

Sandwell Metropolitan Borough Council

16 May, 2017

**Appointment to Executive Offices and the Constitution of Committees,
Boards and Other Fora 2017/2018**

Summary Statement

- 1.1 The Council's Constitution sets out the executive, scrutiny and constitutional functions and the rules and procedures for how the Council operates, it also prescribes the issues that the Council should address at its Annual Meeting in identifying the person(s) or bodies it wishes to carry out its functions as a local authority and the portfolios and terms of reference for those persons and bodies.
- 1.2 This report has been prepared to support members in
 - (a) considering and approving the political balance of committees, boards and other fora for the 2017/2018 Municipal Year;
 - (b) assigning members to those roles and bodies;
 - (c) considering and approving the proposed programme of meetings for the year;
 - (d) considering and approving the Members' Allowances Scheme for 2017/2018; and
 - (e) considering and approving changes to the Council's Constitution as a consequence of legislative and policy development updates.
- 1.3 This report also provides the opportunity for the Leader to announce his appointment of Cabinet Members, including the portfolio responsibilities they will hold on his behalf.
- 1.4 The main changes for 2017/2018 (details of which are set out in the background section of this report) are:-
 - (a) updates to the Members' Allowances Scheme (pending a formal review, which is scheduled for the summer of 2017) (Appendix J);

- (b) changes to the terms of reference of the following committees and Boards (Appendices G and H):
- Audit and Risk Assurance Committee;
 - Chief Officers Terms and Conditions Committee;
 - Chief Officers Appointments Sub Committee;
 - Ethical Standards and Member Development Committee;
 - General Purposes and Arbitration Committee;
 - Licensing Committee;
 - Budget and Corporate Scrutiny Management Board;
 - Children's Services and Education Scrutiny Board;
 - Economy, Skills, Transport and Environment Scrutiny Board;
 - Health and Adult Social Care Scrutiny Board; and
 - Safer Neighbourhoods and Active Communities Scrutiny Board.
- (c) update to Part 3 of the Constitution – Responsibility for Functions, and the Scheme of Delegation to Officers and other persons or bodies (Appendices C and D);
- (d) the appointment of an additional independent member to the Audit and Risk Assurance Committee.

2. **Recommendations**

The Council is invited: -

- 2.1 To endorse the executive form of governance for the Council as set out in the Constitution and the arrangements for the operation of the Council's Overview and Scrutiny function.
- 2.2 To endorse the continued leadership arrangements for the Council and in doing so to receive the names of persons appointed by the Leader of the Council to the position of Deputy Leader (Statutory) and as a Cabinet Member (Appendix A).
- 2.3 To receive the Executive Portfolios as determined by the Leader of the Council and their assignment to the Deputy Leader and each Cabinet Member (Appendix B).

- 2.4 In relation to the Scheme of Delegation to Officers as set out at Appendix C:
- (a) to receive the executive functions assigned to officers by the Leader of the Council;
 - (b) to approve the delegation to officers of non-executive functions;
 - (c) to approve the Scheme of Delegation in its entirety on the basis that the law or the local choice provisions as defined in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 prevail over the determination of delegations between executive and non-executive functions and all delegations are lawfully enacted.
- 2.5 To approve the allocation of responsibility for functions to be undertaken by the Council, as required by Part 3 of the Constitution, and as attached at Appendix D to this report, except where these are the responsibility of the executive Leader of the Council to determine.
- 2.6 To establish and determine the constitution and political balance of the committees, boards and other fora for 2017/2018 which are required to carry out those functions allocated under 2.5 above as set out in Appendix E.
- 2.7 To approve the revised terms of reference of the Audit and Risk Assurance Committee, Chief Officers Terms and Conditions Committee, Chief Officers Appointments Sub Committee, Ethical Standards and Member Development Committee, General Purposes and Arbitration Committee and Licensing Committee, as set out in Appendix G.
- 2.8 To approve the terms of reference of the Budget and Corporate Scrutiny Management Board, Children's Services and Education Scrutiny Board, Economy, Skills, Transport and Environment Scrutiny Board, Health and Adult Social Care Scrutiny Board and Safer Neighbourhoods and Active Communities Scrutiny Board, as set out in Appendix H.
- 2.9 With the exception of the fora referred to in 2.7 and 2.8 above, to reaffirm the terms of reference of the committees, boards and other fora as set out in the Appendix to Part 3 of the Constitution and otherwise as approved or amended by the Council during the 2016/2017 Municipal Year.

