid off the arrears by making additional payments.
44. A council finance officer wrote to Mrs A in June 2018, in response to a letter she sent in April. He explained the client contribution initially included Attendance Allowance but this was corrected and the contribution was adjusted (reduced). He confirmed Mrs A had paid the property debt invoice. (see paragraph 33)
45. The Council has provided us with a copy of a letter from Mrs A saying she agreed to pay a top-up, but it has not provided a top-up agreement with Mrs A.

Comments from the Council and Care Home

46. The Care Home told us:
- there was no formal contract with the Council for Mrs B's care. There was an individual placement agreement letter;
 - there was a clerical error which meant it did not action the standing order. It had apologised for this;
 - had it activated the standing order, there would have been an overpayment as Mrs A had put the wrong amount. Mrs A would have been getting monthly bank statements and could have picked up the payment was not going out;
 - it was still owed a significant amount;
 - most other councils it works with require it to collect client contributions;
 - some councils refuse to make top-up payments in the event of non-payment by the third party and some have also said that the top-up is not part of their contract. And councils may require the home to take steps to recover any debt. Without an obligation between the third party and the home, the scope for debt recovery is limited;
 - it is difficult for the home to keep track of payment calculation and administration when clients move between periods of self-funding and council funding.
47. The Council told us:
- its policy is to pay care homes net of client contributions and top-ups. This happens in all cases;
 - statutory guidance said it was liable for costs but did not specify that councils must make full payment and recharge the service user;
 - its contract said it was responsible in the event of default and would make the payment and take up the matter with the client/top-up payer;
 - payment of top-ups to a care provider was not the preferred approach but it was permitted;
 - it considered the Care Home made errors: the letter in September 2017 did not separate the client contribution Mrs B was required to make from the amount

paid by the Council. And there was a delay in setting up a standing order to collect client contributions;

- its letter to the Care Home in January made no reference to top-up payments, only to the client contribution;
- it could have provided clearer information to Mrs A and to the Care Home about the three elements of the care cost: the top-up, the client contribution and the Council contribution;
- there was inconsistency in the information Mrs A received. This led to confusion and a debt being created;
- Mrs A did not receive a payment reminder about Mrs B's client contribution until the debt reached about £5,000. She was faced with a large debt that could have been identified and addressed earlier. The Council would pay half of the debt;
- there were 340 others in residential care who pay their care home contributions directly to a care provider; and
- there were vacancies in seven different care homes at the time Mrs B was placed. These placements were at the Council's personal budget rate and so could have been provided without a third-party top-up.

Conclusions

The Council and Care Home's actions when the placement was council funded

48. The care charging framework is complex and can be difficult to navigate, particularly when people switch between periods of council funding and self-funding. Other councils pay care providers the full fee and bill the client and third party directly. Here, there is an additional layer of complexity because of the Council's arrangement with care homes to collect client contributions and top-ups.
49. The principles of Care and Support Statutory Guidance (CSSG) aim to:
 - avoid the risk of confusion caused by multiple contractual and payment relationships;
 - give people genuine freedom of choice and clear information to enable them to make informed decisions about payment arrangements;
 - provide assurance for the council that it is meeting its responsibilities to both the payer and care home as regards top-up fees; and
 - ensure no undue pressure is placed on top-up fee payers by a care home to increase the top-up.
50. CSSG strongly discourages councils from getting care providers to collect third-party-top ups on its behalf, although this is permissible if there is choice and all parties agree. CSSG only specifies this arrangement is allowed for top-ups and does not provide any similar discretion for client contributions to be collected by a provider. This makes common sense in terms of the intent as it is the care home resident who is likely to be most in need of the administrative protections the guidance envisages.

