



Purpose: For Decision

# Full Council Report

Date **18 JANUARY 2023**

Title **REVIEW OF POLITICAL PROPORTIONALITY,  
ALTERNATIVE ARRANGEMENTS,  
AND APPOINTMENTS**

Report of **MONITORING OFFICER**

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## EXECUTIVE SUMMARY

1. The purpose of this report is to undertake the mandatory review of political proportionality triggered by the formation of a new political group following the by-election last November, to give an opportunity for alternative arrangements (if any) to be made instead of political proportionality, and to receive nominations to the revised seat allocations, and to make appointments to seats (including for the vacancy for a representative from IWALC on the Planning Committee).

## RECOMMENDATION

2. That the political proportionality review be approved subject to any alternative arrangements duly agreed.
3. That, unless alternative arrangements are agreed, Cllr Andrew Garratt be appointed to continue to serve on the Appeals Committee, with Cllr Nick Stuart appointed his substitute having been nominated by the Liberal Democrat Group.
4. That it be noted that there is one vacancy on the Appeals Committee for an ungrouped councillor or if the alternative arrangements set out in this report are agreed that there are two vacancies on the Appeals Committee for two ungrouped councillors.
5. That Cllr Andrew Garratt be appointed to continue to serve on the Audit Committee, with Cllr Nick Stuart appointed his substitute having been nominated by the Liberal Democrat Group.
6. That Cllr Nick Stuart be appointed to the Planning Committee, with Cllr Andrew Garratt appointed as his substitute having been nominated by the Liberal Democrat Group.

7. That Cllr Nick Stuart be appointed to the Policy and Scrutiny Committee for Health and Social Care, having been nominated by the Liberal Democrat Group.
8. That Cllr Nick Stuart be appointed to the Policy and Scrutiny Committee for Neighbourhoods and Regeneration, having been nominated by the Liberal Democrat Group.
9. That alternative arrangements be agreed in that the seat allocated under the political proportionality review to the unaligned group on the Pension Fund Committee be instead allocated to the Liberal Democrat Group, and that the unaligned group be allocated an additional seat on the Appeals Committee to consequently compensate, with the seat allocation to the Liberal Democrat Group on the Appeals Committee being thereby removed.
10. That Cllr Emma Cox, having been nominated by the Isle of Wight Association of Local Councils, be appointed to the Planning Committee to the non-voting seat allocated for IWALC to replace Cllr Giles Aldred and that he be thanked for his service.
11. That the appointments set out in Appendix 1 be agreed subject to any changes agreed during the meeting.

## BACKGROUND

### Political Proportionality Review

12. Parliament, with its wider democratic mandate, introduced the political proportionality regime under the Local Government and Housing Act 1989. It stopped any majority group, or the majority of councillors present and voting, from simply allocating all seats on committees and other bodies to such a majority to the detriment of the principles of democracy. This is a classic example of parliamentary supremacy.
13. There is a legal requirement to undertake a further review of the political proportionality arrangements when a councillor joins a political group.
14. On 24 November 2022 a by-election in the electoral division of Brighstone, Calbourne and Shalfleet was held following the resignation of Cllr Steve Hastings and Cllr Nick Stuart was duly elected.
15. Cllr Nick Stuart joined the newly established Liberal Democrat group (together with Cllr Andrew Garratt).
16. At the time of writing this report (6 January 2023), the table below lists the number of councillors belonging to established political groups and the number of councillors who are ungrouped:

	November 2022	Overall Percentage
Alliance:	17	44%
Conservatives:	17	44%
Liberal Democrat	2	5%
Ungrouped:	3	7%
<b>Total:</b>	<b><u>39</u></b>	<b><u>100%</u></b>

17. The results of the political proportionality review means that the indicative changes are as follows:

### **Appeals Committee (10)**

Was Alliance Group (4), Conservative Group (5), Ungrouped (1)

Now Alliance Group (4), Conservative Group (4), **Liberal Democrat Group (1)**, Ungrouped (1)

