

CHESHIRE EAST COUNCIL

Governance and Constitution Committee

Date of Meeting: 27th May 2010
Report of: Democratic Services Manager
Title: Proposed Changes to the Council's Committee Structure

1.0 Purpose of Report

- 1.1 To propose the reallocation of committee responsibilities and the creation of two new committees in place of the existing Governance and Constitution Committee.
- 1.2 To approve the political group representation of the Council as a result of the proposed changes.

2.0 Recommendations

- 2.1 Council be recommended to agree that
 - (1) a new Audit and Governance Committee be established, with the powers and functions set out in Appendix B of this report, and with an allocation of seats to the political groups of 7:2:0:0 (Conservative: Liberal Democrat: Labour: Independent);
 - (2) the Leaders of the Political Groups, as appropriate, notify the Borough Solicitor of their nominations to the Audit and Governance Committee;
 - (3) a Constitution Committee be established to replace the existing Governance and Constitution Committee, with the powers and functions set out in Appendix C of this report, and with the same allocation of seats to the political groups as the existing Governance and Constitution Committee;
 - (4) the Constitution Committee shall retain the membership and current schedule of meetings of the existing Governance and Constitution Committee as agreed by Council, subject to any changes of meeting dates agreed by the Chairman;
 - (5) the Chairman and Vice-Chairman of the Audit and Governance Committee be elected by the Committee at its first meeting, which shall be arranged to take place on a date to be agreed by the Democratic Services Manager, in consultation with the Leaders of the Political Groups;
 - (6) the political group representation, as agreed by Council at its annual meeting, be amended in accordance with the proposals contained in this report, and that they be adopted, resulting in a new proportional entitlement of seats as follows:

New Proportional Entitlement 131 (72.8%) 27 (14.8%) 13 (7.4%) 9 (5%)

(7) the Borough Solicitor be authorised to make such changes to the Constitution as he considers are necessary to give effect to the wishes of Council.

3.0 Legal Implications

- 3.1 The legal implications in respect of the allocation of seats to the political parties are set out in Sections 15 and 16 of the Local Government and Housing Act 1989. The appended report, which was presented to Council on 13th May 2010 (Appendix A), sets out the allocations prior to the recommended changes, whilst this report sets out the amended allocations in accordance with Sections 15 and 16 of the Local Government and Housing Act 1989.

4.0 Risk Assessment

- 4.1 Failure to comply with the legislation when appointing its committee memberships would leave the Council open to legal challenge.

5.0 Information

Proposed Committees

- 5.1 Appendix A to this report comprises the report which was presented to Council at its annual meeting on 13th May. Its recommendations were agreed by Council. This report sets out proposed changes and explains the reasons for them, and the consequences of those changes if they are agreed.
- 5.2 In a climate of increasing need for strong governance arrangements, transparency and clear lines of responsibility, it is considered good practice to have a separate committee which incorporates the requirements of good corporate governance which has an independent assurance function separate from any other responsibilities. The Code of Practice for Internal Audit in local government (CIPFA 2003) is the main document which assesses adherence to the necessary standards. Para 4.1.1 requires that “the authority has an independent Audit Committee.” In addition the CIPFA document “Audit Committees; Practical Guidance for Local Authorities” (2005) states that “the audit committee must be independent of the executive and scrutiny functions and that it must have a clear right of access to full council.”
- 5.3 CIPFA recommend a statement of purpose for the Committee:
- “the purpose of the Audit Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority’s financial and non-financial performance to the extent that it affects the authority’s exposure to risk and weakens the control environment, and to oversee the financial reporting process.”
- 5.4 CIPFA also says 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.”

