

COUNCIL:

26th MARCH 2015

REPORT FROM THE CONSTITUTION COMMITTEE – 19 MARCH 2015

REPORT OF THE COUNTY CLERK & MONITORING OFFICER

Reason for the Report

1. To report on the recommendations of the Constitution Committee following its meeting on 19 March 2015 in relation to the following matters:
 - to establish a Local Authority Governors Panel to advise council on the appointment of Local Authority (LA) Governors
 - to amend the Officer Scheme of Delegation to authorise the Director of Education to appoint additional governors and other matters in relation to schools causing concern
 - to amend the definition of “inappropriate business” to include matters outside the powers of the council
 - to amend the rules relating to business at Extraordinary meetings to make it clear that the rules of debate for ordinary motions will apply
 - To revise the rules relating to Order of Business at council meetings to require all matters requiring decision to take precedence.

Local Authority Governors Panel

2. In November 2014, the Children & Young People Scrutiny Committee undertook a Task and Finish Inquiry into the effectiveness of Cardiff schools’ Governing Bodies including a review of the appointment process for local authority governors. The Inquiry has recommended the setting up of a Member Governors Panel to oversee the process of recruiting local authority governors and to carry out a programme to recruit and support school governors
3. The Constitution Committee are supporting this new approach and recommending that the Constitution be amended to establish a cross party Advisory Member Panel to consider and vet all applications to serve as a Local Authority Governor making recommendations for appointment to the Council.

The Panel would also maintain an overview relating to the recruitment and training of governors; criteria for appointment and conduct. It is proposed that the Panel would comprise up to seven Cardiff councillors and meet termly or more frequently as required to consider all LA governor applications or renewals. The Panel would also consider any objections to appointments and any applications to remove an LA governor. All applications would need to be accompanied with an enhanced Disclosure and Barring Check.

School causing concern – Officer Scheme of Delegation

4. The Council has statutory responsibility for monitoring and intervening where necessary where there are concerns about school standards. The Council's powers to intervene in maintained schools are set out in Part 2, Chapter 1, of the School Standards and Organisation (Wales) Act 2013 ('SSOW Act 2013'). The accompanying statutory guidance (Schools Causing Concern, Welsh Government Guidance document no. 129/2014) states that Councils are required to 'use their powers proactively and effectively to bring about the rapid improvement of underperforming schools' (Guidance, Introduction paragraph 2).
5. There are 5 different types of intervention powers under the SSOW Act 2013, which the Council can exercise whenever the statutory grounds for intervention exist. Section 3 of the 2013 Act requires a Warning notice to be served before the powers can be exercised. The intervention powers are:
 - i. To direct a governing body to secure advice or collaborate in order to secure improvements - section 5;
 - ii. To appoint additional governors (to provide additional expertise to the governing body in key areas to support the school's improvement) - section 6;
 - iii. To appoint an Interim Executive Board to replace the governing body - section 7;
 - iv. To suspend the school's delegated budget – section 8; and
 - v. To give directions to the governing body or head teacher or take any other steps – section 9.
6. The appointment of individuals to outside bodies is, by law, a local choice function, which means that the Council has discretion to allocate responsibility for this function to either the Cabinet or the Council. The Statutory Guidance issued by Welsh Government (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, paragraph 3.22) confirms that the appropriate allocation of responsibility for such functions will depend on the circumstances, which means that whilst certain appointments may be suitable for decision by full Council, other appointments may be more suitable for decision by the Cabinet or officers under delegated authority. However, the Constitution currently assigns responsibility for *all* such appointments to full Council (Scheme of Delegations, Section 3).

7. The powers to intervene in schools causing concern need to be exercised in a timely manner, and sometimes on an urgent basis, without the delay likely to be involved in waiting for a Council meeting. The decision to intervene and the type of intervention are matters requiring professional judgement, rather than political debate; and additional governors are generally appointed on the basis of their special expertise, rather than as representatives of the Council. For these reasons, it is submitted that all the powers of intervention listed in paragraph 5 above (including the power to appoint additional governors) should properly be assigned as Executive functions, and delegated to the Director of Education.
8. The Constitution Committee recommend amendment of the Scheme of Delegations to that effect. This delegation will be subject always to the usual caveats applicable to all officer delegations, including consultation with Cabinet or any relevant non-executive committee and relevant officers and the proper recording of the decision.
9. The Constitution Committee are also recommending the corresponding amendment to the allocation of responsibility for the function of making appointments to outside bodies, to refer to the Director's delegation. For the avoidance of any doubt, no change is to be made to the provision for all other appointments to outside bodies to be referred to full Council.