### **Audit Committee (7)**

Was Alliance Group (3), Conservative Group (3), Ungrouped (1)

Now Alliance Group (3), Conservative Group (3), **Liberal Democrat Group (1)**, Ungrouped (0)

### **Planning Committee (12)**

Was Alliance Group (5), Conservative Group (6), Ungrouped (1)

Now Alliance Group (5), Conservative Group (5), **Liberal Democrat Group (1)**, Ungrouped (1)

### **Policy and Scrutiny Committee for Health and Social Care (7)**

Was Alliance Group (3), Conservative Group (3), Ungrouped (1)

Now Alliance Group (3), Conservative Group (3), **Liberal Democrat (1)**, Ungrouped (0)

### **Policy and Scrutiny Committee for Neighbourhoods and Regeneration (7)**

Was Alliance Group (3), Conservative Group (3) Ungrouped (1)

Now Alliance Group (3), Conservative Group (3), **Liberal Democrat (1)**, Ungrouped (0)

## Alternative Arrangements

18. Should, however, the council wish to make alternative arrangements, the council may disapply the political balance requirements in whole or in part provided that no councillor present votes against those alternative arrangements (see section 17(1) of the Local Government and Housing Act

1989 and regulation 20 of the Local Government (Committees and Political Groups) Regulations 1990).

19. An alternative arrangement might be to keep Cllr Andrew Garratt of the Liberal Democrat Group on the Pension Fund Committee where he currently occupies the allocated ungrouped seat, and to reallocate that ungrouped seat to the Liberal Democrat Group. To address the balance, the lost ungrouped seat on the Pension Fund Committee could be allocated to the Appeals Committee, resulting in an additional seat for ungrouped councillors, and the Liberal Democrat's seat allocation on the Appeals Committee would be removed.

#### Allocation of seats, nominations to and appointments

20. Appendix 1 to this report sets out the allocation of seats on committees.
21. Political groups, and ungrouped councillors, are advised to very carefully consider (1) eligibility, (2) suitability and (3) willingness to serve before making nominations to seats allocated to their respective political groups and to the respective ungrouped allocations.
22. For example, under Part 5 Section 13 ('Code of Practice for Members and Officers Dealing with Planning Matters') it states: The Town and Country Planning Act 1990 establishes a plan-led system. Planning applications must be determined by reference to the current adopted development plan. Each application must be decided in accordance with the plan unless there are material considerations to justify departure from it. Members who are consistently unable to support national or local planning policies will inevitably find themselves unable to take objective decisions in relation to individual planning applications and should not participate in development management decision making.
23. The decision as to whether a member can continue to participate in development management decision-making is one primarily for individual members, having received advice from the Monitoring Officer. However, any member who finds themselves speaking against a particular policy on two or three occasions during a twelve-month period, or five or six occasions during the lifetime of the council, might choose to regard themselves as unable to support that particular policy and withdraw from the debate where it is being applied. Where a member speaks out about three or more policies during a twelve-month period, or against five or six over the lifetime of a council, they similarly might find themselves unable to support national or local policies to the extent that they should not make development management decisions'. [PART 5 - Code of Practice for Members and Officers dealing with Planning Matters.pdf \(modern.gov.co.uk\)](#)
24. Moreover, when making nominations for overview and scrutiny committees, regard must be had to the 'Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities' (May 2019) [Title \(publishing.service.gov.uk\)](#). Chapter 4 sets out the statutory guidance on selecting such committee members, including their chairs. For instance, paragraph 27 states: 'When selecting individual members to serve on scrutiny committees, an authority

should consider a member's experience, expertise, interests, ability to act impartially, ability to work as part of a group, and capacity to serve'. (By law, no member of the Cabinet can be on any overview and scrutiny committee – see section 9FA (3) of the Local Government Act 2000. This is to prevent conflicts of interests as no person can scrutinise their own decisions).

