

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

22 February 2022

Report of the Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGES TO CONSTITUTION

The report recommends that changes are made to the constitution to (a) allow for substitutes at Committees and Advisory Boards/ Panels and (b) allow for Members to remain seated when speaking at full Council.

1.1 Substitutes

- 1.1.1 Currently the Constitution does not permit the use of substitute members on any of the Council's Committees and Advisory Boards. The Leader has requested that I bring forward a report to allow for political groups to deal with unexpected short-term absences of Committee/ Board members. This report recommends appropriate amendments to the constitution.
- 1.1.2 The use of a substitution system is common in many local authorities, primarily as a means of preserving political balance of committees and boards when one or more of the ordinary members of that body are unable to attend. It can also ensure that a committee or board achieves a quorum of members in order to transact its business.
- 1.1.3 There are a number of aspects of a substitution system that need to be considered. These are set out below.

Appointment of substitutes

- 1.1.4 It is suggested that the most practicable method of appointing substitute members would be for the Council itself to appoint named substitutes for each Committee/ Board etc. The substitute members would therefore be named and appointed at the same time as the regular committee membership, usually at annual Council. This method has the advantage of certainty in that the identity of the substitute members is publicised in advance. In the event that an ordinary Committee or Board member were unable to attend a specific meeting, one of the appointed substitutes (from within the same political group) could attend the meeting in their place, subject to the appropriate notification procedures (see paragraphs 1.1.10 to 1.1.11 below).

- 1.1.5 An alternative method would be to delegate authority to the Chief Executive to make changes in the standing appointments to committees & boards on the instructions of the political groups. Technically, this would operate as a formal change to the membership of any given committee or board as the change would remain operative until further notice from the instructing political group. In that respect this approach is more cumbersome and administratively burdensome than the former approach, and also operates against the principle of fixed membership of a committee. The preferred approach for many councils has therefore been to follow the method set out at 1.1.4 above.
- 1.1.6 It is suggested that each political group be permitted to nominate up to 5 substitute members on each Advisory Board and Committee (subject to the exceptions set out at paragraph 1.1.9 below). There is in theory no limit on the number of substitute members that may be agreed for each Advisory Board/ Committee but it is suggested that Members may wish to cap the number at 5 per political group per Board/ Committee in order to avoid a potentially unsatisfactory scenario where all participating members in attendance at a particular meeting may be substitutes.

Powers of substitute members

- 1.1.7 Substitute members will have all the powers and duties of any primary ordinary member of the Board or committee but cannot exercise any special powers or duties exercisable by the person they are substituting e.g. they cannot act as Chair of a committee if they are substituting for a member who has been appointed by Council as the Chair of that committee. However, in the absence of both the Chair and Vice-Chair from a meeting it would be necessary to appoint a Chair for the meeting – this person may be drawn from any members (including any substitute members) present.
- 1.1.8 Members are reminded that any substitute members will need to be physically present in the Council Chamber in order for their formal attendance to be recorded and to exercise their right to vote. It will not be possible for substitute members to attend remotely.

Exceptions

- 1.1.9 There are a number of exceptions to the substitution rules:-
- (a) The Cabinet is not lawfully able to have substitutes;
 - (b) The Licensing Act 2003 does not allow for the use of a formal substitution process for the Council's Licensing & Appeals Committee or any of its panels dealing with alcohol, entertainment or gambling licensing (although the panels are drawn on a case-by-case basis from the membership of the Licensing & Appeals Committee so substitutions are not likely to be necessary);
 - (c) Substitution cannot occur at full Council meetings;

- (d) Constitutionally, the Terms of Reference for the Audit Committee and the Overview & Scrutiny Committee prevent Cabinet Members from being a member of these Committees. Cabinet Members would not therefore be able to act as substitute members. Similarly, Cabinet Members are unable to chair Advisory Boards and have not otherwise been appointed as ordinary members. It is proposed to continue with this practice in respect of substitutions;
- (e) Given the criteria set out in the Constitution for membership of the Council's 3 Area Planning Committees i.e. each of the 3 Committees contain only elected members from specific wards of the Borough, it is not considered that substitution would be consistent with this approach.

Procedure at meetings

- 1.1.10 In order to ensure that the attendance of substitutes at meetings is notified and recorded in an appropriate manner, it will be necessary to include suitable provisions within any new rules. It will also be necessary to set out the process that would be followed in the event that the ordinary member of the Committee or Board arrives after the substitution has taken place.
- 1.1.11 It is suggested that the following provisions are made within the rules:-
- (a) Substitute Members may attend meetings in that capacity only
- if the substitution is notified at the commencement of the meeting;
 - at the commencement of a reconvened meeting; or
 - immediately upon the substitute member arriving at the meeting
- (b) Once the meeting has been informed of the appointment of a substitute Member, the original Member may not resume membership of the Committee until after the conclusion of the meeting;

Training

- 1.1.12 Protocol A to the Constitution (Member attendance at training) sets out the existing requirements for Members to attend training. These rules will apply equally to substitute members but for the purposes of clarity it is proposed to amend Protocol A to make it explicit that substitute members are subject to the same requirements.
- 1.1.13 It is proposed that the Council and Committee Procedure Rules are amended as set out at Annex 1.

1.2 Standing at full Council meetings

- 1.2.1 Since the introduction of streaming technology into the Council Chamber it has become apparent that a practical difficulty arises in respect of the procedure rule

requiring that Members stand when speaking at full Council. Members will be aware that the cameras automatically ‘pan’ to show the speaker who has activated their microphone. However, the area covered by the camera is limited to the area immediately behind the individual microphones within the chamber i.e. it only operates successfully when Members are all seated.

- 1.2.2 It is therefore proposed that Rules 10.4 & 10.5 of the Council and Committee Procedure Rules are amended so that they now read

‘10.4

When a member speaks at full Council they must address the meeting through the Mayor. If more than one member indicates that they wish to speak, the Mayor will invite one to speak and the others must wait to be called. Other members must remain silent whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

10.5

When the Mayor intervenes during a debate, any member speaking at the time must stop. The meeting must be silent.’

1.3 Legal Implications

- 1.3.1 Article 10 of the Constitution sets out the procedure for review and revision of the Constitution. Except in specified circumstances, changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council’s Monitoring Officer.

1.4 Financial and Value for Money Considerations

- 1.4.1 None.

1.5 Risk Assessment

- 1.5.1 The changes proposed in this report will allow for substitutions to take place within a transparent and politically balanced process.

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

- 1.7.1 It is **RECOMMENDED** that the Monitoring Officer be authorised to amend the Constitution to give effect to

(a) the changes in respect of substitute members set out at Annex 1;

(b) the changes to Protocol A (Member attendance at training) set out at paragraph 1.1.12 above;

(c) the changes in respect of standing at full Council set out at paragraph 1.2.2 of this report.

Background papers:

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