- 2.10 To approve the appointment of a statutory Licensing Committee which will also sit as the Council Committee to carry out other licensing functions.
- 2.11 In accordance with the provisions of the Localism Act 2011, to invite one nomination from each of the Church of England Diocese and Roman Catholic Archdiocese and two nominations for Parent Governor representatives to serve as non-elected members on the Children's Services and Education Scrutiny Board, with voting rights conferred only on any matter with regard to education, whether in respect of schools or wider educational issues.
- 2.12 To determine the members and co-opted members to be assigned to the positions, committees, boards and other fora established by the Council.
- 2.13 To approve the appointment of an additional independent member to sit on the Audit and Risk Assurance Committee.
- 2.14 To approve the programme of meetings for 2017/2018, as set out in Appendix I.
- 2.15 To approve the Members' Allowances Scheme for the 2017/2018 Municipal Year, (pending a formal review in the summer of 2017) as set out in Appendix J.
- 2.16 To approve the continuation of the current Financial Regulations and Procedures and Procurement and Contract Procedure Rules until such point as the review has taken place and revised procedures are submitted to a future meeting of Council.
- 2.17 In order to reflect the decisions of the Council on the above recommendations, to authorise the Head of Governance to make any necessary changes to the Council's Constitution, its Parts and Articles, in accordance with Article 15 of the Constitution, including the following:-
- Part 4 – Scrutiny Procedure Rules (Appendix K)
 - Article 6 – Scrutiny Boards (Appendix L)
 - Part 3 – Responsibility for Functions - Member Role Descriptions (Appendix M).

Darren Carter
Executive Director – Resources

Contact Officers

Diane Baker
Head of Governance
0121 569 3183
Diane_baker@sandwell.gov.uk

Suky Suthi-Nagra
Democratic Services Manager
0121 569 3479
suky_suthinagra@sandwell.gov.uk

3. Strategic Resource Implications

- 3.1 There are no direct resource implications arising from the approval of the decision-making structures for 2017/2018 or the appointment of members to positions within the structure. The costs associated with the Members' Allowance Scheme will be met from within allocated resources.

4. Legal and Statutory Implications

- 4.1 This report invites the Council to determine its political organisation for the upcoming Municipal Year taking into account the requirements of its Constitution introduced under the Local Government Act 2000 (as amended). The Constitution prescribes the issues that the Council should address at its Annual Meeting in terms of the identification of the person(s) or bodies it wishes to carry out its functions as a local authority and the portfolios and terms of reference for those persons and bodies.
- 4.2 The Council's Constitution came into full effect from 1 September, 2002 and has been amended periodically to keep pace with the drive for change and improvement and in response to Government regulations, statute and custom and practice. The most significant change has been brought about by the Local Government and Public Involvement in Health Act 2007 which required the Council to amend its executive arrangements and, as a result, the Council decided to adopt the Leader and Cabinet Executive (England) model form of executive, as set out in Section 11 (2A) of the Local Government Act 2000 (the 'Strong Leader' model).

