

Annual Meeting of the Council – 16th May, 2013

Report of the Director of Corporate Resources

Appointment and Membership of the Cabinet, Committees and Community Forums for 2013/14 and Related Matters

Purpose of Report

1. To receive a report of the Leader on the appointment of the Deputy Leader and Members of the Cabinet and to consider the appointment and membership of Committees and a number of related matters for the 2013/14 municipal year.

Background

Appointment of the Deputy Leader and Members of the Cabinet

2. Article 7 of the Council's Constitution prescribes that the Cabinet will consist of the Leader together with at least 2, but not more than 9 other Councillors appointed to the Cabinet by the Leader. Under Article 7, it is the responsibility of the Leader to maintain the list of responsibilities and executive functions allocated to Cabinet Members.
3. The Leader is proposing that the Cabinet comprises of 10 members (including himself) with the designations shown on the lists to be circulated at the meeting. The list of responsibilities and executive functions allocated to Cabinet Members is set out under Part 3 of the Constitution and these will be updated accordingly. In view of the changes for Libraries and Adult Learning (which includes Archives), it is also proposed that the Chief Executive be authorised to determine appropriate organisational arrangements for the Libraries, Archives and Adult Learning Division.
4. The Leader will report at the meeting on the appointment of the Deputy Leader and the designation of Cabinet Members for the 2013/14 municipal year, as set out in the lists to be circulated at the meeting. The Constitution provides that Cabinet Members appointed by the Leader shall hold office until:
 - (a) they resign from office; or
 - (b) they are no longer Councillors; or
 - (c) they are suspended from being councillors (although they may resume office at the end of the period of suspension); or
 - (d) they are removed from office, either individually or collectively, by the Leader.

5. Cabinet Procedure Rules provide that other political groups on the Council may nominate Members from their Group to attend meetings of the Cabinet. Such Members may speak at the meeting, but may not vote. The Opposition Group nominations will be made in accordance with proportionality.

Appointment and Membership of Committees

6. On 25th April, 2013, the Cabinet received a report on a review of the Council's scrutiny arrangements. The report presented the outcomes of a review undertaken by Scrutiny Chairs and is available in full on the Council's Internet site or on request from Democratic Services (01384 815235). The principles of the review are to strengthen the Council's overview and scrutiny arrangements; to ensure proper democratic accountability and to promote confidence in the conduct of the Council's business. The review also takes account of the context of the significant financial pressures faced by the Council and the need to focus limited resources in the most effective way.
7. The Cabinet endorsed the recommendations of Scrutiny Chairs, which can be summarised as follows:
 - That an Overview and Scrutiny Management Board be established with 11 elected members, comprising the Chairs/Vice-Chairs of the five Scrutiny Committees and one additional Member to comply with overall political proportionality requirements.
 - That the revised structure of overview and scrutiny committees, as set out in Appendix 1, be approved and adopted and that each Scrutiny Committee comprise 11 elected members (with co-opted members in the case of Children's Services and the possible future appointment of a co-opted member on the Health Scrutiny Committee).
 - That the future role of Scrutiny Committees be developed on the basis set out in the report to the Cabinet (including the development of an Annual Scrutiny Plan, which will be considered at the first meeting of the Overview and Scrutiny Management Board on 29th May, 2013).
 - That the terms of reference of the Overview and Scrutiny Management Board and the five Scrutiny Committees be as set out in Appendix 2 and that all Scrutiny Committees retain the discretion to include a "Public Forum" on their agenda.
 - That the proposed servicing arrangements be noted and that the Director of Corporate Resources confirm the nomination of lead officers for the Scrutiny Committees along with the ongoing Democratic Services support.
 - That the Director of Corporate Resources consider the nomination of a lead officer in respect of the Overview and Scrutiny Management Board to replace the former statutory role of Scrutiny Officer and that the level and quality of support to the Scrutiny Committees be considered as an ongoing issue as part of the implementation of the revised structures.

- That the scrutiny of the Council's revenue budget proposals continue on the basis of reports to the individual Scrutiny Committees.
 - That development sessions be held for members and officers to discuss the revised overview and scrutiny arrangements.
 - That the Director of Corporate Resources undertake a review of Article 6 of the Constitution (Scrutiny Committees) and the Scrutiny Procedure Rules and Protocols to give effect to the changes.
 - That the revised arrangements be subject to ongoing review and further consideration by the Overview and Scrutiny Management Board in November, 2013.
8. The Council's Procedure Rules prescribe that the Council, at its Annual Meeting, will appoint at least one Scrutiny Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions, and will in this connection:
- (a) decide the size and terms of reference for Committees;
 - (b) appoint Chairs and Vice-Chairs for Committees;
 - (c) decide the allocation of seats and substitutes to political groups in accordance with the political balance rules;
 - (d) receive nominations of Councillors to serve on each Committee.

