

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

**ADMINISTRATION COMMITTEE – 8 JANUARY 2024
FULL COUNCIL – 31 JANUARY 2024**

**REPORT OF THE CHIEF SOLICITOR & MONITORING OFFICER CHANGES TO,
AND READOPTION OF, THE CONSTITUTION**

The Administration Committee is invited to recommend Full Council to adopt the changes to the Constitution set out in this report and then re-adopt the Constitution in its entirety.

FOR DECISION

1. BACKGROUND

- 1.1 The Council's Constitution is a living document that adapts to reflect changes to legislation and how the Council works. Minor editorial changes are agreed by the Monitoring Officer throughout the year and any more significant changes are brought, via the Administration Committee, to Full Council for agreement.
- 1.2 The current version of the Constitution remains largely unchanged since it was adopted as a fully revised Constitution on 24 July 2019, but was re-adopted in October 2022. The full current version of the Constitution is published [here on the Council website](#).
- 1.3 There have been some recent editorial changes to the Constitution by reason of changes to the senior management team and the resulting changes in management responsibilities. It is good practice for the Council regularly to review the Constitution and to re-adopt it in its entirety. Some amendments are now recommended to parts of the Constitution either to clarify current provisions or practice or to address practical or operational issues that have arisen.

2. PART 4, SECTION 1 – THE EXECUTIVE

Paragraphs 1.19-1.23 - Key Decisions (KDs) and Executive Decisions (EDs)

- 2.1 The Council is required, by virtue of the Local Government Act 2000, to define what is a 'Key Decision': the definition is required to have two 'strands' – both a financial and a local impact criterion. The Constitution also contains a definition of an 'Executive Decision', to capture a wider range of executive-side decisions taken by officers, which need to be publicised in accordance with requirements in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.
- 2.2 The current KD and ED definitions are set out in Part 4 of the Constitution. These two definitions together capture the most significant decisions made:
 - **Key decisions** – taken either by the Council's executive (i.e. the Leadership Team and/or individual Lead Members) – of which there are approx. 150 each year

- **Executive Decisions** – decisions that don't fall within the KD definition but have a value of £100k or more, which are taken by Executive Directors – of which there are approx. 150 each year.
- 2.3 All these decisions are taken in an open and transparent way, with a minimum of 28 days advance notice on the Forward Plan of Decisions, and alerts on each (i.e. when items are added to the Forward Plan, when reports are published and when decisions are confirmed and implemented) are included in the daily and weekly e-notifications.
- 2.4 The changes to the internal management arrangements have included the creation of the post of Strategic Director for Grenfell Partnerships, Communities and Corporate Transformation reporting to the Chief Executive. It is therefore proposed that the definition of “Executive Decision” is amended as follows;
- 1.23 Executive decisions (see paragraph 1.19 above) that do not fall within the Key Decision definition above but which involve income or expenditure of £100,000 or more will be taken by the relevant Executive Director or Strategic Director (and are referred to as ‘Executive Decisions’).*

Decisions delegated to officers as part of a Key Decision

- 2.5 Executive Directors and Directors take operational decisions in accordance with powers delegated to them under the Constitution. Leadership Team and Lead Members often delegate specific decisions to Executive Directors and Directors following consideration of a detailed Key Decision report on a proposal. Such delegations include, for example, the award of a contract following the approval by the Leadership Team of a major project or the setting up of a contract framework from which individual project contracts will be awarded. Often the terms of the delegation requires consultation with the Lead Member before the delegated decision is taken.
- 2.6 The exercise of such delegations amounts to implementation of the decision of the Leadership Team. Such decisions do not follow the Executive Decision process but delegated reports will be prepared and published on the Council's website when decisions are taken in accordance with specific delegations from the Leadership Team.
- 2.7 In order to make this clear and explicit the Administration Committee is invited to **recommend** full Council to add the following paragraph as a new paragraph 1.23 with the subsequent paragraphs re-numbered:
- 1.23 Where, as part of a Key Decision, Leadership Team or a Lead Member delegates one or more decisions to an Executive Director or Director, those subsequent delegated decisions will not be Key or Executive Decisions; however they will only be taken following advance consultation with the relevant Lead Member and on the basis of a written report which will be published on the Council website as and when the delegated decision is taken.*

City Living Local Life and Neighbourhood Community Infrastructure Levy (NCIL)

- 2.8 Both of the above schemes allow ward councillors to agree on projects which should be funded in their wards. Once agreement is reached the relevant

Executive Director or Director will take a formal decision to approve the payments to the successful organisations. The definition of a key decision in the Constitution is such that a grant of £50k would fall within the definition. It is therefore proposed to add a note to clarify that awards of funding within the CLLL and NCIL schemes are not key decisions.

