

**Meeting of the Cabinet – 28<sup>th</sup> October, 2009**

**Report of the Interim Director of Law, Property and Human Resources**

**Annual Review of the Constitution**

**Purpose of Report**

1. To consider the annual review of the Council's Constitution.

**Background**

2. The Council introduced its written Constitution in May 2002.
3. Section 37 of the Local Government Act 2000 requires the Council to keep the Constitution up to date. This is reflected in Article 15, which requires the Monitoring Officer to monitor and review the operation of the Constitution in order to ensure that the aims and principles are given full effect.
4. The full Council must approve any changes to the Constitution after consultation with the Cabinet. The only exception to this is that the Leader, with the support of the other Group Leaders, may approve amendments to the Scheme of Delegation.
5. The Constitution was last reviewed in October 2008. All previously approved amendments have been fully implemented.
6. This report highlights some general issues and includes reference to provisions brought into effect during 2009 under the Local Government and Public Involvement in Health Act 2007. Particular reference is made to Executive Arrangements, the 'Councillor Call for Action' and future provisions for the scrutiny of Local Area Agreements and the work of Partner Organisations. The scrutiny powers in the Police and Justice Act 2006, have been the subject of a separate report to the Select Committee on Community Safety and Community Services and are also touched upon in this report.

**General**

7. One of the principal objectives in having a Constitution is to ensure that decisions taken by or on behalf of the Council are transparent and that decision makers are held to account for those decisions. The Constitution continues to fulfil this important role and ensures that the Council's decision-making processes are efficient, transparent and robust.

## **Scheme of Delegation**

8. The Scheme of Delegation is regularly updated to reflect changing circumstances and new legislation. At the annual meeting of the Council on 21<sup>st</sup> May, 2009, there were a number of changes to the titles of Cabinet Members. These have been incorporated in the Constitution. Maintaining the Scheme of Delegation is particularly important to ensure that proper authorisations are in place for Members and Officers to lawfully carry out their functions. This document will be kept up to date, reviewed and refreshed as necessary, in consultation with the various Directorates. This will also incorporate recommendations from the partnership working audit report to make reference in the scheme of delegations to the key partnership working arrangements in the Borough.

## **Local Government Public Involvement in Health Act 2007**

9. The Cabinet considered a report on the main provisions of this Act at its meeting on 13<sup>th</sup> February, 2008. The report indicated that whilst the Act received the Royal Assent in October 2007, the majority of its provisions would only come into force once the Secretary of State made the necessary commencement orders.
10. With regard to the proposals in the Act concerning elections, the Cabinet has previously decided:-
  - That no change should be made to the current election arrangements of retirement of Members by thirds.
  - That the number of Members per ward of 3 should not be changed.
  - That ward name changes should be considered in due course, with priority being given to reviewing the name of the Cradley and Foxcote and Lye and Wollescote Wards.
  - That the current policy regarding community governance, whereby the establishment of Parish Councils within the Borough is not supported, should be continued.

Members' views are requested as to whether the proposed ward name changes outlined above should now be pursued formally with the Electoral Commission and if any additional name changes are required.

11. The Council has already implemented many of the provisions of the 2007 Act, including the requirement to produce a Local Area Agreement in consultation with partner organisations. The provisions relating to ethical standards, which have resulted in the locally adopted procedures for complaints against elected Members, were introduced from May, 2008 and have operated successfully.

## **Executive Arrangements**

12. The Local Government Public Involvement in Health Act 2007 makes amendments to the Local Government Act 2000 concerning Executive Arrangements. In summary, the existing 'Leader and Cabinet' and the 'Mayor and Council Manager' Executives are discontinued. Local authorities are now required to choose one of two new models of governance, either a directly elected Mayor and Cabinet, or a new style 'stronger' Leader and Cabinet Executive system.

