

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

Reporting Officers: Head of Democratic Services and Borough Solicitor

SUMMARY

Members will recall that at the meeting held on 6 November 2008, Council was asked to consider a new form of Executive for Hillingdon which had, by law, to be adopted by 31 December 2009, for implementation three days after the local elections are held in 2010.

Council resolved to adopt the new style Leader and Cabinet Executive form of governance and also approved a number of consequential amendments to the Constitution. Before Hillingdon is able to finally make such a resolution, it has to undertake a public consultation exercise and full Council also has to approve a formal set of proposals for a change in governance arrangements.

This report sets out the outcome of the consultation and it also asks full Council to approve the proposals referred to above.

RECOMMENDATIONS: That:

1. **the outcome of the public consultation exercise, as set out in Appendix 1 and referred to in the body of the report, be noted.**
2. **the formal proposals for a change in governance arrangements, as set out in Appendix 2, be approved.**
3. **the Head of Democratic Services be authorised to take the following steps in accordance with the specific requirements of the Local Government and Public Involvement in Health Act 2007:**
 - a) **to arrange to make copies of a document setting out the proposals and make them available at the Civic Centre for inspection by members of the public at all reasonable times, and**
 - b) **to arrange to publish a Notice setting out the main features of the proposals in a local newspaper circulating in the borough.**
 - c) **to arrange a special meeting of the Council to be held on Thursday 10 December 2009, commencing at 7.30pm, to confirm the change in governance arrangements.**

INFORMATION

Background

1. The Local Government Act 2000 radically changed the decision making structures of local government in England by discarding large parts of the traditional Committee structure and requiring local authorities instead to adopt one of three new structures.

Briefly, these were [1] Leader and Cabinet; [2] directly elected Mayor and Cabinet; [3] directly elected Mayor and Council Manager.

2. The Local Government and Public Involvement in Health Act 2007 [LGPIHA] received the Royal Assent in October 2007. It built on the 2005 White Paper "Strong and Prosperous Communities" setting out the Government's case for further reforms to local government leadership arrangements.
3. The LGPIHA amends the 2000 Act so that only two models of executive are now permissible namely, [1] Leader and Cabinet or [2] directly elected Mayor and Cabinet.

The two new forms of executive models

4. **Leader and Cabinet Executive** - a Councillor elected as Leader and two or more Councillors appointed by the Leader (not elected by the Council AGM as at present) to serve as the Executive of an authority (up to a maximum of ten Members as at present). The Leader of the Council will be elected at the AGM immediately following the 2010 local elections and serve for a period of four years, subject to the fact that he/she could be removed by a resolution of full Council prior to that date.
5. **Directly elected Mayor and Cabinet** - the Mayor would not be a serving Councillor but would be elected in a separate ballot run at the same time as the local elections. The Mayor would then appoint two or more Councillors to the Executive (up to a maximum of ten Members as at present). The Mayor would also serve for a period of four years which would commence from the date of the 2010 Council AGM.
6. The relevant provisions in the LGPIHA came into effect on 31 December 2007 but it contains transitional provisions and therefore the Council is not prevented from continuing to operate its current 'old style' Leader and Cabinet model which expires three days after the 2010 local elections are held. However, all London Boroughs are required to pass a resolution to adopt one or other of the above models at a meeting of the full Council "which is specifically convened for the purpose of deciding the resolution with notice of the object" by no later than 31 December 2009. The new model will come into effect at exactly the same time that the old model expires i.e. three days after the 2010 elections.

The November 2008 decision

7. It is acknowledged that full Council resolved in November 2008 to adopt the new-style Leader and Cabinet Executive model but the LGPIHA requires local authorities to undertake public consultation exercises and to draw up formal proposals for a change in governance arrangements before such a resolution can be made. Therefore, the November 2008 resolution can only properly be regarded in practice as a decision by the Council to decide on its preferred model, which it is required by law to do, and then to use it as a basis for consultation.