- 5.5 As a consequence of the above, it is proposed that the “audit-related” functions and powers of the Governance and Constitution Committee, appropriately modified in line with current thinking, should be transferred to a new Audit and Governance Committee. The existing Governance and Constitution Committee would retain the remaining functions and undertake these under the new title: the Constitution Committee. Subject to any changes agreed by its Chairman, the Committee would retain its existing programme of meetings, and its membership would also remain the same as that of the existing Governance and Constitution Committee.
- 5.6 Appendices B and C set out the powers and functions of the proposed Audit & Governance Committee, and the Constitution Committee, respectively.
- 5.7 It is proposed that the Audit and Governance Committee will have 9 members and the membership be allocated 7:2:0:0 (as explained elsewhere in this report).
- 5.8 It is proposed that the existing membership of, and arrangements for, the Governance and Constitution Committee be carried forward to the new Constitution Committee.

Political Proportionality

- 5.9 When changes are made to committee arrangements, the effect of the relevant legislation means that changes become necessary to secure political proportionality. The proportional entitlements do not change, but the calculations need to be checked and worked through all of the relevant member bodies. The group allocations on each committee subject to political proportionality, as well as the total number of seats allocated to each group, must be as close as possible to the overall ratio of members of each group on the Council.

The proportional entitlement of seats allocated to the Council’s political groups (following annual council), rounded to the nearest whole number was:

Proportional Entitlement 124 (72.8%):25 (14.8%):13 (7.4%):9 (5%)

- 5.10 The second page of the Council report sets out the legal requirement arising from the allocation of seats to each individual committee: “The Act provides that where this results in a Group having more or fewer actual seats than their proportional entitlement (as shown in the ‘Difference’ line in Appendix One), any surplus seats are re-allocated to ensure that the final actual allocation to each Group equals the proportional entitlement”. This is essentially a requirement to ‘true up’ the numbers by checking allocations across all member bodies covered by the requirement for proportionality and making any minor adjustments to achieve political proportionality.

- 5.11 This report proposes that a new Audit and Governance Committee should not have a large Membership.
- 5.12 It is therefore proposed that the new committee should have a membership of 9. According to the existing political proportionality of the Council, this would normally result in a 7:1:1:0 to give political balance to the committee itself.
- 5.13 The creation of the new committee would increase the total number of seats on the Council's committees from 171 to 180.

	Conservative	Liberal Democrat	Labour	Independent
Total seat entitlement after Annual Council (overall proportionality)	124	25	13	9
	72.8%	14.8%	7.4%	5.0%
Total seat entitlement after Annual Council with the new Audit and Governance Committee added (overall proportionality)	131	27	13	9
	72.8%	14.8%	7.4%	5.0%
Total seat entitlement after creation of Audit and Governance Committee (with committee proportionality) 7:1:1:0	131	26	14	9
	72.8%	1 seat too few Below 14.8%	1 seat too many Above 7.4%	5.0%
Total seat entitlement after creation of Audit and Governance Committee (with overall proportionality) 7:2:0:0	131	27	13	9
	72.8%	14.8%	7.4%	5.0%

- 5.14 It can therefore be seen that, by applying the proposed 7:1:1:0 allocation of seats to the new committee (making the seats on the committee itself balance), the entitlement to seats across the Council total is no longer in proportion. The Liberal Democrat Group would have one too few seats and the Labour Group would have one too many.
- 5.15 Under the requirements of the legislation, this must be rectified, and could be achieved by changing the allocation of seats on the new committee to 7:2:0:0.

6. Reasons for Recommendations

- 6.1 To set up appropriate decision-making structures and determine proportional political representation on the Council's committees.

For further information:

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Background Documents: None

CHESHIRE EAST COUNCIL

Report to Council

Date of Meeting: 12th May 2010

Report of: Borough Solicitor

Title: **Political Representation on the Council's Committees**

Purpose of Report

To determine the political representation on the Council's committees.

Recommendations

That the political group representation, as set out in Appendices One and Two to this report and the methods, calculations and conventions used in arriving at them as outlined in the report be adopted.

Legal Implications

The Local Government (Committees and Political Groups) Regulations 1990, made pursuant to the Local Government and Housing Act 1989, make provisions in respect of the political group representation on a local authority's committees in respect of the political composition of the Council. The legislation applies to overview and scrutiny committees and the decision-making committees of the Council.