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51. We consider the Council and Care Home failed to offer the protection afforded by the statutory charging framework in this case and this was fault. Their actions fell short of standards in applicable law and guidance because:
- the Council contracted out the collection of client contributions to the care provider which is not permissible under CSSG. If it were allowed, CSSG would have said so;
 - the Council gave the Care Home and Mrs A inadequate, confusing and incorrect information about the different elements of the fee for Mrs B's care. This is not in line with paragraph 8.3 of CSSG or paragraph 24 of Annex A;
 - the Care Home did not invoice Mrs A for the client contribution until the end of January 2017. This was three months after the Council started funding the placement. The delay meant Mrs A received a large invoice for the client contribution;
 - the Council's standard contract with care homes allows for eight weeks of unpaid client contributions until the care home is allowed to invoice the Council for the unpaid money. This means a significant debt may be owed by the client and the care home is also out of pocket. It also means the Council does not have a full overview of fee payment, does no monitoring for eight weeks and cannot identify early on where a client may be in difficulty;
 - the Council did not set a personal budget for Mrs B and it did not prepare a care and support plan, which should have contained a personal budget. This is not in line with section 26 of the Care Act 2014;
 - the Council did not offer Mrs B a placement without a top-up. It says this was because Mrs A had already 'chosen' the Care Home, but we do not consider the family were offered a meaningful choice that was within the law. It is not enough for the Council to say that there were vacancies in other homes at the personal budget rate that would in theory have been suitable for Mrs B. The Council has to evidence that it set a personal budget and offered at least one such placement. It failed to do so and we conclude it did not act in line with section 30 of the Care Act 2014 and Choice of Accommodation Regulations;
 - the Council claims the letter from Mrs A saying she agreed to pay a top-up was a top-up agreement, but it was just a letter. The information prescribed in paragraph 23 of Annex A to CSSG was lacking. There was an agreement between the Care Home and Mrs A for the top-up. But this was also inappropriate because Annex A makes clear that the agreement should have been between the Council (not the Care Home) and the top-up payer. The position is further confused by the Care Home's top-up agreement starting before the Council commenced funding Mrs B's care: there should only be a top-up agreement between a council and third party for a period where a council funds a placement;
 - clause 13.3 of the Council's standard contract with care homes sets out a requirement that care homes have a written top-up agreement with a third party top-up payer. This is not in line with Annex A of CSSG as the agreement should be between the Council and third party;
 - top-up payers and care providers should actively agree to payments being made to the Care Home. The Council told us payments were made net of client contributions and top-ups in all cases. We consider the statutory framework envisages provision of appropriate information on charges and a choice of whether to pay the council or provider. There is no record in this case of the

Council consulting with Mrs A or discussing the different payment options. This is not in line with paragraph 8.3 of CSSG. The Council's actions did not give Mrs A the meaningful informed choice envisaged by the guidance;

- the Care Home's contract says it may end the contract if the third party does not pay the top-up. This is inappropriate and unnecessary because the Council retains responsibility for payment if the third party does not pay and so the Care Home should then look to the Council for payment of the debt. The Care Home should not need to rely on a contractual provision to evict residents for non-payment of top-ups because the statutory charging regime makes it clear that the Council is responsible for the whole fee;
- the council finance officer's email to the Care Home '*if you had a third party top up agreement with the family then this must be paid in addition to the £4844 client contribution*' suggests he was not aware of the law and guidance on top-up agreements which says the agreement should be between the Council and third party.

Actions by the Care Home when Mrs B was a self-funder

52. The Care Home issued a contract with Mrs A and a third-party top-up agreement when Mrs B first moved in as a self-funder. This contract had a clause allowing the Care Home to end the contract if the third party did not pay the top-up. This clause is inappropriate and should not be present in a private contract where there is no local authority funding: a third-party top-up is specific to a local authority funded placement only.
53. The Care Home should not have had a top-up agreement with Mrs A. The top-up agreement should have been between Mrs A and the Council.
54. The Care Home was at fault when it failed to action the standing order. This caused yet more confusion for Mrs A and meant three months' arrears accumulated.

Injustice

55. The Council and Care Home's actions caused Mrs A avoidable confusion and distress during a period when she was inevitably already distressed about Mrs B's ill-health.

Recommended action

Recommendations for the Council

56. Our recommendations aim to restore the person affected to the position they would have been in but for the fault and to minimise recurrence in similar cases. We do not always recommend reimbursement of care home fees a council is entitled to charge. In this case, we have taken into account:
 - the lack of a top-up agreement between Mrs A and the Council;
 - the lack of a care and support plan with a personal budget; and
 - the failure to evidence at least one placement offered at the personal budget rate.
57. The above factors mean in this case we consider there are grounds to recommend the Council reimburses Mrs A all the top-up payments she made for Mrs B's care. We consider the absence of due process around care planning and financial assessment; the defects in the arrangements for fees and contracts; the

absence of an affordable option; and the lack of meaningful, informed choice throughout mean that there is significant doubt about what the outcome might have been but for the fault. In this case, had the procedural safeguards been in place and had meaningful, informed choice been present, we can conclude that the outcome might well have been different, and a top-up might well not have been required. So we are satisfied that a full refund of the top-up in these circumstances is appropriate.