13. Under the provisions of the Act, the Council is required to pass a resolution concerning its future Executive Arrangements by 31<sup>st</sup> December, 2009. A separate report on this issue was presented to the Council on 12<sup>th</sup> October, 2009. Any necessary amendments to the Constitution will be made in due course.

### **Councillor Call for Action (CCfA)**

14. One of the key themes in the Local Government and Public Involvement in Health Act 2007, and the associated White Papers on Strong and Prosperous Communities and Communities in Control, is the enhancement of opportunities for people to be involved in decisions affecting their communities. The Council's Constitution already makes significant provision for this to happen.
15. The provisions set out in Section 119 of the Act relate to the 'Councillor Call for Action' (CCfA). Further provisions in the Local Democracy, Economic Development and Construction Bill, aim to promote measures to strengthen local democracy, including those relating to the power for local communities to submit petitions. This will be the subject of a further report once the Bill is enacted.
16. The CCfA was initially intended to allow a direct request to a Scrutiny (Select) Committee from a member of the public. However, during the Parliamentary process, this was amended to enable a member of the public to make a request to their local Councillor. The Councillor can then ask for discussions at Scrutiny (Select) Committees on issues where local problems have arisen and where other methods of resolution have been exhausted.
17. The CCfA should be regarded as a power of last resort. The Constitution already affords elected Members and members of the public significant opportunities to raise issues, for example:-
  - **Select Committees**  
Each Select Committee may choose to have a Public Forum; Members can exercise their rights under the Call In process; Work Programmes are developed by Select Committees on an annual basis with input from Members; Members of Select Committees may raise agenda items by giving notice to the Interim Director of Law, Property and Human Resources.
  - **Area Committees**  
Every Area Committee has a standard agenda item for Ward Issues to be raised by Members and the provision for a Public Forum; Petitions can be presented direct to Area Committees.
  - **Council Procedure Rules**  
Notices of motion can be raised by Members given sufficient notice under Rule 12; provision is made for Members to ask questions under Council Procedure Rule 11, including questions on the discharge of the functions of a joint authority.
  - **Questions Under Council Procedure Rule 11.8**  
This applies to all Committees of the Council; Members may ask questions to the Chairman given two days written notice.

- **Internal Complaints Procedure and the Local Government Ombudsman**  
The Council has a robust procedure for dealing with and resolving specific issues and complaints. Citizens also have the right to complain to the Local Government Ombudsman once the internal complaints procedure has been exhausted.

18. In the light of the procedures already in place, the implementation of the CCfA power is unlikely to have a significant effect on the way this Council operates in practice. The CCfA does not replace or override any of the existing mechanisms to raise business through the decision-making structures of the Council.
19. The suggested approach to dealing with the CCfA is that other avenues of resolution should be exhausted first. Members are encouraged to raise issues direct with officers in the first instance. If this has not happened, a Select Committee may reject a CCfA put forward by a Member without the opportunity being given for officers to resolve the issue informally. Where the issue is personal rather than a concern for a section of the community, the matter will be more suited to the Council's complaints procedure. Members are requested to signpost the complaints procedure to individual citizens in these cases.
20. Only where there is an ongoing dispute about a community issue, which cannot be resolved through the Council's existing procedures, will it be appropriate to invoke the CCfA procedure. The view of the Monitoring Officer may also be sought on the validity of a Call for Action, for example, if it may be vexatious. Where a decision is made to consider a CCfA, Select Committees will use their existing powers to scrutinise the matter and make a referral to the Cabinet or Council if appropriate.
21. The legislation provides that once a formal CCfA request is made and duly considered, the Select Committee must notify the Member of any decision it makes and the reasons for it. The Select Committee must also provide the Member with a copy of any report or recommendations that it makes to the Council or the Cabinet.
22. Under Section 21A of the Local Government Act 2000, a Councillor Call for Action must relate to a 'local government matter'. This could be interpreted narrowly, to mean only those issues under the direct control of the Council. However, to give full effect to the CCfA, the interpretation of 'local government matter' should be broader to include issues relating to the Council's partners, in line with the area focus of Comprehensive Area Assessment (CAA).
23. The Council's duties increasingly impact on other organisations and involve partners within and outside the Dudley Community Partnership (the Local Strategic Partnership). Under the 2007 Act, Select Committees have new powers to look at partner organisations and request information from them. In relation to a CCfA, Select Committees will have powers to consider a particular issue; look at the performance of the partner in relation to that issue and require information from the partner. As with internal scrutiny, however, Select Committees have no powers to force a partner organisation to take any action.

