

Council

Date: 21 April 2021

Agenda item:

Subject: Appointment of Chairs and Vice Chairs of the Overview and Scrutiny Commission and its Panels and the Councillors' Code of Conduct

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Recommendations:

- A. To note the differing views of the political groups regarding the appointment of chairs and vice chairs of the Overview and Scrutiny Commission and its Panels set out in this report
- B. To consider whether to amend paragraph 9 of the Overview and Scrutiny Procedure Rules by deleting the following wording: "The appointment of Chairs and Vice Chairs will comply with the rules of proportionality and" as shown below:

" The Council will appoint the Chair and Vice Chair of the Overview and Scrutiny Commission and any of its scrutiny panels at its Annual Council meeting. In each case the Chair and Vice Chair for each body will not be from the same political party. In the event of a vacancy during the council year, the Council will appoint a new Chair at the first meeting following the resignation of the Chair. All panel chairs are to be members of the Overview and Scrutiny Commission."

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. In July 2020 the Standards and General Purposes Committee established a cross party working group to oversee a review of the Council's constitution. The working group has met on a number of occasions and has considered several aspects of the current constitution with a view to agreeing some recommended changes. These discussions have to some extent recognised the fact that over the years practice on the ground has diverged from the written word of the constitution. A full proposed revised version of the Constitution will be considered by the Standards and General Purposes Committee early in the next municipal year, possibly at a special meeting of that Committee, with a view to its being adopted at the July Council meeting.
- 1.2. One aspect on which it has not yet been possible to reach agreement is the question of the selection of the chairs and vice chairs of the Overview and Scrutiny Commission and its three panels. At the last meeting of the Standards and General Purposes Committee on 11 March, an amendment was proposed suggesting that the current requirement for some form of proportionality should be removed. This amendment was not formally put to the vote and instead the Committee delegated authority to the Council's Monitoring Officer to submit a report with recommendations to a meeting of full council, having reconvened a meeting of the constitution review working

group in an effort to seek agreement on the issue. The working group met on 30 March to consider a number of options.

2 DETAILS

2.1. Paragraph 9 of the Overview and Scrutiny Procedure Rules deals with the appointment of the chairs and vice chairs in the following way:

“The Council will appoint the Chair and Vice Chair of the Overview and Scrutiny Commission and any of its scrutiny panels at its Annual Council meeting. The appointment of Chairs and Vice Chairs will comply with the rules of proportionality and in each case the Chair and Vice Chair for each body will not be from the same political party. In the event of a vacancy during the council year, the Council will appoint a new Chair at the first meeting following the resignation of the Chair. All panel chairs are to be members of the Overview and Scrutiny Commission.”

2.2. It will be noted that the appointment is required to be in compliance with the rules of proportionality which is presumably a reference to the requirements for political balance contained in section 15 of the Local Government and Housing Act 1989. Although those provisions relate to the membership of committees, they do not apply to the appointment of chairs and vice chairs. This requirement may have originated from an earlier review of the scrutiny function which recognised the need for scrutiny to be non party political function.

2.3. In practice it is quite difficult to implement precise proportionality across the 8 seats available. However, it would be fair to say that the current allocation is some way from being “proportionate”. The table below shows the percentages of seats in the Council as a whole by reference to political group and the current allocation of chair and vice chair positions.

Political group	Number of Seats	% of seats held by the political groups on the Council as a whole	% of positions available across Commission and Panels
Labour	4 (3 Chairs + V-C of Commission)	57%	50%
Conservative	3 (V-Cs of all 3 panels)	28%	37.5%
MPWIR	1 Chair of the Commission)	5%	12.5
Liberal	0	10%	0

Democrat			
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3 ALTERNATIVE OPTIONS

- 3.1. Although there is no legal requirement to allocate chair and vice chair positions proportionately, it does seem unsatisfactory for there to be a reference in the procedure rules which is not reflected in practice. The group considered a number of options and the debate in essence was between leaving complete flexibility as to the appointment and amending the constitution to be more prescriptive about how the allocation should work.
- 3.2. One way of creating complete flexibility would be to delete the following words from paragraph 9: *“The appointment of Chairs and Vice Chairs will comply with the rules of proportionality and”*. This was the option proposed at the Standards and General Purposes Committee. If this approach were adopted, there would still be a requirement for the chair and vice chair to come from different groups so as to preserve the cross party nature of the allocations. The appointment would be made by a majority vote at annual council. This proposed approach was supported by the administration’s representative on the working group and by the Conservative group’s representative.
- 3.3. The option of writing into the constitution a minimum entitlement was preferred by the representative appointed by the Liberal Democrat Group who considered that, in the interests of plurality and scrutiny being seen to be representative of the widest possible range of voters across Merton, there should be a requirement that each group represented on the Council be allocated at least one chair or vice chair position with remaining positions awarded, as closely as mathematically possible, via proportionality. This was not a view supported by the other members of the working group; although they recognised that this might well be an outcome in any one year, they favoured leaving the position open for decision by full Council on an annual basis.
- 3.4. The representative of the Merton Park Ward Independent Residents Group did not consider it appropriate to express a view on the preferred way of dealing with the issue, bearing in mind his current and long held position as Chair of the Commission. He did state having a chair of scrutiny who is not necessarily a member of one of the national political parties represented on the Council does provide an element of independence to the scrutiny function, although this view was not supported by the Liberal Democrat representative. The broader issue of party allegiance was also flagged up by one of Council’s Independent Persons who referred to the Government’s statutory guidance on scrutiny which emphasises the need for scrutiny

chairs to be selected on the basis of their expertise, experience and skill rather than by reference to their particular party affiliation.

- 3.5. In light of the balance of views in the working group, Full Council is now being asked to consider whether to delete the reference to proportionality contained in the Overview and Scrutiny Procedure Rules. This will leave the allocation up to the decision of the annual council meeting, with the proviso that the chair and vice chair of the Commission and its 3 panels must be from different political groups which prevents an outcome where one group takes all the positions although provides no guarantees that one or more parties will not be entirely excluded.

Other Issues

- 3.6. In addition to the question of entitlement to positions, there was a discussion about the mechanism for deciding on the individuals to be appointed with a suggestion that this should be done by secret ballot at the annual council meeting. This could apply after the party filling that position had been decided (by informal discussion amongst the parties). A minimum of two members from the party filling that role would then be nominated and the final choice made by a secret ballot of all members. The argument being put was that this would allow for a genuinely free vote without any councillor feeling constrained to vote in a specific way and to ensure the election of chairs and vice chairs who had the confidence of members across the political spectrum. One of the Council's Independent Persons emphasised that the guidance on scrutiny arrangements, referred to above, recommends that selection by secret ballot be considered by councils.
- 3.7. The working group were divided on this point and the majority did not think such a suggestion should be adopted for the forthcoming municipal year although some thought it was something which could be explored again closer to 2022 elections in preparation for the newly constituted Council. They also thought the question of apportionment of chair and vice chair seats could be revisited at that point, with a view to reaching agreement between the political groups then represented on the Council.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The discussions with the working group constitute the relevant consultation for these purposes

5 TIMETABLE

- 5.1. If agreed, the amendment to the Overview and Scrutiny Procedure Rules will take immediate effect for the purpose of appointing the chairs and vice chairs for the 21/22 municipal year.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. The legal implications are set out in the body of the report.

**8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION
IMPLICATIONS**

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