

# Minutes of Governance and Constitution Review Committee

Thursday, 21 September 2023 at 2.32 pm  
at Committee Room 1 - Sandwell Council House, Oldbury

**Present:** Councillor Carmichael (Chair)  
Councillors W Gill, Kalebe-Nyamongo, Padda and Rollins

**Also present:** Surjit Tour (Director of Law and Governance and Monitoring Officer), Elaine Newsome (Assistant Director – Democracy), Suky Suthi-Nagra (Democratic and Member Services Manager) and Johane Gandiwa (Committee and Constitutional Services Lead Officer).

## 1/23 Apologies for Absence

Apologies were received from Councillor Piper.

## 2/23 Declarations of Interest

There were no declarations of interest.

## 3/23 Minutes

The minutes of the meeting held on 27 May 2022 were agreed as a correct record.



## **4/23 Urgent Business**

There were no additional items of business to consider as a matter of urgency.

## **5/23 Investigation into the feasibility of establishing a shadow cabinet**

The Director of Law and Governance and Monitoring Officer reported that at its meeting on 25 July 2023, Council resolved that the Governance and Constitution Committee would investigate the feasibility of establishing a shadow cabinet and to report back to Council on its findings at the next full council meeting.

The issue of formally recognising shadow cabinet roles was also raised by the Independent Remuneration Panel (IRP), in its 2023 report 'A Review of Member' Allowances for Sandwell Metropolitan Borough Council'. This matter had been raised by Councillor participants in the IRP review activity. The IRP observed that this was a matter for Council as to whether it would wish to recognise these roles and attach a special responsibility allowance.

A benchmarking exercise was conducted across the West Midlands local authorities and beyond to ascertain the prevalence of shadow cabinets. The benchmarking exercise involved analysing constitutions of 26 councils, of which 12 were in the West Midlands. Six of the councils that were considered during the exercise were regarded by the Chartered Institute of Public Finance and Accountancy (CIPFA) in its model as Sandwell's 'nearest neighbours'.

The roles and functions of shadow cabinets varied from council to council. Traditionally, the largest opposition party may establish a shadow cabinet. However, this was not a legal requirement although local authorities were at liberty to establish shadow cabinets.

It was noted that there were varied arrangements and protocols for the establishment of shadow cabinets which included, amongst others, right to attend meetings, right to make statements in cabinet and access to information. However, the right to access information was not absolute as the Executive had a privilege to decide which information to share.

The Committee was further advised other arrangements were the opposition nominates spokespersons who undertook the roles and functions of a shadow cabinet.

The Committee considered the report outlining the proposed recommendations and options. The following key issues emerged from the Committee's deliberations.

- The Executive was in support of the principle of establishing a shadow cabinet as the practice enhanced scrutiny, accountability, and political challenge.
- Modalities would be considered to ensure that the opposition can speak and make statements in cabinet.
- Concern was raised that the opposition had not been contacted when the various options on the working arrangements for a shadow cabinet were being drafted.
- There was need to provide for legal recognition of a shadow cabinet in the Constitution.
- Further details on the working arrangements for the shadow cabinet would be considered as part of a protocol.

In order to allow the proposals by the opposition group to be considered, it was proposed to set up a Working Group of the Committee, to include Councillor Fisher, to consider shadow cabinet proposals. It was also proposed to authorise the Chair of the Committee, in consultation with the Director of Law and Governance and Monitoring Officer, to agree any proposals and recommend to Council to approve.

In addition, Councillor Gill was also requested to share any proposals for shadow cabinet arrangements in advance of the working group meeting, once considered and agreed by his political group.

## **Resolved:**

- (1) that an Officer Working Group of the Governance and Constitution Review Committee be established comprising of the following members:  
  
Councillors Carmichael (Chair), Fisher, W Gill, Kalebe-Nyamongo, Padda and Rollins;
- (2) that the Opposition Group submit any initial proposals for the shadow cabinet in readiness of the first meeting of the Governance and Constitution Review Committee Working Group;
- (3) that the Governance and Constitution Review Committee Working Group be authorised to draft the shadow cabinet protocol and the Chair of the Governance and Constitution Review Committee Working Group, in consultation with the Director of Law and Governance and Monitoring Officer, be authorised to approve the protocol on behalf of the Committee and submit to Council.

### **6/23 Centre for Governance and Scrutiny - The use of call-in: guidance for English authorities**

The Democratic and Member Services Manager reported that the Centre for Governance and Scrutiny (CfGS) had published “The use of call-in: guidance for English authorities”. The document embedded best practices on call-in procedures with a view to strengthening and developing the Council’s overview and scrutiny function.