58. During this investigation, the Council offered to pay half the client contribution for Mrs A in recognition of the fault in its handling of the case and the distress caused. This is £2,422 and is an appropriate remedy. In addition, we recommend the Council, within three months of this report:
- undertakes a review and ensures care and support plans, with a personal budget, are provided as appropriate for all clients;
 - ensures clients requiring a placement are offered at least one care home place in accordance with their personal budget without a top-up. The records should clearly show the offer made; and
 - ensures it has top-up agreements with third parties in all cases where there is a top-up.
59. We also recommend the Council reviews its fee collection arrangements with care homes to ensure that they are in line with its responsibilities under the Care Act 2014 and CSSG. In particular, the Council should:
- amend its standard contract with care homes to remove references to top-up agreements between care homes and third parties;
 - take back responsibility for collecting client contributions for all care home placements it commissions (that is, ends the practice of care homes collecting client contributions);
 - ensure the Care Home's contract does not allow it to evict clients for non-payment of a top-up (because the Council is responsible for the full fee);
 - review other cases where there is a top-up and offer a remedy if other clients are similarly affected; and
 - ensure when it places people in care, that they are given the option to pay the top-up to the Council. We make this recommendation because the Council told us that payment to the provider happens in all cases. We consider the statutory framework envisages people having meaningful, informed choice and this means they should have the option to pay their council should they prefer.
60. The Council has indicated it accepts our findings and we welcome this constructive agreement to implement the recommendations. We recognise this is a significant change to the current system and the Council will need time to consider the actions needed and put in place a new fee-collection process. The Council's intention is to implement the necessary changes to collecting payments in stages and will put in place interim measures meantime, to avoid the risk of recurrence. It should update us with a more detailed action plan within three months of this report. This action plan should have timescales to address the recommendations in paragraph 59.

Recommendations for the Care Provider

61. The Care Provider's failure to action a standing order form for three months caused debt to accrue. The Care Provider has already apologised for this. To

reflect the avoidable distress and confusion to Mrs A, we recommend a payment of £250 within three months of this report.

62. In addition, within three months of this report, the Care Provider should ensure it does not enter into any third-party top-up agreements. And it should remove the clause in its private contract which allows it to terminate the service for non-payment of a top-up as this clause is confusing and unnecessary when there is no local authority involvement in a private placement.
63. We note the Care Provider's comments about other councils who place clients with it adopting the same or similar practice to this Council. We do not consider this justifies the Care Provider continuing with arrangements we have criticised in this case. We have issued this report to highlight our findings to other councils and care providers and would urge them to take steps to ensure their charging and payment collection arrangements comply with CSSG.
64. We note also the Care Home is still owed money in outstanding charges pending the outcome of this investigation and says it should not have to pay anything to Mrs A in light of the debt owed by Mrs B. Mrs A does not dispute that her mother owes some money, but the reason for her complaint was out of concern that her mother had overpaid and the lack of clear information about the charge. Our recommendation for the Care Home is to make a payment of £250 to Mrs A in reflection of her avoidable distress and confusion. That payment is to remedy her personal distress and confusion and is separate from any monies her mother owes. We see no reason to offset this payment against any debt owed by Mrs B.

Decision

65. We uphold Mrs A's complaint against Moreland House Care Home and London Borough of Barking and Dagenham because they did not act in line with law and guidance on charging. This caused Mrs A avoidable confusion and distress. To remedy the injustice, the Council and Care Provider should make the payments and take action described in paragraphs 56 to 64 of this report.
66. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
67. Moreland House Care Home must consider our findings within one month (or longer, if we agree) and notify us of the action it decides to take, including whether or not it accepts any recommendations. If we are dissatisfied with the response, we may require it to publish an adverse findings notice. If we receive no response, we may publish an adverse findings notice. (*Local Government Act, 1974, section 34*)

ANNUAL ASSEMBLY

15 May 2019

Title: Appointment of Independent Persons	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: Paul Feild Senior Governance Solicitor	Contact Details: Tel: 020 8227 3133 E-mail: paul.feild@lbbd.gov.uk
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law & Governance (and Monitoring Officer)	
<p>Summary:</p> <p>The Council must appoint Independent Person(s) (IPs) to perform an advisory role as part of arrangements regarding the following:</p> <ul style="list-style-type: none"> (i) Investigating and determining complaints made under the Councillors Code of Conduct as required by the Localism Act 2011 (the Act); and (ii) Disciplinary proceedings for Statutory Chief Officers (Statutory Standing Orders (SI 2015 / 881). <p>Following a review of the Council's arrangements, it is proposed that the services of the three current IPs be retained for a further three-year term.</p>	
<p>Recommendation(s)</p> <p>The Assembly is recommended to agree the extension of the appointment of Mr Michael Carpenter, Dr Gurpreet Singh Bhatia and Pastor Thomas Adeyemi Aderounmu as Independent Persons, under the Localism Act 2011, until the next Assembly meeting following the Annual Assembly in 2022.</p>	
<p>Reason(s)</p> <p>Section 28(8) (c) (iii) of the Act states that decisions on the appointment of Independent Persons must be agreed by a majority of Councillors.</p>	

1. Introduction and Background

- 1.1 From 1 July 2012, the Localism Act 2011 (the Act) required that councils must adopt local codes of conduct and establish the means to investigate and determine complaints about Councillors. At the Assembly meeting on 11 July 2012, Members adopted the LBBB Code of Conduct in accordance with the Act, together with procedures for investigating and deciding on allegations of breaches of the Code.

