



Purpose: For Decision

Full Council Report

Date **18 MAY 2022**

Title **REVIEW OF POLITICAL PROPORTIONALITY,
ALTERNATIVE ARRANGEMENTS,
APPOINTMENTS OF COMMITTEES, ALLOCATION OF SEATS,
NOMINATIONS AND APPOINTMENTS TO COMMITTEES
(INCLUDING CHAIRS AND VICE-CHAIRS) AND OTHER
CONSTITUTIONAL ISSUES**

Report of **MONITORING OFFICER**

EXECUTIVE SUMMARY

1. The purpose of this report is to undertake the mandatory annual review of political proportionality, to give an opportunity for alternative arrangements (if any) to be made instead of political proportionality, to formally establish council committees and to receive nominations to seats allocated on such committees, and to make appointments to such committees, including appointments of chairs and vice-chairs.
2. In addition, this report recommends a further review of the constitution following its substantial review during 2020 and its adoption in November 2020 by Full Council (with subsequent changes agreed by the Full Council since that date). It is good practice to undertake an in-depth review periodically.
3. In the meantime, this report proposes only constitutional revision be made that facilitate this review through the clarification of the terms of reference of the Audit Committee, together with any consequential changes needed arising from decisions made at this meeting of the council, and one express insertion in Part 3 Section 12 regarding the appointment of the proper officer (and the grant of delegated authority) for the purposes of section 36 of the Counter Terrorism and Security Act 2015.

RECOMMENDATION

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| <ol style="list-style-type: none">4. That the political proportionality review be approved.5. That the appointments of committees and appointments of those persons to such committees (including chairs and vice-chairs) be approved as set out in Appendix 1 to this report (as agreed at the meeting). |
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6. That it be confirmed that the terms of reference of the Audit Committee includes consideration of proposals to revise the constitution, and that the constitution be so amended by the Monitoring Officer to make this clearer.
7. That the constitution be amended at Part 3 Section 12 (Statutory Officers and Proper Officers) to include explicit reference to the appointment of the Strategic Manager for Regulatory and Community Safety Services as the proper officer for the purpose of section 36 of the Counter Terrorism and Security Act 2015 (requirement to have a panel of persons in place as a channel panel), with delegated authority duly granted for such purposes to better support the annual assurance statement.
8. That the constitution be further reviewed this year, and a report brought back to a future meeting of the council.

BACKGROUND

Political Proportionality Review

9. 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 to such a majority to the detriment of the principles of democracy. This is a classic example of parliamentary supremacy.
10. At each Annual Council meeting there is a legal requirement to undertake a review of the political proportionality arrangements, even if there has been no change since the last review was undertaken. (This last review was in September 2021).
11. Since May 2021 there has been no majority political group i.e. no political group holds a majority of seats (20 or more) on the council.
12. At the time of writing this report (25 April 2022), the table below lists the number of councillors belonging to established political groups and those who are ungrouped:

Alliance:	17
Conservatives:	18
Ungrouped:	4
<u>Total:</u>	39
13. No changes in political proportionality have occurred since the time of the last review and consequently no changes are proposed in this report.

Alternative Arrangements

14. 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).

15. No alternative arrangements are proposed by this report, but the option exists to do so on the above basis.

Appointment of Committees

16. Following the mandatory annual political proportionality review, the council formally reviews and establishes its committees.
17. There are no changes proposed to the number of committees and their terms of reference at the moment pending a proposed review of the constitution except, in so far as is needed, to clarify that the existing terms of reference of the Audit Committee in respect of consideration of the effectiveness of corporate governance includes reviewing the constitution. This is commensurate with the Audit Committee's other terms of reference including considering the council's financial regulations and contract standing orders contained within the constitution (see page 37 of the constitution [PART 3 - Terms of Ref of Committees and Boards.pdf \(moderngov.co.uk\)](#)).

Allocation of seats, nominations to and appointments to committees

18. Appendix 1 to this report sets out the allocation of seats on committees.
19. 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.
20. 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. 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 \(moderngov.co.uk\)](#)
21. 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 \(publishing.service.gov.uk\)](https://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).