The proposals of the majority group in respect of issues (a) to (c) above and the nominations of the political groups regarding Members to serve on each Committee will be circulated at the meeting.

9. There are currently two political groups represented on the Council:-

Labour (42 seats)

Conservative (28 seats)

(NB: There is 1 Independent Conservative Councillor and 1 Councillor representing the Green Party)

The Regulations provide that a political group is constituted where two or more Members of the Council give notice that they wish to be treated as a group.

10. Under Sections 15 and 16 of the Local Government and Housing Act 1989, the Council is required to provide for political balance on Committees. It is proposed that the composition of the following Committees be determined in accordance with political balance:

Overview and Scrutiny Management Board

Scrutiny Committees (x5)

Appeals Committee

Appointments Committee

Audit and Standards Committee

Development Control Committee

Ernest Stevens Trusts Management Committee

Licensing and Safety Committee

Taxis Committee

11. The political balance 'rules' provide that political groups are entitled to be allocated seats on Committees in accordance with the proportion of seats they hold on the Council.
12. Section 17 of the Local Government and Housing Act 1989, authorises the Council to approve different arrangements (eg: not reflecting political balance) provided no Member of the Council votes against them.

Terms of Reference and Onward Delegation of Functions

13. The terms of reference and onward delegation of functions are set out in Part 3 of the Constitution. The terms of reference of the Overview and Scrutiny Management Board and Scrutiny Committees are as set out in Appendix 2.

Appointment of Co-opted Representatives to Serve on the Children's Services Scrutiny Committee and the Health Scrutiny Committee

14. The Council has previously appointed co-opted representatives to serve on the Children's Services Scrutiny Committee. The persons appointed in 2012/13 were as follows:-

Non-Elected Voting Members

Parent Governor Representatives
Secondary Schools - Vacancy
Primary Schools - Mr Songole
Special Schools - Mr Tinsley

Church Representatives
Worcester Diocesan Board of Education – Revd Wickens
Archdiocese of Birmingham – Mrs Ward

Non-elected, Non-voting Members

Teacher Representatives:
Primary Education – Mrs Verdegem
Secondary/Special Education – Mr Lynch/Mr Bruton

Church Representative:
Free Churches – Mr Taylor

Persons with experience of and interest in Education in the Borough:
Mrs Coulter
Mr Ridley

15. For 2013/14, it is proposed that the same number of co-opted representatives be appointed to serve on the Children's Services Scrutiny Committee. The names of the persons nominated for co-option to the Committee for 2013/14 will be submitted in the lists to be circulated at the meeting. These co-opted members will also be required to serve on any meetings of the Overview and Scrutiny Management Board that may be necessary to determine scrutiny 'call ins', insofar as they concern education issues.

16. The Health Scrutiny Committee will assist the Council to fulfil statutory scrutiny functions and respond to the provisions of the Health and Social Care Act 2012. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 make provision for greater flexibilities for local authorities in discharging health scrutiny functions. These include obligations on NHS bodies, relevant health service providers and local authorities concerning consultation on substantial developments or variations to services to aid transparency and local agreement. The requirements of the new Regulations will be reflected in the functions of the Health Scrutiny Committee. The potential appointment of a co-opted member will be the subject of a further report to the Committee in due course.
17. In order to mitigate any delay in their serving, the Council has previously authorised the Director of Corporate Resources, in consultation with the Leader, to appoint non-elected co-opted Members to fill any vacancies that might arise from time to time. Approval is requested for the same facility to apply in 2013/14.