- 4.3 Schedule 2 to the Localism Act 2011 sets out the permitted forms of governance for local authorities in England and requires that a local authority must operate executive arrangements, or a committee system or prescribed arrangements. Sandwell has adopted executive arrangements since the inception of the Local Government Act 2000 and, as referred to in 4.2 above, has elected to adopt the Leader and Cabinet Executive (England) model form of executive, as set out in Section 11 (2A) of the Local Government Act 2000. The Council's Executive model is fully compliant with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Openness of Local Government Bodies Regulations 2014.
- 4.4 Proportionality in relation to the appointment of members to fora is governed by the Local Government and Housing Act 1989. The appointment of members to executive positions is pursuant to the Local Government Act 2000 (as amended) and unless otherwise specified, the appointment of members to committees and other fora falls within the Local Government Act 1972 (as amended).
- 4.5 The Scheme of Delegation to Officers, attached at Appendix C, is compliant with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and the Openness of Local Government Bodies Regulations 2014.
5. **Implications for the Council's Scorecard Priorities**
- 5.1 The Council's decision making structures are designed to support the delivery of Sandwell's Scorecard Priorities and 'Great Performance'.

6. **Background Details**

The Executive

Leader and Deputy Leader of the Council

- 6.1 Article 7.03 of the Constitution provides that the Leader of the Council will be a councillor elected to that position by the Council and that he/she will hold office for up to four years or until he/she resigns, is suspended, ceases to be a councillor or is removed by resolution of the Council either directly or indirectly by virtue of the election of a new leader.

Councillor Eling was confirmed as Leader at the Annual Meeting of the Council in May 2016 for a four-year term of office expiring with the Annual Meeting of the Council in 2020.

- 6.2 In accordance with Schedule 1 of the Local Government Act 2000, the Leader of the Council is required to appoint a statutory Deputy Leader who, if for any reason the executive leader is unable to act or the office is vacant, must act in his/her place in respect of the Leader's statutory duties:
- determining the size of the Cabinet;
 - appointing, removing and replacing members of the Cabinet;
 - allocating portfolios to Cabinet Members;
 - exercising or delegating executive functions to Cabinet Members and officers as appropriate.
- 6.3 The Council's executive structure allows for the appointment of a Deputy Leader of the Council for a term of office concurrent with that of the Leader, expiring with the Annual Meeting of the Council in 2020. This appointment is determined by the Leader of the Council and is currently held by Councillor Khatun.

Cabinet Members

- 6.4 Article 7.06 of the Constitution provides that Cabinet Members are appointed by the Leader of the Council and will hold that office until he/she is removed by the Leader or resigns, is suspended, or ceases to be a councillor. The Leader of the Council will advise the Council at the meeting of any appointments he intends to make.
- 6.5 Paragraph 1.2 of Part 4 of the Constitution (Executive Procedure Rules) details the information relating to each Cabinet Member that must be submitted to the Annual Meeting of the Council (ie name, address and ward).
- 6.6 Article 7.08 of the Constitution requires the Leader of the Council to maintain a list of which member of the Cabinet is responsible for the exercise of a particular executive function.

Paragraph 1.2 of Part 4 of the Constitution (Executive Procedure Rules) requires the executive leader to submit a written record of the delegations to Cabinet Members to the Annual Meeting of the Council, i.e. the Executive Portfolios. The allocation of portfolio responsibilities is the sole responsibility of the Leader of the Council.

Delegation of Executive Functions to Officers

- 6.7 Article 7.08 of the Constitution requires the Leader of the Council to maintain a list of any executive functions delegated to officers. Paragraph 1.2 of Part 4 of the Constitution (Executive Procedure Rules) requires the executive leader to submit a written record of the nature and extent of any delegation to officers or other persons to the Annual Meeting of the Council.
- 6.8 The executive delegations currently contained in the Constitution have been reviewed to update them in line with any changes in legislation, to reflect any changes in the senior officer structure, to clarify any that were not considered to be clear, to delete outdated functions and to include any changes approved by the Leader or the Council during 2016/17. The updated Scheme of Delegation to Officers is set out at Appendix C.
- 6.9 The list of delegations supplements any functions or duties that may be undertaken by the officers listed:-
- a) in pursuance of their statutory obligations;
 - b) as otherwise authorised by resolution of the Council, decision of a Cabinet Member or Committee, or in accordance with Standing Orders, policies and procedures that may be adopted by the Council from time to time.
- 6.10 Council is asked to note that whilst every effort has been taken to ensure that those matters delegated by the Leader are all identified as executive functions, from time to time, legal challenge can identify anomalies in the drafting of legislation, or case law can change the interpretation of legislation.