- 1.2 The Act further required that the Council appoints at least one Independent Person (IP):
- (a) whose views are to be sought and taken into account by the Monitoring Officer on an allegation being considered for investigation, but before a decision to investigate is made; and
 - (b) whose views may be sought:
 - (i) by the Monitoring Officer on other matters relating to an allegation; and
 - (ii) by a member or co-opted member of the Council who has been complained about.
- 1.3 To ensure 'independence', an IP is not to have links to the Council, Councillors or officers or been an elected Member for the previous five years.
- 1.4 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015 / 881) amended the disciplinary procedure for statutory chief officers i.e. the Head of Paid Service (Chief Executive), Chief Finance Officer (Chief Operating Officer) and the Monitoring Officer (Director of Law and Governance). SI 2015 / 881 introduced the requirement for two IPs to be appointed to sit on a statutory Chief Officer disciplinary panel.
- 1.5 Two IP appointments were made in 2012. At the Assembly in February 2014, the Monitoring Officer presented a report recommending that the Council make an additional appointment to provide resilience in the event of potential issues of conflict of interest or general unavailability of one of the Council's IP's.
- 1.6 Mr Michael Carpenter has held the position of IP since July 2012. Dr Gurpreet Singh Bhatia and Pastor Thomas Adeyemi Aderounmu were appointed as IPs in February 2015.

2. Proposals

- 2.1 A desk top review has been carried out which examined the number of Members' Complaints where Independent persons were needed. Whilst there have been a number of complaints under the Members' Complaints arrangements, there have only been two matters which required a formal Complaints hearing, the first being in February 2016 and the second in October 2018. Up until the hearing in 2016 the last Members' Complaint hearing was in March 2010.
- 2.2 While it is not possible to predict the level of future complaints, the picture at Barking and Dagenham is that the need for a formal Complaints hearing is very rare. It is therefore difficult to justify the cost of recruiting, inducting and training three new IPs, particularly when the current IPs are so skilled under the Members' Complaints Code and the arrangements for a statutory officer's disciplinary committee.
- 2.3 The Monitoring Officer has contacted the three current IPs and they have all expressed a willingness to continue. It is proposed, therefore, that the

appointments of Mr Carpenter, Dr Bhatia and Pastor Aderounmu are extended until after the Annual Assembly meeting in 2022

3. Options Appraisal

- 3.1 The appointment of at least one Independent Person is a statutory requirement of the Act.
- 3.2 When Barking and Dagenham's scheme was established in late 2012 a minimum number of two was proposed, principally because of the risk of conflict of interest. The current level of three IPs is considered appropriate, in order to provide added resilience and in view of the requirements of SI 2015 / 881.

4. Consultation

- 4.1 It is a statutory requirement that Assembly is consulted and approves the appointments.

5. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager- Service Finance

- 5.1 The position of IP attracts an annual allowance of £500. The IP's may also claim reasonable expenses for attendance, travel and subsistence.
- 5.2 The allowance and any expenses required to fund these posts will be met from existing budgets within Democratic Services.

6. Legal Implications

Implications completed by Suzan Yildiz, Deputy Head of Legal Services

- 6.1 The body of this report sets out the legal framework. As explained, by virtue of the Act, the Council is required to have a minimum of one IP, although this is considered to be unsatisfactory as there are circumstances where statutory obligations, such as the right for a Member to consult with an IP, the need for consultation by the Monitoring Officer and a Sub-Committee, dictate that two or more IPs are required. An arrangement of a minimum of one IP does not provide sufficient resilience, e.g. if the IP is not available or a member wishes to consult with an IP. In addition, with the extension to the duties of an IP to sit on a Chief Officer disciplinary panel, Members are recommended to agree to the re appointment of the IP members as set out in this report.

7. Other Implications

- 7.1 **Risk Management** - The Council has a duty to promote and maintain high standards of conduct. Failure to appoint IP's puts the Council at risk of not being able to fulfil these duties in accordance with the Act
- 7.2 **Customer Impact** - Residents of the borough must be confident that the Council will continue to promote and maintain high standards of conduct through the implementation of the statutory requirements of the Act

Public Background Papers Used in the Preparation of the Report: None

List of Appendices: None