Paras 1.32-1.36 – Urgency Arrangements

- 2.9 The Constitution includes the statutory provisions allowing for urgent Key and Executive Decisions, that is to say decisions where it is not possible to give the full 28 days public notice on the Forward Plan ('general exception') and decisions where it is not possible even to give 5 clear working days public notice (special urgency). Use of standard urgency requires **notification** of the Chair of Overview & Scrutiny (OSC) whereas use of special urgency requires the **agreement** of the OSC Chair.
- 2.10 Though existing Constitutional provisions don't explicitly indicate this, it has always been accepted that the involvement of the OSC Chair is required because of the urgency and, as part of this, the associated need to exempt particularly urgent decisions from call-in provisions so that decisions can be taken and implemented immediately thereafter. It is therefore suggested that a new paragraph 1.37 be inserted, purely to clarify existing arrangements. The Chair of OSC has been consulted and agrees with the clarification:

The implementation of Key and Executive decisions taken under urgency arrangements

'1.37 Decisions taken under special urgency provisions above will be implemented as soon as taken and published and, because they are especially urgent, special urgency decisions are exempt from the call-in procedures elsewhere in Part Four, Section One of the Constitution.'

Contract Regulations – Changes to officer procedures

- 2.11 The Contract Regulations in Part Eight Section Five of the Constitution includes the internal officer procedures to be followed before the approval of a procurement strategy or the award of a contract, above specified thresholds, is recommended to the formal decision maker. The Contract Regulations require endorsement by the officer Commercial Assurance Panel.
- 2.12 It is proposed that the relevant part of the Contract Regulations is amended to provide flexibility so that the commencement of procurement activity and contract awards can be endorsed by an equivalent governance board, to be set up in accordance with the requirements of the Procurement Code, e.g. an internal governance board specifically to consider housing contracts, as an alternative to the Commercial Assurance Panel or the Commercial Governance Review Board (which covers procurement of services for bi-borough Adults and Children's services).
- 2.13 The proposed changes are shown in bold below;

7. Approval of Procurement and Commissioning Decisions

- 7.01 *Before any procurement and/ or commissioning activity begins, endorsement by Commercial Assurance Panel (CAP) or an equivalent*

internal governance board must be sought and demonstrated in line with Governance Requirements (including the relevant provision in Part 4 of the Constitution) and as detailed in the Procurement Code.

7.02 Before award of any contract, endorsement by CAP or an equivalent internal governance board and approval by the relevant decision maker must be sought and demonstrated in line with Governance Requirements as detailed in the Procurement Code.

- 2.14 It is also proposed that the internal threshold for (capital) works contracts, which require endorsement by the Commercial Assurance Panel or an equivalent governance board, will rise from £100,000 to £250,000. These changes would be both proportionate and beneficial to efficient decision-making given the negligible risk involved in these routine matters. None of these proposed changes affect the thresholds for key or executive decisions. If approved the Monitoring Officer will make the relevant changes to the Contract Regulations.
- 2.15 It is further proposed that the internal threshold for call-offs below £500k that are procured via the new Project Union suite of Framework Agreements there will be no requirement for endorsement at CAP or equivalent board at procurement strategy or contract award stages. This recognises the lower risk associated with smaller, less complex works and will enable the prompt delivery of improvements for Council tenants, with quality and value for money having been determined through the procurement of the Framework Agreements. Decision reports will be produced in line with the existing governance thresholds and requirements.
- 2.16 Project Union was established in late 2021 to deliver a new suite of RBKC direct Framework Agreements to transform how the Council procured works, services, and goods across Housing Management, increasing supply chain collaboration, driving standardisation and efficiency. The Frameworks were structured in a way that would maximise value added to day-to-day project delivery and included key objectives including resident engagement; right first time; value for money; sustainability, social value and consistent delivery against time, cost, and quality by a best-in-class supply chain.
- 2.17 The Procurement Act 2023, which when in effect will replace the Public Contract Regulations 2015, involves a significant change to the way in which the Council procures and manages contracts. It is expected that the new provisions will be in effect from October 2024 and as a result there will need to be further changes to the Contract Regulations and other parts of the Constitution. There will therefore be a further report to Administration Committee recommending changes to the Constitution in the first part of 2024.