25. With regard to membership of the Audit Committee, current guidance from CIPFA discourages having cabinet members on the Audit Committee. The reason CIPFA put forward is that it 'could deter the committee from being able to challenge or hold to account the executive on governance, risk and on control matters'. The guidance continues to advise against appointing any cabinet member on to an audit committee unless the committee has compensating arrangements to ensure independence such as appointing independent members or an independent chair i.e. someone who is not an elected councillor of the local authority. The constitution states that Audit Committee members should ideally not be Cabinet members or ideally not members of a Scrutiny committee due to potential conflicts of interest. The change in the constitution was made in May 2021 by Full Council to widen the eligibility for membership to the Audit Committee (through the removal of the absolute ban on Cabinet members serving on the Audit Committee) due to past practical difficulties in making appointments to all seats on that Committee.
26. In addition to the above seat allocation to elected county councillors, the Isle of Wight Association of Local Councils (IWALC) presently has one co-opted person on the Planning Committee to which it nominates a person to serve. This allocated seat is a non-voting seat. (By section 13 of the Local Government and Housing Act 1989 it does not attract voting rights). IWALC have nominated Cllr Emma Cox to replace Cllr Giles Aldred for appointment by Full Council to that seat on the Planning Committee.

## CORPORATE PRIORITIES AND STRATEGIC CONTEXT

27. Good governance arrangements are essential to the delivery of the council's services and the decision-making process that supports this.
28. The appointment of committees and members to such committees contributes to good governance and enables the [Corporate Plan 2021 – 2025](#) to be delivered, including addressing climate change and complying with the local authority's duty to prevent or reduce crime, disorder and anti-social behaviour under section 17 of the Crime and Disorder Act 1998.

## CONSULTATION

29. Group Leaders and non-aligned councillors have been consulted.

## FINANCIAL / BUDGET IMPLICATIONS

30. There are no additional costs associated with the proposals contained in this report. The recommendations accord with the resources available within the overall budget agreed by the Full Council on 23 February 2022.

## LEGAL IMPLICATIONS

31. The duty to undertake a review of the political proportionality is triggered under section 15 of the Local Government and Housing Act 1989 because the joining of a political group is a statutory triggering event.
32. Under section 16 of the Local Government and Housing Act 1989 the power to appoint committees and to committee seats is that of the local authority acting through the Full Council. (The power to appoint sub-committees and to sub-committee seats rests with the parent committee).
33. This power to appoint persons to committees (and indeed the power to remove persons from committees) cannot be delegated by the Full Council to a committee or to any officer of the council or indeed to any political group, but must be exercised by the Full Council itself. This is because the power to make delegated arrangements under section 101 of the Local Government Act 1972 is subject to express provision contained in that Act or in any subsequent enactment, and section 102 of the Local Government Act 1972 ('Appointment of committees') and section 16 of the Local Government and Housing Act 1989 are such express provisions.
34. It is the duty of the Full Council itself to exercise the power of appointment of elected councillors to its committees 'as soon as practicable'. The obligation on the Full Council is to give effect at the first practicable opportunity appointments are required to be made.
35. As it is only the council that can make appointments to its committees (and only the council has the power to remove) the council must, if it wishes to have any substitutes, appoint substitutes to its committees as political groups have no power to appoint, merely to nominate. The appointment of named substitutes (where such substitution is permitted by law and under the Constitution) has the merit of transparency and openness. As the council has already agreed that political groups should only nominate councillors as substitutes if they have had relevant training in the work of the committee, this approach enables training and resources to be better focussed and so the council's fiduciary duty to ratepayers is better discharged.
36. In the absence of alternative arrangements, the Full Council must appoint to the seats allocated to particular political groups in accordance with the expressed wishes of such groups, and must appoint seats allocated to the ungrouped in accordance with the proportion allocated to the ungrouped councillors (see section 16 (1) and section 16(2A) of the Local Government and Housing Act 1989 as inserted by way of modification by regulation 16 of the Local Government (Committees and Political Groups) Regulations 1990 SI 1553 as amended).
37. Under section 9P of the Local Government Act 2000 the local authority is under a duty to keep up to date.

