

# **Report to the Constitution and Members Services Standing Scrutiny Panel**



**Date of meeting:** 27 July 2011

**Portfolio Holder:** Leader

**Subject:** Audit and Governance Committee – Membership

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## **Decisions Required:**

- (1) To note the comments of the council's external auditors on membership of the Audit & Governance Committee;
- (2) To consider the following options for membership of the Audit and Governance Committee concerning Deputy Portfolio Holders:
  - (a) precluding Deputy Portfolio Holders from membership of the Committee; or
  - (b) allowing Deputy Portfolio Holders to remain as members but subject to declaration of prejudicial interests relating to Cabinet business; or
  - (c) a combination of (b) above and excluding the Finance Deputy specifically;
- (3) To recommend amendments to the Constitution to reflect the preferred option; and
- (4) To review the designation "Deputy Portfolio Holder" for the future.

## **Report**

### **1. AUDIT AND GOVERNMENT COMMITTEE – PRESENT POSITION**

1.1 The Audit & Governance Committee (AGC) comprises 5 members as follows:

- (a) 3 Councillors appointed annually at the Annual Council meeting;
- (b) 2 co-opted members appointed following public advertisement and interview.

1.2 Currently, the three Councillors may not include:

- (a) any member of the Cabinet;
- (b) any member of a Cabinet Committee;
- (c) any panel appointed by the Overview and Scrutiny Committee to be responsible for reviewing the Council's finances or financial procedures.

1.3 The Chairman of the AGC is appointed from among the three Councillors whilst the Vice Chairman is appointed from one of the two co-opted members.

1.4 Since the establishment of the Committee, deputy Cabinet positions have been created. The terms of reference of the AGC is currently silent on whether these deputies may be members.

## **2. DEPUTY PORTFOLIO HOLDERS (DPHs)**

2.1 In summary, DPHs are appointed to support the appointed Cabinet members in their portfolios. They are also seen as positions which assist succession planning by showing deputies an insight at first hand of Cabinet work.

2.2 DPH's may not make decisions on behalf of the Cabinet member concerned. They cannot vote at Cabinet meetings or at Cabinet Committees and cannot sign Portfolio Holder decisions. In the event that any portfolio matter arises in the absence of the Cabinet member, it is for the Leader to allocate that matter to another Portfolio Holder.

2.3 This is not to say that DPHs are not involved in Cabinet business. They might be asked , for instance, prepare reports or Portfolio Holder decisions for approval by the lead Cabinet member. In that sense, they could be involved in the work associated with the portfolio.

2.4 In passing, the term "Deputy" may be a misnomer in that the DPH's do not deputise in the accepted sense. The Panel might consider a different title, such as "Portfolio Holder Assistant" which might better reflect the role.

## **3. THE AUDIT ROLE**

3.1 In Overview and Scrutiny, the Code of Conduct imposes restrictions on members being directly involved in reviewing decisions with which they were previously involved. There are parallels here with the role of AGC.

3.2 The essence of the AGC is not to be involved in Council decision making but to review and seek assurance that proper processes are fit for purpose. A wide range of such matters is set out in the Committee's terms of reference.

3.3 The Council's Corporate Governance Group and the independent members of AGC have queried the appointment of the Deputy Portfolio Holder for Housing to serve on AGC this year. The Constitution could be read as not giving authority for such an appointment because it is silent on the matter. By the same token, it could be argued that the Constitution does not prevent this.

3.4 It is desirable that the issue to be resolved. Although good audit practice would dictate a complete separation of roles between the Cabinet and the AGC but a range of options is nevertheless set out in recommendation (1) of the report as possible ways of amending the constitution. These are in summary:

(a) excluding DPHs;

(b) allowing DPHs to be members but subject to the normal declaration rules re conflicts of interest;

(c) excluding the Finance and ICT DPH(s) specifically and rely on (b) for the other

deputies;

- (d) permitting DPHs to be members of the AGC

#### **4. VIEWS OF THE COUNCIL'S EXTERNAL AUDITORS**

4.1 The views of the Council' external auditors have been obtained. MR R. Bint has commented as follows:

“By way of background, there is no current legislation relating to audit committees. However as you are aware, the CLG is consulting on the future of local public audit and they are proposing that in due course audit committees of local authorities should be given the key role in appointment of external auditors. This latter role will be predicated on the independence of the audit committee including truly independent outside members. They propose introducing legislation requiring local authorities to have audit committees, specifying their role and almost certainly membership criteria. At that point it is highly possible that DPHs and similar would be excluded from membership of audit committees. However, that is two or three years away.

In the meantime while there is no legislation CIPFA publish “Audit Committees: Practical Guidance for Local Authorities” which is the extant best practice guidance. The CIPFA Guide states in respect of independence:

“To be effective the audit committee needs to be independent from executive and scrutiny. The link with the scrutiny function can be beneficial but the ultimate power of the audit committee could be compromised by too much cross-membership. The audit committee needs to retain the ability to challenge the executive on issues and to report to it on major issues and contraventions. Therefore cross-membership should not be the norm, and if it is seen as necessary should be restricted to one member from each.

The audit committee chair should not be, expressly, a member of the executive. A non-executive chair is important in order to promote the objectivity of the audit committee and to enhance its standing in the eyes of the public.

Whilst a separate voice is vital, a clear right of access to other committees of the council and strategic functions is also important if such independence is to lead to any beneficial action.”

It should be noted that whilst it stresses the general importance of independence a line is drawn in relation to the membership only of the chair not being a member of the executive. As I state above it is likely in my view future legislation may go further than this.

I am not aware of any other local authority we audit where members involved at member level in the executive process are members of the council's audit committee.

Having regard to the above my view on the four options in respect of the Scrutiny Panel paper are as follows:

It is highly preferable that DPHs should not be members of the AGC. In practice the only obvious good case for this if it meant a member or members with particularly relevant qualities and experience could become members and if they were debarred there would be no comparable alternative. Since contribution to the committee's affairs is also important this may sway the decision.

If the Council did decide to appoint them as AGC members I think, whilst prospectively the AGC may review any area of the Council's business, finance and ICT roles are closer to the core of AGC functions and these should certainly be precluded.

There should also be rules about declarations of interest but further than that if there were a report specifically on a DPH's portfolio area he or she should be proscribed from taking part in the debate. I accept there are some composite reports, e.g. the internal audit annual report which might impinge on many areas and in that case the DPH should be permitted to contribute (e.g. housing may be mentioned in a few cases in an internal audit report covering the whole Council).

So, while there is no prohibition, the CIPFA Guidance draws the line only at a need for non-executive chairs and therefore the Council can appoint DPHs to the AGC, I think it would be highly preferable they did not. In the event that they were to decide to do so there needs to be clear rules to deal with the most obvious areas of potential conflict.

Incidentally, I agree that the title Deputy Portfolio Holder is misleading and Portfolio Holder Assistant would be preferable and at least avoid some unnecessary perception issues."

## **5. FURTHER ACTION**

- 5.1 Changes to the AGC terms of reference require Council approval and the views of that Committee could be obtained before the matter is considered by the Council.