The legislation requires that, where proportionality applies, and seats are allocated to different political groups, the authority must abide by the following principles, so far as is reasonably practicable:

Not all of the seats can be allocated to the same political group. There are no single group committees.

The majority of seats on a body are to be allocated to a political Group with a majority membership of the authority. The seats are so allocated.

The number of seats on the total of all ordinary committees allocated to each Political Group bears the same proportion to the proportion on the full Council. Appendix One achieves this.

The number of seats on each ordinary committee allocated to each Political Group bears the same proportion to the proportion on full Council. Appendix Two demonstrates proportional distribution across all committees etc.

The 1990 Regulations require Political Group Leaders to notify the Proper Officer of the Group's nominations to the bodies in question.

Risk Assessment

Failure to comply with the Act and Regulations when appointing its committee memberships would leave the Council open to legal challenge.

LOCAL GOVERNMENT (COMMITTEE AND POLITICAL GROUPS) REGULATIONS 1990

Appendix One to this report sets out the proposed political representation on ordinary committees, based on the political structure of the Council as a whole. The following is the basis of the approach adopted:

Conservatives	59	72.8%
Liberal Democrat	12	14.8%
Labour	6	7.4%
Independent	4	5.0%
TOTAL	81	100%

Appendix One demonstrates how the Council has to agree the proportionality of its ordinary committees. The definition of an ordinary committee does not include sub-committees or joint committees. They are therefore excluded from Appendix One, but shown at Appendix Two, except where these are ad-hoc bodies. The proportionality rules do not apply to the Cabinet or to the Standards Committee. These are also excluded from Appendix One.

The proportionalities have been arrived at by the following methods and conventions:

applying the relevant percentage to each body;
rounding up from 0.5 and above and rounding down below 0.5

The Act provides that where this results in a Group having more or fewer actual seats than their proportional entitlement (as shown in the 'Difference' line in Appendix One), any surplus seats are re-allocated to ensure that the final actual allocation to each Group equals the proportional entitlement.

Discussions were held with Group Leaders in April 2009 to ensure that the proportionality calculations were accurately carried out. Following these discussions, agreement was reached to the effect that some adjustments should be made to the original draft proportionalities calculation, in particular in respect of the Northern Planning Committee. The agreements reached in April 2009 have been carried forward to the calculations for 2010/11.

5.4 Appendix Two shows the proportional distribution of seats on all bodies (this includes not only the ordinary committees at Appendix One but other bodies such as joint committees, sub-committees etc.

Reasons for Recommendations

To determine political representation on the Council's committees.

For further information:

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Background Documents: None

APPENDIX ONE

CHESHIRE EAST COUNCIL - POLITICAL PROPORTIONALITIES

<u>Committee Total</u>	<u>Con</u>	<u>Lib Dem</u>	<u>Lab</u>	<u>Ind</u>
Children and Families Scrutiny	10	2	1	1
Health/Adult Social Care Scrutiny	10	2	1	1
Environment and Prosperity Scrutiny	10	2	1	1
Sustainable Communities Scrutiny	10	2	1	1
Corporate Scrutiny	10	2	1	1
Strategic Planning Board	10	2	1	1
Northern Planning Committee	12	3	0	0
Southern Planning Committee	11	2	1	1
Licensing Committee	11	2	1	1
Governance and Constitution	10	2	1	1
Public Rights of Way	5	1	1	0
Staffing	5	1	1	0
Appeals	5	1	1	0
Lay Members Appointments	5	1	1	0
Total Places (Actual) 171	124	25	13	9
Proportional Entitlement	124 (72.8%)	25 (14.8%)	13 (7.4%)	9 (5%)
Difference	0	0	0	0

NB:

1. The methods and conventions used in arriving at these proportionalities are outlined in the report.
2. The final proportionality for the Northern Planning Committee will be 12:3:0:0. The explanation for this is given in the report.
3. Cabinet and Standards Committee are outside the proportionality rules as are Joint Committees.