Licensing Act 2003 – Statutory Functions

18. In accordance with the Licensing Act 2003, the Council is required to make provision for the appointment of a Licensing Committee to undertake functions relating to liquor licensing. The Licensing and Safety Committee undertakes the statutory functions under the 2003 Act, with the exception of the approval of the licensing policy and any other specific functions that may be reserved to full Council. The Committee comprised 12 Members in 2012/13. In practice, the majority of licensing applications are dealt with by the Licensing Sub-Committees. For 2013/14, it is proposed to appoint Licensing Sub-Committees on the same basis as the previous year. The establishment of the Sub-Committees, together with the appointment of Members and allocation of functions, will be considered at the first meeting of the main Committee in the 2013/14 municipal year.
19. The Council has previously decided to waive the proportionality requirement in respect of the Licensing Sub-Committees. It is proposed that the waiver be re-affirmed for 2013/14.

Appeals Committee

20. In previous years, the Council has established separate Committees to deal with appeals, most recently the Disciplinary, Dismissal, Grading Appeals Committee and the Appeals Panel (Children's Services Transport). To streamline and simplify the administrative arrangements, it is recommended that a single Appeals Committee be established for 2013/14. The Appeals Committee will have delegated powers to determine all appeals in cases where a right of appeal to elected members exists under any of the Council's policies or procedures.
21. The Appeals Committee will comprise 9 elected members, with the option to establish smaller Sub-Committees to hear individual cases (eg: 3 members to hear school transport appeals). Training will be provided to Members prior to their hearing any individual appeals.

West Midlands Police and Crime Panel

22. The West Midlands Police and Crime Panel is established as a joint Committee of the 7 West Midlands District Councils, with a membership of 12 elected members and 2 co-opted members . The membership of the Panel comprises a Councillor from each of the 7 West Midlands Councils plus 5 additional elected members to be appointed on the basis of 2 from Birmingham City Council; 2 to be jointly nominated by the Black Country Councils and 1 member to be jointly nominated by Coventry City Council and Solihull Metropolitan Borough Council. As in 2012/13, the Council is requested to endorse the establishment of the West Midlands Police and Crime Panel as a joint Committee on the basis outlined above. A report elsewhere on the agenda deals with the appointment of this Council's representative to this body (and a named substitute) for the 2013/14 municipal year.

Substitute Members of Committees

23. Council Procedure Rules 5.2, 5.3 and 5.4 currently provide for the appointment of substitute Members of Committees. The arrangements for the appointment of substitute Members, as set out in the Council Procedure Rules, have worked successfully and it is recommended that they be continued in 2013/14.

Members should note that the Council Procedure Rules provide that a substitute Member shall only be appointed in that capacity if he/she is otherwise eligible to serve on the body concerned. This would include a requirement, particularly in the case of quasi-judicial meetings (eg: Development Control Committee and Appeals Committee), that the Member concerned has undertaken any necessary training as required by the Council.

Changes in Committee Memberships

24. Regulations made under the Local Government and Housing Act 1989 require the Council's Committees to reflect the overall political balance of the Council and take account of the wishes of political groups when allocating Members to Committees. From time to time during the municipal year, it may be necessary for changes to be made in the allocation of Committee Memberships to reflect the wishes of the political groups. It is therefore recommended that the Director of Corporate Resources be authorised to make any such changes that might arise from time to time in accordance with the instructions of the Leaders of the political groups.

Dudley Health and Wellbeing Board

25. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 make provision for the disapplication and modification of certain enactments relating to local authority committees, including the rules on proportionality. The Regulations aim to provide local areas with the flexibility and freedom to shape health and wellbeing boards to fit local circumstances.

26. The Dudley Health and Wellbeing Board has existed in 'shadow' form since 2011. With effect from 1st April, 2013, the Dudley Health and Wellbeing Board is established under Section 194 of the Health and Social Care Act 2013. A report on the next steps for the Board, including governance arrangements, was submitted to the Dudley Health and Wellbeing Board on 29th April, 2013. It was agreed that the membership be as set out in Appendix 1 to the report submitted to that meeting and that the Council be recommended that the voting arrangements remain the same as previously adopted under the successful 'shadow' arrangements. The elected Members nominated to serve on the Board for 2013/14 will, therefore, be as follows:

Cabinet Member for Health and Wellbeing
Cabinet Member for Adult and Community Services
Cabinet Member for Children, Libraries and Lifelong Learning
Opposition Spokesperson for Health and Wellbeing

