

Scrutiny Overview Committee

27th September 2018

**Agenda
Item No. 8**

Mayoralty

Ward(s) All

Portfolios: Councillor Bird - Leader

Executive Summary:

The report is looking at the issue as to whether or not it is possible to remove the ceremonial functions of the Mayoralty, from the requirement to Chair council meetings.

Reason for scrutiny:

The report has been requested by the Chair of the Scrutiny Overview Committee in relation to the governance surrounding the appointment of the Mayor at Annual Council and whether or not the ceremonial function of the Mayor can be divorced from the function of Chairing council meetings.

Recommendations:

That, subject to any comments Members may wish to make, the content of the report be noted.

Background papers:

None

Background to the Report

1. The necessity for this report is based upon the current political balance of Walsall Council. Following the Local Elections in May 2017 the political balance of the council was as follows:
 - Conservative Group – 30 members
 - Labour Group – 26 members
 - Liberal Democrat Group – 2 members
 - Independents – 2 members

2. Following Council on the 16th July 2018 the two Independent members joined the Labour Group.
3. This question would probably not arise were it not for the close political balance of the council. This balance may fluctuate every time that there is a Local Election, three out of every four years.
4. At annual council on the May 2018 there was a contested mayoral election. The mayor's casting vote was pivotal in determining the leadership of the Council. It had previously been accepted that the Mayoralty would be determined by longevity of continual service by Councillors however this is an informal arrangement not recognised in law.
5. Under the 1835 Municipal Corporations Act a new borough of Walsall was established with aldermen and elected councillors. There was a mayor, town clerk and treasurer. The Mayoralty in Walsall dates back to 1377.
6. The Mayor can also have a formal role in acting as returning officer at Council elections.
7. Under section 25 Local Government Act 1974 the elected Chairman of Council meetings is entitled to refer to themselves as Mayor. It would therefore be impossible to in essence have two Mayor's one for ceremonial purposes and one for Chairing the Council meeting. It would also create unnecessary confusion as to what is a clear statutory role. If the Mayor is present in a council meeting they have to assume the role of Chair. This is further enforced by s25(3) which states that where a council has an executive function containing an executive Mayor, the Chair of the council meeting has no right to be entitled as Mayor see below. If the Mayor is present in Council meetings they must preside over the meeting.

Legal Considerations

1. Section 2 Local Government Act 1974 - Constitution of principal councils in England.
 - (2) For every district there shall be a council consisting of a chairman and councillors and the council shall have all such functions as are vested in them by this Act or otherwise.
 - (2A) Where a council mentioned in subsection (1) or (2) above are operating executive arrangements which involve a mayor and cabinet executive or a mayor and council manager executive, the council shall consist of an elected mayor, a chairman and councillors.
 - (2B) In such a case, a reference in this Act to a member of a council is a reference to—
 - (a) the elected mayor of the council,

- (b) the chairman of the council, or
- (c) a councillor of the council.】

(3) Each council mentioned in subsection (1) or (2) above shall be a body corporate by the name “The County Council” or “The District Council”, as the case may be, with the addition of the name of the particular county or district.

3 Chairman.

(1) The chairman of a principal council shall be elected annually by the council from among the councillors.

(1A) A member of the executive of a principal council may not be elected as the chairman of the council.

(2) The chairman shall, unless he resigns or becomes disqualified, continue in office until his successor becomes entitled to act as chairman.

(3) During his term of office the chairman shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of councillors.

(4) The chairman of a district council shall have precedence in the district, but not so as prejudicially to affect Her Majesty’s royal prerogative.

(4A) Subsection (4) above shall have effect in relation to a district council which are operating executive arrangements which involve a mayor and cabinet executive. . . as if it provided for the elected mayor of the council to have precedence in the district, but this subsection shall not apply if the executive arrangements provide for it not to apply.

(5) A principal council may pay the chairman for the purpose of enabling him to meet the expenses of his office such allowance as the council think reasonable

2. The Local Government Act 1972 provides very clearly in section 4(1) that: -

“The election of the chairman shall be the first business transacted at the annual meeting of a principal council.”

This is a fixed process and must follow a set order. The Council must comply with section 4(1). No other business can be transacted at Annual Council until the Mayor is elected. If it were to be the matters transacted prior to the appointment of the Mayor would be unlawful and subject to challenge.

- 3. The 1972 Act Schedule 12, paragraph 5(1) provides “At a meeting of a principal council the chairman, if present, shall preside”. The Local Government Encyclopedia states at paragraph 2-10 that “normally this will be the chairman elected the previous year”. Article 5 of the Council's Constitution, titled “Chairing the Council”, provides at clause 5.01 that the Mayor and Deputy Mayor will be elected by the Council at the annual Council meeting.

4. The Council's Rules of Procedure provide at clause 1.1 (ii) for the election of a person to be Mayor. At section 2(a)(vi) it provides that at the first meeting in any calendar year the Council shall name from the members of the council at that date, the Mayor-elect and Deputy Mayor-elect for the ensuing municipal year. The Constitution provides nothing further in relation to this issue other than their role and function. There is no restriction in statute, regulations, guidance, case-law, nor any other source of law, inhibiting Mayor from serving for more than one term. Similarly there is no prohibition on such a person sitting in that role for consecutive years. As instructing solicitors may know, this is extremely common in practice.
5. The Mayor can vote in relation to a motion to appoint/re-appoint themselves. The Mayor holds such voting rights by virtue of holding the offices of Councillor, and of current Chair of Full Council. There is nothing in the Local Government Act 1972 which deprives such a person of the voting rights otherwise held by virtue of those positions. This is also considered in *Bland v Buchanan* [1901] 2 KB 75. Also see *Burdon v Barron* [1939] 2 All ER 525.
6. The Mayor does have a casting vote. Section 4 of the Local Government Act 1972 is titled "Election of chairman" and provides as follows -
 - (1) The election of the chairman shall be the first business transacted at the annual meeting of a principal council.
 - (2) If, apart from section 3(3) above or section 5(2) below, the person presiding at the meeting would have ceased to be a member of the council, he shall not be entitled to vote in the election except in accordance with subsection (3) below.
 - (3) In the case of an equality of votes the person presiding at the meeting shall give a casting vote in addition to any other vote he may have.
7. Applying sub-section (3) of section 4, whomever is currently "presiding at the meeting" holds "a casting vote". The person "presiding at the meeting" is the existing Mayor prior to the vote for a new Mayor.
8. Sub-section (2) only applies where the presiding person at that the meeting ceased to be a member either through retirement. This was not the case in 2017 as the current Mayor was not up for election. Further that the effect of section 3(3) of the same Act is that the current Mayor remains in position as chairman until he or she is succeeded by their successor Mayor

F125A Title of chairman or vice-chairman of county borough council.

(1)The chairman of a county borough council is entitled to the style of "mayor" or "maer".

(2)The vice-chairman of a county borough council is entitled to the style of "deputy mayor" or "dirprwy faer".]

[F2(3)]This section does not apply where a county borough council are operating executive arrangements which involve a mayor and cabinet executive or a mayor and council manager executive

Council Corporate Plan Priorities:

This report links to the Internal Focus of the Corporate Plan in ensuring that there are clear and effective decision making processes in place.

Citizen impact:

All citizen and stakeholders should be able to understand the governance of the council.

Environmental impact:

None

Performance management:

There needs to be clarity around the role of the Mayor to ensure good governance and clear accountable decision making.

Reducing inequalities:

This supports this aim by providing clear and accountable decision making at Council.

Consultation:

None

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