Motions at Extraordinary meetings

10. The Constitution Committee are recommending that current Council Meeting Procedure Rules relating to items of business at Extraordinary Meetings need to be revised to make it clear that Notices of Motion can be considered at Extraordinary Meetings, and that the rules of debate for Ordinary Motions as set out in Rule 22 will apply as modified in relation to notice.

Inappropriate Business

11. Inappropriate business is defined in Rule 35 of the Council Meeting Procedure Rules. The definition does not include any matter which is unlawful or ultra vires the Council. The Constitution Committee are recommending that matters that are ultra vires the Council or unlawful be added to the definition.

Order Of Business at Council Meetings

12. The Constitution Committee has been reviewing the current Rules relating to Order of Business at council meetings. Rule 3 sets out an Order which puts the Leader and Cabinet Member Statements and the 90 minute Member Oral Questions and Answers ahead of Reports and Motions. The Committee is of the view that the Council Meeting should deal with all items of business requiring a vote including Motions ahead of these items and are recommending Rule 3 be

amended to do this.

Legal Implications

13. The relevant legal provisions are set out in the body of the report. Article 14 requires the full council to approve any changes to the Constitution.

Financial Implications

14. There are no financial implications arising from the recommendations of this report

RECOMMENDATIONS:

Council is recommended by the Constitution Committee to agree the following amendments to the Constitution:

1. Local Authority Governors Panel

That a Local Authority Governors' Panel be established as part of the Constitution with the following Terms of Reference:

Terms of reference

For School Governing Bodies constituted under The Government of Maintained Schools (Wales) Regulations 2005 to advise the council on appointments and removal of governors to those places allocated to the Local Authority;

To consider and make decisions relating to the recruitment, training and vetting of potential governors and any other matters that may be referred to the Panel by the Cabinet or the Constitution Committee.

Membership -Seven members

2. School causing concern – Officer Scheme of Delegation

Part 3- Responsibility for Functions .Section 4F, Insert a new delegation:

'Director of Education, Delegation Reference 'DEd1'

To exercise the Council's powers of intervention under Part 2 of the School Standards and Organisation (Wales) Act 2013, including for the avoidance of doubt, the powers to serve a Warning Notice; appoint additional governors or an Interim Executive Board'

Section 3, Amend allocation of the following local choice function as follows:

'The appointment of any individual:

To any office other than an office in which he / she is employed by the authority;

To anybody other than:

(i) The authority;

(ii) A joint committee of two or more authorities; or

To any committee or sub-committee of such a body,

And the revocation of any such appointment'

Decision Making Body – Council / Cabinet, for appointments pursuant to powers of intervention under section 6 or section 7 of the School Standards and Organisation (Wales) Act 2013

Delegation – [For appointments pursuant to powers of intervention] - Director of Education under delegation reference DEd1 (Scheme Section 4F)

3. Motions at Extraordinary meetings

Amend Rule 4 of the Council Meeting Procedure Rules relating to make it clear that Notices of Motion can be considered at extraordinary meetings, and that the rules of debate for Ordinary Motions as set out in Rule 22 will apply as modified in relation to notice.

4. Inappropriate Business

Amend Rule 35 of the Council Meeting Procedure Rules to include any matter which is unlawful or ultra vires the Council. .

5. Order Of Business

Amend Rule 3 of the Council Meeting Procedure Rules to move items 9 (viii) and (ix) [Leader and Cabinet Statements and Oral Questions] of business to follow Ordinary Motions

6. Consequential Amendments

Authorise the County Clerk and Monitoring Officer to make any consequential amendments to other Constitution provisions.

MARIE ROSENTHAL

County Clerk and Monitoring Officer

20 March 2015

The following background papers have been taken into account:

Reports to Constitution Committee on 15 January and 19 March 2015:

Proposed Local Authority Governor Panel

Interventions in Schools – Scheme of Delegation

Council Meeting Procedure Rules Review