Community Forums

27. During the previous municipal year, the Council established 9 Community Forums to replace the former Area Committees. In 2012/13, the Community Forums comprised the elected representatives of the following wards:-
- Amblecote/ Cradley and Wollescote/ Lye and Stourbridge North
 - Belle Vale/Halesowen North/Halesowen South/Hayley Green and Cradley South
 - Brierley Hill/Brockmoor and Pensnett
 - Castle and Priory/ St James's/ St Thomas's
 - Coseley East/ Sedgley
 - Gornal/ Upper Gornal and Woodsetton
 - Kingswinford North and Wall Heath/Kingswinford South/Wordsley
 - Netherton, Woodside and St Andrew's/ Quarry Bank and Dudley Wood
 - Norton/Pedmore and Stourbridge East/Wollaston and Stourbridge Town
28. Following consultation with the Leader, it is proposed to establish 10 Community Forums in 2013/14. These are on the basis set out above, with the exception of the wards below, which will comprise two separate Community Forums as follows:-
- Belle Vale//Hayley Green and Cradley South
 - Halesowen North/Halesowen South

29. The political balance rules do not apply to Community Forums as these are not Committees of the Council and comprise all the ward Councillors for the areas concerned.
30. The appointment of the Chairs and Vice-Chairs of Community Forums will be considered at the first meeting of each Forum in the municipal year.
31. On 26th November, 2012, the Council agreed that the revised area arrangements be the subject of an ongoing review to ensure that they remain flexible. Further, it was agreed that a full review of the operation of the Community Forums be undertaken after 12 months of experience (ie: by February 2014). The Community Forums will be the subject of a process of ongoing review and development during the year.

Members' Allowances Scheme

32. On 26th November, 2012, the Council decided that, pending a review of the Members' Allowances Scheme in 2013, no special responsibility payments be made to the Chairs and Vice-Chairs of Community Forums. A similar decision was made on 25th February, 2013 in relation to the Ernest Stevens Trusts Management Committee. Under the Local Authorities (Members' Allowances) (England) Regulations 2003, the Council has a duty to review the indexing arrangements in its Allowances scheme every 4 years. This was last undertaken in July 2009. There have been no increases in Members' Allowances since 2009 as the Allowances are linked to pay awards for Council staff. The Council has a duty to have regard to recommendations made by an Independent Remuneration Panel when reviewing the Members' Allowances Scheme. The Council has previously appointed 4 Independent Persons in line with the standards provisions of the Localism Act 2011. In view of the changes to governance arrangements, it is recommended that the Council confirm that the 4 Independent Persons will form the Independent Review Panel and that the Panel be asked submit recommendations to the Council in July, 2013.

Finance

33. The financial implications arising from the proposals in this report will be met from existing resources.

Law

34. The relevant statutory provisions regarding the Constitution and arrangements with respect to executives are contained in Part II of the Local Government Act, 2000, as amended by the Local Government Public Involvement in Health Act 2007, together with Regulations, Orders and Statutory Guidance issued by the Secretary of State. The rules on proportionality are contained in the Local Government and Housing Act 1989 and associated regulations.
35. The power to appoint Committees and to delegate functions to Committees and Officers is set out in Sections 101 and 102 of the Local Government Act 1972.

36. Seats on Committees must be allocated to political groups on a proportional basis in accordance with Section 15 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990.
37. If it so wishes, the Council may resolve not to apply the proportionality rules in respect of one or more Committees, but such a resolution must be passed with no Member of the Council voting against it (Section 17 of the 1989 Act).
38. The rules on proportionality do not apply to Community Forums because the Forums are not Committees of the Council and they comprise all the ward councillors for the areas concerned.
39. The implications of the Localism Act 2011 have been reflected in this report, including the freedoms to consider governance structures and the provisions relating to standards.
40. The duty to allocate seats on a politically proportional basis does not apply to a Licensing Committee or to Sub-Committees established under the statutory requirements of the Licensing Act 2003. However, the proportionality duty does apply to the Licensing and Safety Committee in discharging other licensing functions not covered by the 2003 Act (eg functions under the Gambling Act 2005). The Council has previously agreed that the proportionality requirements of Section 15 of the Local Government and Housing Act 1989 should not apply to the Licensing Sub-Committees established by the Licensing and Safety Committee, to enable them to deal with all licensing business requiring Member determination. It is recommended that this should also apply to any Sub-Committee established by the Audit and Standards Committee to consider complaints against Members under the Council's standards arrangements.
41. The rules on proportionality do not apply to the Dudley Health and Wellbeing Board established under Section 194 of the Health and Social Care Act 2013. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 specifically disapply the proportionality rules in respect of Health and Wellbeing Boards.
42. The relevant statutory provisions regarding the Council's Constitution are contained in Part II of the Local Government Act 2000 together with Regulations, Orders and Statutory Guidance issued by the Secretary of State.
43. The effects and principles contained in Section 499 of the Education Act, 1996, DFES Circular 19/99 and the Education (Parent Governor Representatives) Regulations 2001 are reflected in the proposals in respect of the appointment of co-opted representatives to serve on the Children's Services Scrutiny Committee.
44. The provisions relating to the establishment of the Police and Crime Panel are contained in the Police Reform and Social Responsibility Act 2011. The West Midlands Police and Crime Panel is established as a joint Committee of the seven West Midlands District Councils.