The consultation exercise

8. The LGPIHA requires local authorities to take reasonable steps to consult local government electors for, and other interested persons, in the authorities' area before drawing up its formal proposals for a change in governance arrangements.
9. It is important to note that it is for a particular authority to decide what reasonable steps need to be taken and in deciding this, it can legitimately take into account how radical the proposals are, and the extent to which an authority has received any representations, lobbying for change. It is also for an authority to determine what constitutes a reasonable period for the consultation process to take place.
10. At the beginning of September 2009, a summary of the two leadership models was publicised for consultation and residents were asked to submit their views by an initial date of 1 October 2009, which was subsequently extended by two weeks to 15 October 2009. The details were set out on the Council's website, advertised in local newspapers and included in the 'Hillingdon People' magazine which is delivered free of charge to every household in the borough. Information about the consultation also featured as an article in the Gazette newspaper. A comparison with several other London Boroughs who have expressed a preference for the Leader and Cabinet Executive model indicates that the form and extent of the consultation process which they have undertaken is very similar to the one which Hillingdon followed.
11. A summary of the responses to the Council's consultation process are attached at Appendix 1. A total of 123 responses were received which represents approximately 0.06% of the Borough's total electorate. Of those returned, 50 have expressed an actual preference (12 for the Leader and Cabinet Executive and 38 for the Elected Mayor and Cabinet). A number of respondents have not expressed a preference for either Model but instead have commented on the Council's consultation methods and timescale. It should also be noted that a number of the responses received have called for a referendum to be held.
12. Members will be aware that officers also received the results of a survey commissioned by an individual resident. This is referred to in Appendix 1. If Members were minded to include the results of the survey into the overall responses received then the total figures would be 59 for the Leader and Cabinet model and 196 for the Elected Mayor and Cabinet. The total responses would be 623 which represents approximately 0.32% of the Borough's total electorate.
13. The leading case on consultation by public authorities states that the product of consultation must be conscientiously taken into account when a decision is made by such authorities. However, it does not say that authorities are bound to follow the outcome of a consultation exercise.
14. The Borough Solicitor has two specific comments to make in relation to the consultation process which the Council has undertaken. Firstly, that it complies with the requirements of the LGPIHA although it is ultimately for Members to satisfy themselves as to whether the consultation has been reasonable and proportionate. Secondly, that Members can legitimately take into account other relevant

considerations when proposing a change in governance arrangements in Hillingdon. A summary of such considerations are set out in the following paragraph.

15. The Leader and Cabinet Model has been in operation at Hillingdon since May 2002. It has been the preferred model for the majority of the over 450 local authorities across the UK and there are only 12 authorities who currently have an elected Mayor. The Leader and Cabinet arrangement is firmly embedded at Hillingdon and if Members decide to opt for an elected Mayor, this would represent an untried and untested form of governance in the borough. Therefore, if Members prefer minimal change, the new-style Leader and Cabinet Executive Model would allow the Council to continue to operate in a very similar way to that which it currently does and only a number of minor changes will have to be made to its Constitution. Essentially, the Leader and Cabinet will fulfil the same role and functions that they currently have.

The Council's proposals for a change in governance arrangements

16. The LGPHIA provides that a local authority must draw up formal proposals for a change in governance arrangements. It specifically prescribes those matters which must be included within a proposals document. These can be summarised as follows:
 - a timetable with respect to the implementation of the proposals;
 - details of any transitional arrangements which are necessary for the implementation of the proposals;
 - consideration of the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness;
 - set out the extent to which the functions specified in regulations under section 13[3] [b] of the Local Government Act 2000 [Local Choice functions] are to be the responsibility of the executive which will be operated if the proposals are implemented.
17. A copy of the Council's proposals are attached at Appendix 2 and full Council is asked to approve them.
18. Once they have been approved, copies of the document in which the proposals are set out must be made available at the Civic Centre for inspection by members of the public at all reasonable times and a Notice will also need to be published in a local newspaper circulating in the borough, outlining the main features of the proposals.
19. The proposals may provide for the change in governance arrangements to be subject to approval in a referendum.

Referendum

20. As referred to in paragraph 11 above, a number of the responses to the consultation process have called for a referendum to be held. There is no statutory obligation on the part of the Council to do this.

21. The ability for local communities to require the Council to hold a referendum for a directly elected Mayor was given statutory force by the Local Government Act 2000. Regulations made in 2001 set out the detailed rules governing a referendum and it is a legal requirement that a petition containing verified signatures of at least 5% of the total electorate in the borough is needed before the Council can consider holding a referendum. For the year 1 December 2008 to 30 November 2009 the number of local government electors shown in the Register of Electors that is equal to 5% is 9,648. No such petition has to date been submitted to the Council.
22. The estimated cost of holding a referendum would be in the region of £250,000. The low level of responses asking for a referendum to be held suggests that the Council would not be justified in spending a considerable amount of time and public money in holding it. A further consideration is that if the Council is proposing to adopt a new-style Leader and Cabinet Executive model, which represents only a minor change from the current arrangements, this would amount to a further justification for not holding a referendum.

FINANCIAL IMPLICATIONS

No financial implications will arise in the event that full Council decides that it does not wish to hold a referendum.

LEGAL IMPLICATIONS

All relevant legal implications are contained in the body of the report.

BACKGROUND PAPERS

- DCLG Consultation Paper: "Changing Council Governance Arrangements - Mayors and Indirectly Elected Leaders".
- The Council's Constitution
- Responses to Consultation 'Have your Say - new governance arrangements for the Council'.