22. With regard to membership of the Audit Committee, current guidance from the Chartered Institute of Public Finance and Accountancy (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 the 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.
23. Appointments to those committees (including to the posts of chairs and vice-chairs) need to be made following the political proportionality review.
24. 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). Following Cllr Shirley Smart's resignation from the Planning Committee, IWALC have nominated Cllr Giles Aldred for appointment by Full Council to that seat.
25. Moreover, on the Corporate Scrutiny Committee, IWALC currently has one voting co-opted member on the Corporate Scrutiny Committee (Cllr Cameron Palin), and the Hampshire Association of Local Councils (HALC) has one non-voting member.

Other Constitutional Issues

26. During the course of 2020 there was a review of the constitution which resulted in the adoption of the constitution in November 2020 by the Full Council.
27. Since that original engagement with councillors, ordinary elections have been held in May 2021 and, notwithstanding some subsequent changes agreed by the Full Council, it is good practice to review the constitution as a whole document from time to time to ensure that it is and remains fit for purpose.
28. It is therefore recommended that a review of the constitution takes place.
29. Besides any changes consequential upon decisions made following the political proportionality review, there are only two changes recommended in advance of this review.

30. The first proposed change is the clarification to be given to the terms of reference of the Audit Committee in order to better facilitate this proposed review of the constitution so that consideration of revisions to the constitution is expressly stated to be within its terms of reference.
31. The second proposed change is the *explicit* inclusion within the wording of Part 3 Section 12 (Statutory and Proper Officers) of the appointment of the Strategic Manager for Regulatory and Community Safety Services as the proper officer for the purpose of section 36 of the Counter Terrorism and Security Act 2015 (Assessment and support: local panels), and that delegated authority for such purposes be duly expressly granted to that post. The 'Channel panel' is already in existence as part of multi-agency arrangements but express mention is needed for the purpose of the annual assurance statement. [Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

COUNTER TERRORISM AND SECURITY ACT 2015

Section	Purpose	Proper Officer
36	Requirement to have a panel of persons in place as a channel panel	Strategic Manager for Regulatory and Community Safety Services

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

32. Good governance arrangements are essential to the delivery of the council's services and the decision-making process that supports this.
33. 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

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

FINANCIAL / BUDGET IMPLICATIONS

35. 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

36. 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 holding of an annual meeting is a statutory triggering event.

37. 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).
38. 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.
39. 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.
40. 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.
41. 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).
42. Under section 9P of the Local Government Act 2000 the local authority is under a duty to keep up to date.

EQUALITY AND DIVERSITY

43. 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

44. To approve the review of political proportionality.
45. Not to approve political proportionality but to agree alternative arrangements without dissent.
46. To appoint the committees, and appoint the persons to those committees (including the chairs and vice-chairs), as set out in Appendix 1 to this report (as agreed at the meeting)
47. To make clear that the terms of reference of the Audit Committee includes consideration of proposals to revise the constitution, and that the constitution be so amended by the Monitoring Officer.
48. To make clear that the terms of reference of the Audit Committee excludes consideration of proposals to revise the constitution.
49. To amend the constitution in Part 3 Section 12 (Statutory Officers and Proper Officers) to include explicit reference to the appointment of the Strategic Manager for Regulatory and Community Safety Services as the proper officer for the purpose of section 36 of the Counter Terrorism and Security Act 2015 (Assessment and support: local panels) and that delegated authority be duly expressly granted for such purposes to better support the annual assurance statement.
50. That there be no such explicit reference to section 36 of the Counter Terrorism and Security Act 2015 and no express mention of the grant of delegated authority for such statutory purpose.
51. That the constitution be further reviewed this year, and a report brought back to a further meeting of the council.
52. That the constitution be not further reviewed at this time.

RISK MANAGEMENT

53. 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

54. Council has no option and must respect the duly expressed wishes of the respective political group and to appoint those nominated to their allocated seats on committees which are politically balanced.

55. Equally Council has no option 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.
56. 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.

APPENDICES ATTACHED

57. Appendix 1 – Appointments (to be agreed at the meeting).

BACKGROUND PAPERS

58. None.

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