3. RECOMMENDATIONS

3.1 The Administration Committee is invited:

- (i) to recommend full Council to adopt the changes to the Constitution set out in the body of this report as follows:
- Paragraph 2.4 – officers authorised to take Executive Decisions
 - Paragraph 2.7 – follow-up decisions delegated to officers as part of a Key Decision

- Paragraph 2.8 – awards of City Living Local Life and NCIL funding approved by ward councillors are not key decisions
 - Paragraph 2.9 – urgency arrangements
 - Paragraphs 2.13 to 2.17 – changes to the Contract Regulations
- (ii) To recommend to full Council to readopt the Constitution as amended by the above and amendments to Standing Orders proposed by another report on this Agenda.

FOR DECISION

LeVerne Parker
Chief Solicitor & Monitoring Officer

Background papers used in the preparation of this report: None

Contact officer: Robert Sheppard, Head of Governance & Mayoralty, at robert.sheppard@rbkc.gov.uk

Full Council 31 January 2024 Appendix Two

Appendix 1

Log of Changes to the Constitution made since the Constitution was last adopted on 12 October 2022

Date	Constitutional Reference	Previous text	Replacement text
28/10/22	Part 4 – The Executive	N/A	'Cost of living' added to the Finance & Customer Delivery portfolio
28/12/22	Part 5 – Section 2 Terms of Reference of Council Committees- Pension Board	Local Government Pension Scheme (LGPS) Governance Regulations 2013	Local Government Pension Scheme Regulations 2013
28/12/22	Part 4 – The Executive Shareholder Committee	...in accordance with 2.4 (i) - (xi) above...	...in accordance with 2.10 (i) - (xi) above...
26/1/23	Part 1 –Update the Councillors' names	Had the 2018-22 councillors	Has the councillors elected in May 2022
1/2/23	Part 2 section 4: Member:Officer relations	A range of changes as shown in track change version	
16/3/23	Part 2 section 3: Councillors' Allowanges	£10.44ph	£11.95ph
3/5/23	Part 7 Section 2: Scheme of delegations	Track change version available on request from governance@rbkc.go.uk	Track change version available on request from governance@rbkc.go.uk
4/5/23	Part 5 Section 2: Terms of Reference of Council Committees	Track change version available on request from governance@rbkc.go.uk	Track change version available on request from governance@rbkc.go.uk
07/6/23	Part 7 Section 2: Scheme of delegations	N/A	1. To enter into agreements with statutory authorities governing transport, utilities, telecoms or similar infrastructure where they relate to specific capital projects following consultation with the Lead Member for Grenfell Housing, Housing and Social Investment; the Chief Solicitor and Monitoring

Date	Constitutional Reference	Previous text	Replacement text
			Officer and the Executive Director of Resources and S151 Officer. This includes agreements where there is a requirement for the Council to accept an uncapped liability or indemnity. [Executive]
07/6/23	Part 7 Section 2: Scheme of delegations	Director of Law	Director of Law and Governance
07/07/23	Part 7 Section 1	Full senior management organisational chart	Link to the page on the intra- and internet that is kept up to date by Human Resources.
04/08/23	Part 5, Section 3	Terms of reference (as at October 2022)	New Terms of reference (as set out at Full Council).
07/09/23	Part 4, Section 2	Part 4, Section 2 (as at October 2022)	New text paragraphs 2.25 to 2.33
25/09/23	Part 5, Section 3	local health bodies including those established by the Health and Social Care Act 2012; these include the NHS Commissioning Board (NCB), Clinical Commissioning Groups (CCGs), NHS Trusts or NHS Foundation Trusts and other relevant health service providers (including voluntary, independent and private sector providers)	local health bodies including those established by the Health and Social Care Act 2012 and the Health and Social Care Act 2022; including NHS Trusts or NHS Foundation Trusts, Integrated Care Boards and other relevant health service providers (including voluntary, independent and private sector providers);
11/10/23	Part 5 Section 3	N/A	As set out in the report to Council, Agenda item 10(ii)
06/12/23	Part 7, Section 2	Track change version available on request from governance@rbkc.go.uk	Track change version available on request from governance@rbkc.go.uk
11/12/23	Part 7, Section s 1 and 2	Director of Law	Director of Law (This role is undertaken by the Executive Director of Democracy, Law and People (WCC))