Equality Impact

45. The requirements to consider the Council's policies with regard to equality, along with duties under the Equality Act 2010, are fully reflected in the Council's governance structures and decision-making processes. Decisions taken by the Council, the Cabinet and its Committees during the year on policy issues and the implementation of the Council Plan framework will involve actions to promote equality and in relation to children and young people.

Recommendations

46. That the Council note the report of the Leader on the appointment of the Deputy Leader and Members of the Cabinet for the 2013/14 municipal year, as set out in the list circulated at the meeting, together with the designations of Cabinet Members, and authorise the Chief Executive to determine appropriate organisational arrangements for the Libraries, Archives and Adult Learning Division.
47. That the structure of Committees be approved on the basis set out in this report, the structure chart set out in Appendix 1 and the lists circulated at the meeting.
48. That the recommendations set out in paragraph 7 concerning the review of the Council's scrutiny arrangements be endorsed.
49. That the terms of reference and functions of Committees, as set out in Part 3 of the Constitution, be approved subject to the adoption of the new terms of reference arising from the review of Scrutiny Committees as set out in Appendix 2 and the revised terms of reference of the Appeals Committee as referred to in paragraph 20.
50. That, with the exceptions referred to in this report, the composition and Membership of Committees for the 2013/14 municipal year be determined in accordance with the political balance requirements of Sections 15 and 16 of the Local Government and Housing Act 1989, as shown on the lists to be circulated at the meeting.
51. That with regard to the Children's Services Scrutiny Committee and the Health Scrutiny Committee, the proposals in relation to co-opted representatives and the arrangements for the filling of vacancies for co-opted Members as referred to in paragraphs 14 to 17, be approved.
52. That the co-opted representatives serving on the Children's Services Scrutiny Committee be appointed to serve on the Overview and Scrutiny Management Board for the duration of any meetings that are necessary to determine any scrutiny 'call ins', insofar as they concern education issues only.
53. That the Licensing and Safety Committee be appointed in 2013/14 to undertake the statutory Committee functions in accordance with the Licensing Act 2003 and that the Committee comprise 12 Members.

54. That the Council confirm that the proportionality requirements of the Local Government and Housing Act 1989 shall not apply to Licensing Sub-Committees established by the Licensing and Safety Committee or to any Sub-Committee established by the Audit and Standards Committee to hear complaints against Members under the Members' Code of Conduct.
55. That the Council endorse the continued establishment of the West Midlands Police and Crime Panel as a joint Committee of the seven West Midlands District Councils on the basis referred to in paragraph 22.
56. That the arrangements for substitutes on Committees, as set out in Council Procedure Rules 5.2 to 5.4, be reaffirmed for the 2013/14 municipal year.
57. That the Director of Corporate Resources be authorised to make any necessary changes to the appointments to Committees that might arise from time to time during the 2013/14 municipal year in accordance with the instructions of the political groups.
58. That Community Forums be established, on the basis outlined in paragraphs 27 to 31 and that a full review of the operation of the Community Forums be undertaken during the course of the 2013/14 municipal year as previously agreed by the Council.
59. That the appointment of Chairs and Vice-Chairs be approved in accordance with the list to be circulated at the meeting (with the exception of Community Forums and the Dudley Health and Wellbeing Board who appoint their own).
60. That the voting arrangements in respect of the Dudley Health and Wellbeing Board remain the same as previously adopted under the successful 'shadow' arrangements.
61. That the Council endorse the establishment of an Independent Review Panel concerning the Members' Allowances Scheme, as referred to in paragraph 32, and that the Panel submit its recommendations to the Council.
62. That the Director of Corporate Resources be authorised to take any necessary and consequential actions that are required to implement the proposals contained in this report.



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Philip Tart
Director of Corporate Resources