Consequently, in receiving the delegations from the Leader, the Council is also asked to endorse the delegation of the functions to the relevant officer regardless of whether it is executive or non-executive, thereby maintaining the legality of the actions taken by an officer subsequent to a particular delegation.

Responsibility for Functions

- 6.11 Part 3 of the Constitution (Responsibility for Functions), set out as Appendix D, outlines the functions of the Council which the Executive cannot be responsible for, or, where there is local discretion, who will have responsibility for a particular function. The section also lists the committees, boards and fora which the Council has established to carry out those functions.

6.12 At its meeting on 22 March 2017, the Constitution Working Group considered the findings of an advisory group convened by the Leader to advise on any changes that needed to be considered to address deficiencies in the current structure or areas of duplication, and to ensure that governance structures are fit for purpose in meeting current and future challenges. The Constitution Working Group welcomed and endorsed the advisory group's changes to the Council's Committee and Scrutiny Board Structure, as detailed below. The Council is accordingly recommended to approve the terms of reference of the fora as currently set out in Appendix 1 to Part 3 of the Constitution (Responsibility for Functions) (Terms of Reference of Committees, Boards and other fora), and otherwise as amended by the Council during the Municipal Year. Approval is also sought to amend Part 3 – Responsibility for Functions Member Role Descriptions so as to incorporate role descriptions for Town Chairs as per the recommendation of the Governance Review Working Group (Appendix M).

Committees, Boards and other fora

General Purposes and Arbitration Committee

6.13 The terms of reference for the General Purposes and Arbitration Committee have been updated to include the making of nominations for the Queen's Birthday Honours List. The revised terms of reference are set out in Appendix G.

Licensing Committee

6.14 The former Licensing and Licensing Miscellaneous Committees have been merged to create one single Licensing Committee, consisting of fifteen members, responsible for discharging the functions of the Council in relation to the complete range of licenses.

Parliament has given the Council various licensing functions but legislation does not always allow choice in how a Council may operate those functions, for example, Scrap Metal Dealers licensing regime is a matter for the Leader and Cabinet to operate and the Licensing Act 2003 requires the Council to establish a statutory licensing committee to undertake licensing functions, as set out in the Act. Otherwise, the Council has general discretion to create Council committees under the Local Government Act 1972 to make licensing related decisions.

In order for the same members to make all licensing decisions, the Council may appoint a statutory licensing committee and then declare that that committee may also sit as a Council committee to carry out other licensing functions.

Three Licensing Sub Committees will be established by the Committee.

The revised terms of reference are set out in Appendix G.

6.15 Audit and Risk Assurance Committee

The former Audit Committee has been renamed Audit and Risk Assurance Committee with a membership of seven members. It is also proposed to appoint an additional Independent Member with recent and relevant financial experience (see para 6.34 below). The revised terms of reference are set out in Appendix G.

6.16 Ethical Standards and Member Development Committee

The remit of the former Standards Committee has been widened to incorporate member development and training and renamed the Ethical Standards and Member Development Committee.

Sub Committees will be established by the Committee with delegated power to consider investigation reports; to conduct hearings (including the imposition of sanctions).

The revised terms of reference are set out in Appendix G.

6.17 Chief Officers Terms and Conditions Committee/Appointments Sub Committee

The terms of reference for the Chief Officers Terms and Conditions Committee and the Chief Officers Appointments Sub Committee have been updated to provide clarification around the dismissal of the Head of the Paid Service, the Chief Finance Officer, the Monitoring Officer or an assistant to a political group, as set out in Appendix G.