The guidance recommended that call-in should be applied to all executive decisions (i.e. cabinet and cabinet member decisions) as opposed to just key decisions (i.e. over £1m in spend/savings or significantly affects two or more wards) which was currently the case within Sandwell.

The results of a benchmarking exercise with neighbouring local authorities had revealed that all Cabinet and Cabinet Member decisions were subject to call in with the exception of one neighbouring authority.

The Budget and Corporate Scrutiny Management Board considered the proposals on 27 July 2023 and recommended that in the interests of openness and transparency, call-in procedures should also apply to Cabinet Member decision making.

The Committee sought clarification on whether the proposed measures would affect the making of urgent decisions by council. In response, it was explained that this was not the case as urgency provisions were currently in place that permit either the Leader or the Chief Executive to make urgent decisions as well as the sign off of the Chair or Vice Chair of a scrutiny board making an exception to scrutiny call in in urgent cases.

**Resolved** That the Council be recommended to approve the changes to the Council's Scrutiny Procedure Rules as set out in Appendix 1 to incorporate changes to the call-in procedure for cabinet member decisions.

## **7/23 Protocol for nominations of Mayor/Deputy Mayor**

Consideration was given to options for the adoption of a protocol for the appointment of Mayor and Chair of the Council and Deputy Mayor/Vice Chair of the Council.

An established procedure for the appointment to the position of Mayor/Deputy Mayor would offer a consistent approach that would afford any and all political parties and independent members with the opportunity to hold the office.

It was for the Council to determine an approach on the recommendation of the Governance and Constitution Review Committee.

In Sandwell, the Council considered and appointed a Mayor and Deputy Mayor elect, normally in the early part of each calendar year, with formal ratification of the appointment at annual Council at the start of the Municipal Year in May. Members holding office, would do so on one occasion (noting the exception in 2020 where the annual general meeting of the Council was postponed due to Covid).

There were no automatic succession arrangements in place and instead Councillors were required to put forward supported nominations that were, once routed through political groups, submitted for consideration by the General Purposes and Arbitration Committee, prior to subsequent consideration by Council. Ultimately, the Council retained responsibility for the appointment to the office of the Mayor/Deputy Mayor.

The currently defined nomination criteria were:

- Nominees shall be serving members of the Council who had not previously served as Mayor.
- Nominees shall have given notable service to the Borough of Sandwell as a councillor and/or within the local community.
- Each nomination shall be submitted by a serving member of the Council supported by five other serving members of the Council regardless of political party.

Sandwell did not currently have in place an automatic succession practice where the Deputy Mayor became Mayor by default in the subsequent municipal year or vice versa.

The Committee considered various options for the nomination of Mayor/Deputy Mayor as follows:-

1. Length of service: awarded on the seniority of service for individual Councillors, this format provided for an automatic appointment. Members considering nomination would be required to have a minimum of 2 years' service as a Councillor remaining, in order that they were able to occupy both Mayor and Deputy roles. Where there was equity in length of service, this would be determined in alphabetical order. Members would be free to accept or decline any potential nomination in advance of formal consideration. Where a Councillor declined the opportunity to become Mayor/Deputy, it would then be offered to the next most senior/alphabetically ordered member. Membership of a political group was not a consideration.

2. Political apportionment by calculation or formula. This method of appointment removed the seniority factor and afforded all members with an equal opportunity to hold office, regardless of length of service and was often considered to be a merit basis for appointment. There were a number of ways that a formula could be applied, however, this was usually tied to the political balance of the Council and, dependent upon approach, could be a simple or more complex format;

Current practice, if no change was to be considered, was primarily to appoint on the basis of “notable service” to the Council or wider community. Whilst often not difficult for Members to provide examples of service, the Council did not currently have a defined mechanism for weighting the contributions identified by members. Whilst multiple nominations in political groups were often refined to one preferred nominee, the Council may wish to consider formalising a system for balancing multiple nominations received from different political groups.

The Committee considered option 1 (length of service: awarded on the seniority of service for individual Councillors) to be the preferable option to recommend to Council to approve, however the Committee was mindful that the boundary review in 2026 may have an impact on all members level of service and therefore the protocol could be reviewed thereafter.

**Resolved** that Council be recommended to approve and adopt:

- (1) a protocol for the appointment of Mayor and Chair of the Council and Deputy Mayor/Vice Chair of the Council, as set out in Appendix 2, based on length of service and awarded on the seniority of service for individual Councillors;
- (2) the automatic accession of the Deputy Mayor into the office of the Mayor or vice versa.

Meeting ended at 3.24 pm

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