## EQUALITY AND DIVERSITY

38. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is not considered that the content of this report has any negative impact on any of the protected characteristics.

## OPTIONS

1. Option 1 - That the political proportionality review be approved.
2. Option 2 - Not to approve political proportionality but to agree alternative arrangements without dissent.
3. Option 3 - That, unless alternative arrangements are agreed, Cllr Andrew Garratt be appointed to continue to serve on the Appeals Committee, with Cllr Nick Stuart appointed his substitute having been nominated by the Liberal Democrat Group.
4. Option 4 – That alternative arrangements are agreed to reallocate the Liberal Democrat seat on the Appeals Committee to the ungrouped and in return the Liberal Democrat are reallocated the ungrouped seat on the Pension Fund Committee.
5. Option 5 - That Cllr Andrew Garratt be appointed to continue to serve on the Audit Committee, with Cllr Nick Stuart appointed his substitute having been nominated by the Liberal Democrat Group.
6. Option 6 – That the Liberal Democrat Group changes its nomination to the Audit Committee.
7. Option 7 –That it be noted that there is one vacancy on the Appeals Committee for an ungrouped councillor.
8. Option 8 - If the alternative arrangements set out in this report are agreed it be noted that there are two vacancies on the Appeals Committee for two ungrouped councillors.
9. Option 9 - That Cllr Nick Stuart be appointed to the Planning Committee, with Cllr Andrew Garratt appointed as his substitute having been nominated by the Liberal Democrat Group.
10. Option 10 – That the Liberal Democrat changes its nomination to the Planning Committee.

11. Option 11 - That Cllr Nick Stuart be appointed to the Policy and Scrutiny Committee for Health and Social Care, having been nominated by the Liberal Democrat Group.
12. Option 12 – That the Liberal Democrat changes its nomination to the Policy and Scrutiny Committee for Health and Social Care.
13. Option 13 - That Cllr Nick Stuart be appointed to the Policy and Scrutiny Committee for Neighbourhoods and Regeneration, having been nominated by the Liberal Democrat Group
14. Option 14 – That the Liberal Democrat Group changes its nomination to the Policy and Scrutiny Committee for Neighbourhoods and Regeneration.
15. Option 15 - That Cllr Emma Cox, having been nominated by the Isle of Wight Association of Local Councils, be appointed to the Planning Committee to the non-voting seat allocated for IWALC to replace Cllr Giles Aldred and that he be thanked for his service.
16. Option 16 – That IWALC changes its nomination.
17. Option 17 – That the appointments set out in Appendix 1 be agreed
18. Option 18 – That appointments different from those set out in Appendix 1 be agreed.

## RISK MANAGEMENT

19. The recommendations are to ensure that the council meets its corporate governance requirements and responds to changing requirements and demands. These should lessen the risks arising from any challenge to the decision-making process by way of judicial review or other legal action.

## EVALUATION

20. Council has no option and must respect the duly expressed wishes of the respective political groups and to appoint those nominated to their allocated seats on committees which are politically balanced (in the absence of alternative arrangements being agreed without dissent at the meeting).
21. Equally Council has no option (in the absence of alternative arrangements being agreed without dissent at the meeting).and must appoint any unallocated seats on committees which are politically balanced to ungrouped councillors, but it does have discretion as to which ungrouped councillor(s) to appoint. Such discretion has to be exercised properly and in good faith. Fairness requires ungrouped councillors to express their wishes for nomination and for nomination of substitutes.
22. An effective governance system for the council is essential to enable business to be transacted openly and in a timely manner. The appointment of elected councillors (including where appropriate substitutes) to its committees seeks to do this.



APPENDIX ATTACHED

23. Appendix 1 – Appointments to committees.

BACKGROUND PAPERS

24. None.

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