Appointment of Members to Committees and Fora of the Council

- 6.18 The Council is requested to appoint members to the Committees and Fora of the Council. The appointments to seats on those committees will be available at the meeting.

Overview and Scrutiny Function

6.19 Scrutiny Boards have been remodelled and reduced from six to four Boards, to align with Cabinet Portfolios, as follows:-

- Health and Adult Social Care;
- Children's Services and Education;
- Economy, Skills, Transport and Environment;
- Safer Neighbourhoods and Active Communities.

In addition, there will be a formal Chair of the Budget and Corporate Scrutiny Management Board who will have overall responsibility for the coordination of scrutiny work across the Council.

The terms of reference are set out in Appendix H. Part 4 - Scrutiny Procedure Rules (Appendix K) and Article 6 – Scrutiny Boards (Appendix L) have also been amended to incorporate the new Scrutiny Management Board.

Delegation of Non-Executive Functions to Officers

6.20 The non-executive delegations currently contained in the Constitution have been reviewed to update them in line with any changes in legislation, to clarify any that were not considered to be clear, to delete outdated functions and to include any changes approved by the Council during 2016/17.

The Local Government and Housing Act, 1989 and the Local Government (Committees and Political Groups) Regulations 1990

6.21 Sections 13, 15, 16 and 17 of the above Act have a significant impact on the constitution of Committees and other fora and the relevant provisions are briefly outlined below:

Section 13 – Voting Rights of Persons who are not Members of the Council

6.22 Section 13 of the Local Government and Housing Act 1989 provides that a person co-opted to serve on committees and sub-committees appointed under Subsection (1) of Section 102 of the Local Government Act 1972 and who is not an elected member of the Council, cannot have voting rights. However, nothing in the Act prevents a person who is not an elected member from being appointed to any committee or sub-committee established under those provisions as non-voting members.

- 6.23 The exceptions to this are the Health and Wellbeing Board, whose members do have voting rights extended to them by Section 194 of the Health and Social Care Act 2012; and faith and parent governor representatives on the relevant overview and scrutiny committee who have the right to vote on education matters in pursuance of the relevant provisions of the Local Government Act 2000.

Section 15 – Political Balance on Committees

- 6.24 Section 15 of the Act provides, amongst other things, that where a Local Authority is divided into different political groups, it will have regard to the allocation to the different political groups on the Council, of all of those seats on any ordinary committee, sub-committee and Joint Authorities established pursuant to Part IV of the Local Government Act 1985.
- 6.25 The regulations provide for a political group to comprise two or more elected members of a local authority.
- 6.26 Pending notification to the Proper Officer regarding the formation of any political group, it is assumed that at the time of production of this report, Sandwell is a single party authority and the proportionality provisions will not apply.
- 6.27 A political group represented on the Council may choose to allocate a proportion of its allocation of seats to an elected member who is not in a political group on the Council, without affecting proportionality.

With regard to Planning Committee, in accordance with proportionality, all seats are allocated to Labour councillors, however, historically one seat has been offered to an opposition member, as a gesture of good will.

Appointment of Co-opted Members

- 6.28 In line with the Council's established practice and with the exceptions detailed below, it is proposed not to appoint co-opted members to scrutiny boards, but rather to secure the involvement of people as independent advisors in specific reviews appropriate to their expertise or area of interest.

Co-opted Representation on Committees dealing with Educational Matters

- 6.29 Guidance in relation to the implementation of the Local Government Act 2000 and Localism Act 2011 advises that Church and Parent Governor representatives must be appointed to the relevant overview and scrutiny committee(s) where education matters are being discussed.

The Council's Constitution therefore provides that the Children's Services and Education Scrutiny Board shall include in its membership the following voting representatives:-

- (a) 1 Church of England diocese representative;
- (b) 1 Roman Catholic Archdiocese representative;
- (c) 2 Parent Governor representatives.