24. A procedure for dealing with a CCfA is set out at Appendix 1. The procedure will need to be incorporated into the Council's Constitution and it is therefore recommended that the following changes are made:

- Under the heading of 'Select Committees' in the Summary and Explanation, the following should be added...."Select Committees can also receive requests from local Councillors to consider issues of community concern."
- Under the heading of 'Citizens' Rights' in the Summary and Explanation, a new bullet point should be added to the effect that: (*citizens have the right to...*) ask a local Councillor to refer an issue to a Select Committee for consideration. This is called the "Councillor Call for Action" and details of how this operates are set out in the Select Committee Procedure Rules.

This wording also needs to be included under Article 3.01 (b) as a new subparagraph (vi).

- The procedure in Appendix 1 will need to be appended to the existing Select Committee Procedure Rules. The following new paragraph should be inserted in the Rules as paragraph 16 (with consequential paragraph renumbering):

"Councillor Call for Action (CCfA)

Any member of the public can approach a Member of the Council to ask that an issue be referred to a meeting of a Select Committee. This is referred to as a "Councillor Call for Action". The procedure for dealing with this is set out in Table 2 attached to these Rules. This procedure should only be used where there is an ongoing dispute about a community issue, which cannot be dealt with through any of the Council's established procedures. The Call for Action procedure will only be used when all other avenues for resolution have been considered and exhausted."

### **Scrutiny of Local Area Agreements and Partner Organisations**

25. The Local Government and Public Involvement in Health Act 2007 contains provisions relating to the new powers for Councils to engage other public services in the scrutiny of Local Area Agreements. The new scrutiny powers were brought into effect earlier this year and guidance on the practical implications has been issued.

26. A Local Area Agreement (LAA) is a partnership agreement to take action to tackle the area's most important issues and goals for the future. It is a three-year agreement between the Council and other public services. Targets are included which are priorities agreed between the Council, other public services and the Government. The Council, as the area's democratic voice, takes a leading role. It brings together other public services, and representatives of local businesses, and community and voluntary organisations, in a Local Strategic Partnership (ie: the Dudley Community Partnership). The Partnership negotiates a Local Area Agreement, a practical plan to move forward the longer-term aims set out in the Community Strategy.

27. Under Dudley's Constitution, the five Select Committees perform the Overview and Scrutiny function. Select Committees already have a role in reviewing the performance of public services and other local issues and can make recommendations to the Cabinet or Council where appropriate. This can involve the Council's own services, other public services, and any issue which affects the area or its inhabitants. Overall, this helps to ensure that public services work together to understand and tackle the key issues affecting the Borough.

28. The following partner organisations are listed as being legally required to co-operate with Local Area Agreements:-

District Councils	NHS Foundation Trusts
The Environment Agency	Joint Waste Authorities
Natural England	Joint Waste Disposal Authorities
Fire and rescue authorities	Regional Development Agencies
Jobcentre Plus	The Learning and Skills Council
The Health and Safety Executive	Sport England
The Broads Authority	English Heritage
National Park Authorities	Arts Council
Youth Offending Teams	Museums, Libraries and Archives Council
Police authorities	Highways Agency
Transport for London	Metropolitan Passenger Transport Authorities
Chief Officer of Police	Homes and Communities Agency
Local Probation Boards	
Probation Trusts and other providers of probation services	Others could be added by Secretary of State (by Order)
Primary Care Trusts	
National Health Service Trusts	

29. All these public services have legal duties to respond to Council scrutiny. Police and National Health Service bodies are covered by separate, earlier legislation on scrutiny. The scrutiny powers in the Police and Justice Act 2006, can be used to underpin scrutiny of LAA targets on police and crime (as well as supporting other scrutiny of these issues). These powers are within the remit of the Select Committee on Community Safety and Community Services.