APPENDIX TWO

CHESHIRE EAST COUNCIL-PROPORTIONAL DISTRIBUTION OF SEATS ON ALL BODIES (other than those to be appointed on an ad-hoc basis)

<u>Committee</u> <u>Total</u>	<u>Con</u>	<u>Lib Dem</u>	<u>Lab</u>	<u>Ind</u>
Children and Families Scrutiny	10	2	1	1
Health/Adult Social Care Scrutiny	10	2	1	1
Environment and Prosperity Scrutiny	10	2	1	1
Sustainable Communities Scrutiny	10	2	1	1
Corporate Scrutiny	10	2	1	1
Strategic Planning Board	10	2	1	1
North Planning Committee	12	3	0	0
South Planning Committee	11	2	1	1
Licensing Committee	11	2	1	1
Governance and Constitution	10	2	1	1
Public Rights of Way	5	1	1	0
Staffing	5	1	1	0
Appeals	5	1	1	0
Lay Members Appointments	5	1	1	0
Cheshire East/West/Wirral Scrutiny	4	1	1	0
Standards Committee	5	1	1	1
School Governor Appointments Panel	5	1	1	1
Civic Sub Committee	5	1	1	1
Cheshire Fire Authority	6	1	1	0
Peak District National Park Authority	1			
Total Places 210	150	30	18	12
Proportional entitlement	153(72.8%)	31(14.8%)	16(7.4%)	10(5%)
Difference	-3	-1	+2	+2

(Note: In terms of Proportional Entitlement Independents rounded down rather than up as Smallest Group)

NB:

Not included in the above are:

General Licensing Sub-Committees of 5, which are to be appointed on an ad-hoc basis

Licensing Sub-Committees of 3, which are to be appointed on an ad-hoc basis

Wilmslow Community Governance Review Sub-Committee. Although the appointments have been made on the basis of political proportionality the Sub Committee has been appointed on an ad hoc basis.

In accordance with legislation, included in the above are the numbers of Members appointed to Cheshire Fire Authority and the Peak District National Park Authority as “prescribed organisations”. Other previously agreed nominations to “outside bodies” are not included.

AUDIT AND GOVERNANCE COMMITTEE

The Audit and Governance Committee is responsible for:

1. overseeing the Council's role and responsibilities in respect of Corporate Governance and Audit;
2. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
3. supporting the Council's audit function, both internal and external;
4. ensuring the Council has in place appropriate policies and mechanisms to safeguard the Council's resources;
5. supporting the Chief Financial Officer in relation to the performance of their duties;
6. approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
7. ensuring any Council's Risk Management arrangements are operating effectively;
8. where necessary, overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of their duties as Members of the Council, and as the Council's representatives on outside bodies;
9. considering the Head of Internal Audit's annual report and opinion and a summary of internal audit activity and the level of assurance over corporate governance arrangements;
10. receiving the Internal Audit Plan and summary reports on performance against the plan;
11. reviewing and approving the Annual Governance Statement;
12. seeking assurance that customer complaint arrangements are robust;
13. reviewing and making recommendations upon the whistle blowing arrangements process;
14. considering external audit and other external agencies reports to those charged with governance as a source of assurance;
15. ensuring that the Council maintains a robust counter fraud culture via the implementation of an anti fraud and corruption policy and strategy.

CONSTITUTION COMMITTEE

The Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Council's administrative and political business, including electoral matters; administrative boundaries and parishing; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Council and other meetings;
2. determining policies and conventions in relation to the political management of the Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Council's Constitution and recommending any changes to the Council;
4. advising the Council on, and overseeing the promotion of private legislation on behalf of the Council;
5. recommending to the Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members' Allowance budget, including pensions, and keeping under review the scheme for the payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise the Council on the adoption of the scheme and on any proposed amendments;
8. approving annual conference and seminar attendance;
9. making recommendations to the Council on civic issues, including those affecting the Mayor, Freeman and Aldermen.
10. approving reasons for absence for Members;
11. approving the overall seating plan for Council meetings;