If the scrutiny board deals with matters other than education functions that are the responsibility of the executive, these representatives shall not vote on those matters, although they may stay in the meeting and speak.

6.30 In line with the requirements, the Council currently appoints two co-opted members:

- 1 Church of England diocese representative;
- 1 Roman Catholic Archdiocese representative.

An exercise to appoint two Parent Governor representatives will be undertaken shortly.

6.31 In view of the limitation on voting rights and as more schools have moved away from local authority control, which has resulted in difficulties in making appointments because of the diminished benefits for certain of the interest groups and the diminished input in to the work of scrutiny, it is not considered necessary to have a wider range of co-opted members than is required by law.

Appointment of Independent Persons under Section 28 of the Localism Act 2011

6.32 The Localism Act 2011 requires local authorities to have arrangements in place under which allegations of breaches of the Member Code of Conduct can be investigated and decisions on allegations can be made. Those provisions must include the appointment of at least one Independent Person whose views must be sought and taken into account before the Council makes a decision on an allegation it has decided to investigate, and whose views may be sought on other allegations.

The Independent Person's views may also be sought by a member or co-opted member whose behaviour is the subject of an allegation.

6.33 The Council appoints three Independent Persons, however, there is currently one vacancy following a recent resignation.

Mr Raymond Tomkinson and Ms Julie Williams are currently appointed as Independent Persons under Section 28 of the Localism Act 2011 for a two year term of office ending 31 July 2018.

On 19 July 2016, the Council authorized the Standards Committee (Minute No. 78/16 refers) to appoint an Independent Person to serve on the Committee as and when a vacancy occurs between Annual Meetings of the Council. Arrangements are underway to appoint an additional Independent Person.

Appointment of Independent Member of the Audit and Risk Assurance Committee

- 6.34 The Council, at its Annual Meeting in 2016, appointed Mr Michael Ager as an independent member on the Audit Committee for a three year term of office expiring with the Annual Meeting of the Council in May 2019.

As part of the recent review, it is also proposed to appoint an additional independent member to the Audit and Risk Assurance Committee. On 2 December 2008 the Council authorised the Audit Committee (Minute No. 128/08 refers) to appoint an Independent Member to serve on the Committee as and when a vacancy occurs between Annual Meetings of the Council. Arrangements are underway to appoint an additional Independent Member.

Programme of Meetings

- 6.35 The programme of meetings for the 2017/2018 Municipal Year has been prepared, based on the constitution of the committees and other bodies referred to above. The programme is attached as Appendix I and is recommended to the Council for approval.

Scheme of Members' Allowances

- 6.36 The Members' Allowance Scheme forms Part 6 of the Constitution and is attached as Appendix J.

Following the findings of the Governance Review Working Group, it is proposed to amend the Members Allowance Scheme. A review is due to be undertaken by the Independent Remuneration Committee in the Summer. The findings of the review will be submitted to Council at a future meeting.

Financial Regulations and Procedures

6.37 The Procurement and Contract Procedure Rules have been reviewed and no changes are required.

The Financial Regulations and Procedures and Procurement and Contract Procedure Rules are currently under review, the procedures in place for 2016/17 will therefore continue until the review has taken place. A report will be submitted to a future meeting of Council.

Changes to the Constitution

6.38 The Council has a duty under Section 37 of the Local Government Act 2000 to keep its Constitution up to date. A review exercise is carried out each year to ensure that in-year amendments made by the Council have been included and to identify any areas in need of review and revision. A number of amendments will be required as a consequence of the approval of the recommendations contained in this report.

It is customary to delegate authority to the Head of Governance to make these changes.

Source Documents

Sandwell MBC Constitution

Minutes and reports of the Constitution Working Group

Otherwise as referred to in the body of the report and attached as appendices.