30. Powers from the Health and Social Care Act 2001 can be used to scrutinise health targets. These powers are already contained in the Council's Constitution and fall within the remit of the Select Committee on Health and Adult Social Care.

31. Public services other than those listed above could be signed up to specific LAA targets, for example a local housing association or a college. LSPs generally include representatives of local businesses and the local voluntary sector, who might also choose to sign up to relevant LAA targets. These organisations are not obliged to be involved in scrutiny enquiries, but they are encouraged to take part.

32. At present, there is no legal definition of the information that partner organisations must provide to scrutiny enquiries. Information can only be requested on a voluntary basis or by using the more formal recourse to the Freedom of Information Act 2000. It is hoped, however, that partners recognise the importance of providing information to support public debate and understanding of their work. Although the legislation does not make it compulsory for partner organisations to attend scrutiny meetings, partners are encouraged to attend where appropriate.
33. Councils can decide locally how they wish to scrutinise Local Area Agreements and partnership work more generally. The Council's existing Select Committee Procedure Rules already provide that a Committee may invite stakeholders and members and officers in other parts of the public sector to attend to discuss issues of local concern and/or answer questions. There is no requirement to set up separate arrangements for scrutiny of Local Area Agreements and it seems sensible to integrate this work into our existing Select Committee arrangements.
34. A practical approach to integrate the scrutiny of partnership targets into our existing Select Committee working arrangements would be:-
- (a) That a meeting of Select Committee Chairmen be convened in due course to discuss the operation of the working arrangements.
  - (a) That the progress of partnership targets be considered alongside the existing Corporate Quarterly Performance Management reports submitted to Select Committees. Select Committees will receive information on specific issues within their remit and may consider inviting representatives of any relevant partner organisations to attend the next appropriate meeting.
  - (c) That Select Committees discuss their annual work programmes at the March, 2010 cycle of meetings and consider:-
    - any specific issues arising from the Local Area Agreement that they may wish to include for the 2010/11 municipal year.
    - extending an invitation to the Leads from the Dudley Community Themed Partnerships to attend an identified meeting of the Select Committee during the municipal year.
35. This approach will require no significant amendments to the Constitution. It would, however, be appropriate to include reference to 'Partner Organisations' in paragraph 14 of the Select Committee Procedure Rules (Attendance By Others). Reference to the scrutiny of Local Area Agreements will be incorporated under a new paragraph in the Scrutiny Protocols for Select Committees. This new paragraph will also include reference to the scrutiny powers in the Police and Justice Act 2006, which fall within the remit of the Select Committee on Community Safety and Community Services.

#### **Protocol for Area Committees**

36. The Protocol for Area Committees in Part 6 of the Constitution requires minor administrative amendments to reflect current operational practices:-

- Under paragraph 7 (Public Participation), there is a need to clarify that, at the discretion of the Chairman of the Area Committee, the public shall be invited to speak on any item in the public session of the agenda.
- Under paragraph 9(b) (Youth Issues), the existing text needs to be replaced with the following text: *'An item entitled 'Youth Issues' shall be included on the agenda for each Area Committee.'*
- Under paragraph 9(i) (Finalising and circulating the agenda and reports), the reference to 13 working days in the fourth paragraph needs to be amended to read 15 working days to ensure reports are provided to Democratic Services to meet deadlines associated with the printing and publication of Area Committee agenda papers.
- Under paragraph 9(k) (Post meeting work), the second paragraph should be amended to read *'Democratic Services will circulate the draft minutes (or if appropriate a decision summary) to the appropriate Liaison Officers and other relevant officers before finalising and issuing them.'* The third paragraph needs to be deleted as a consequence of this change.

### **Local Democracy, Economic Development and Construction Bill**

37. The above Bill reached the next stage of the Parliamentary process in the House of Commons on 13<sup>th</sup> October, 2009. Measures in the Bill seek to create greater opportunities for community and individual involvement in local decision-making, including proposals for how Council's respond to petitions and consider other matters raised by citizens. A further report will be submitted once the Bill is enacted on any necessary revisions to the existing procedures in the Council's Constitution.
38. Further measures on 'Strengthening Local Democracy' are outlined in the most recent consultation document from the Department for Communities and Local Government. These include matters relating to local authority decision-making and scrutiny powers. Further reports will be submitted as and when necessary on any future implications for the Council's Constitution.

### **Finance**

39. There are no additional direct financial implications arising from this report as the new provisions will be incorporated within existing structures. Any costs arising from compliance with the Constitution are met from existing budgets.



## **Law**

40. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up to date. Section 119 of the Local Government and Public Involvement in Health Act 2007 (which inserts a new Section 21A into the Local Government Act 2000) relates to the Councillor Call for Action. These new powers came into force on 1<sup>st</sup> April, 2009. New powers for the scrutiny of Local Area Agreements (Sections 121 – 124 of the Act) were also commenced on 1<sup>st</sup> April 2009. Powers from the Health and Social Care Act 2001 and the Police and Justice Act 2006 can also be used by Select Committees to scrutinise health targets and crime and disorder issues respectively.

## **Equality Impact**

41. This report complies fully with the Council's policies on equality and diversity and there are no particular implications for children and young people. The provisions relating to Councillor Call for Action, scrutiny of Local Area Agreements and the work of partner organisations affect all Sections of the community.

## **Recommendations**

To recommend the Council:-

42. That the annual review of the Constitution be noted.
43. That the Interim Director of Law, Property and Human Resources continue to monitor and review the Scheme of Delegation and Responsibility for Functions as referred to in paragraph 8.
44. That Members determine whether to formally pursue the proposed ward name changes as referred to in paragraph 10.
45. That a decision on the Council's future Executive Arrangements, as referred to in paragraphs 12 and 13, be made by the Council prior to 31<sup>st</sup> December, 2009.
46. That the Councillor Call for Action procedure, as referred to in paragraph 24 and Appendix 1 to this report, be approved and the Interim Director of Law, Property and Human Resources be authorised to make the necessary amendments to the Constitution.
47. That the arrangements to integrate the scrutiny of the Local Area Agreement and partner organisations into the existing working arrangements of the five Select Committees, as referred to in paragraph 34, be approved and the Interim Director of Law, Property and Human Resources be authorised to make any consequential amendments to the Constitution.
48. That the amendments to the Protocol for Area Committees, as set out in paragraph 36 be approved.
49. That a further report be submitted in due course on any necessary revisions to the Constitution once the provisions outlined in the Local Democracy, Economic Development and Construction Bill are enacted.



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### **List of Background Papers**

[The Council's Constitution - Full copy on the Council's Website](#)

Councillor Call for Action – Best Practice Guidance - The Centre for Public Scrutiny  
<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=92>

Implementing new powers for scrutiny of Local Area Agreements – Briefing Note from  
The Centre for Public Scrutiny/ Local Government Association  
<http://www.lga.gov.uk/lga/aio/1878752>

Local Democracy, Economic Development and Construction Bill  
<http://services.parliament.uk/bills/2008-09/localdemocracyeconomicdevelopmentandconstruction.html>

'Strengthening Local Democracy' - Consultation document from the Department for  
Communities and Local Government – July, 2009.  
<http://www.communities.gov.uk/documents/localgovernment/pdf/1290537.pdf>

**PROCEDURE FOR DEALING WITH A COUNCILLOR CALL FOR ACTION**

