

Governance Committee

21 January 2019

Part I

Substitution on Select Committees

Report by Director of Law and Assurance

Electoral Division: Not applicable

Summary

At its last meeting, the Committee asked for a more detailed report to be prepared on substitution, with a view to considering whether to recommend the introduction of formal substitution on Select Committees.

The report sets out how to establish substitution, why substitution was previously abolished in 2005 and also sets out an option for presuming that a member can speak at a Select Committee if that member's political group would otherwise be unrepresented.

Recommendation

The Committee is asked to consider two possible approaches that may help to ensure representation of a political group at a Select Committee meeting – either the introduction of substitutes or changing Standing Orders to presume that a member can speak at a Select Committee if their group would otherwise be unrepresented at the meeting – and to make a recommendation to the County Council.

Proposal

1. Background and Context

- 1.1 The Labour group has requested that a system of substitution should be established for Select Committees. The Labour group only has one seat on each Select Committee and, when that member is unable to attend, there is no option for representation by another member of the group. The Governance Committee considered an initial report at its meeting in November 2018 and asked for a fuller report to be prepared with more detailed options.
- 1.2 Some local authorities operate a system of substitution whereby, if a member is unable to attend a committee meeting, a named substitute will be able to attend in their place, with full voting rights.
- 1.3 The County Council has substitution on its two quasi-judicial committees, the Planning and Rights of Way Committees, to ensure that a quorum can be achieved in decision-making that adheres to tight time limits. Substitution is

also permitted on the Sussex Police and Crime Panel, clerked by the County Council.

- 1.4 The County Council operated a substitute system on its Select Committees from 2000 until it was abolished by the County Council in March 2005. The reasons for the abolition were set out in a Governance Committee report, an extract of which is set out below:

'Use of substitutes

15 The Committee's views have been sought on the use of substitutes at meetings. Currently a proportionate panel of substitutes is appointed for Select Committees and the Planning and Rights of Way Committees at the Annual Meeting of the Council. The names of the substitutes for each Committee are published in the list of committee memberships and the political group concerned then nominates substitutes from the list by giving notice to the County Secretary. The use of substitutes for Select Committees, other than Health Scrutiny, is limited to those considering call-in.

16 Concern has been expressed about both the difficulty of getting members to stand as substitutes and in finding substitutes available to attend a particular meeting. The Committee has considered the pros and cons of substitutes in terms of continuity of membership of committees, attendance of members at meetings, and the risk of legal challenge attached to the use of a big pool of substitutes. The Committee remains very concerned about member attendance, but feels that the use of substitutes is not an answer.

17 As a result it is recommended that substitutes should no longer be allowed for elected members on the County Council's committees. The Governance Committee has asked the Standards Committee to review urgently the options open to the County Council to encourage better attendance.'

- 1.5 Council at the time agreed to abolish substitutes. While substitution has continued on the Planning and Rights of Way Committees, the practical experience of this has been that it has been difficult to secure substitute members to attend at what is usually fairly short notice.

- 1.6 A table of member attendance at Select Committees from May 2017 to October 2018 is set out below to give background information on attendance. This information excludes any co-opted members.

Select Committee	Attendance 2017/18	Attendance April to October 2018
Children and Young People's Services	81%	94%
Environment, Communities and Fire	79%	87%
Health and Adult Social Care	85%	88%

Select Committee	Attendance 2017/18	Attendance April to October 2018
Performance and Finance	82%	83%

- 1.7 One factor to consider is when a political group is smaller than the size required to ensure a seat on each Select Committee. Within the last 10 years, the Labour group and the independent group were two or three members at certain times, which was not enough to give a seat on each Select Committee. Where this is the case, a substitution system would not necessarily help a small political group to ensure that its members had a chance to attend the committee.

2. Proposal

- 2.1 There are two possible approaches that may help to ensure representation of a political group at a Select Committee meeting.
- 2.2 The first approach would be formal substitution. This would mean that if a member of the Select Committee is unable to attend a meeting, another named member of their political group would be able to attend in their place. The benefit of this approach is that the substitute would have full speaking and voting rights. Only one named member would be able to speak on behalf of a group with one seat. If a political group did not have a seat on the Select Committee substitution would not help to give that group an ability to speak to the committee.
- 2.3 The second approach would be to change Standing Order 3.20 to include a presumption that any member asking to speak at a Select Committee should be agreed by the Chairman if that member's political group would not otherwise be represented. This could cover both absence of a committee member or a situation where a political group is not big enough to ensure a seat on each Select Committee. While the member would not have voting rights, their ability to speak could be presumed through an amendment to the Standing Order. This approach would also allow greater flexibility of which member from a group speaks to the Committee. The other effect however would be to grant representation rights which exceed the level of representation due in accordance with the principles of proportionality.
- 2.4 The Governance Committee is asked to consider which, if any, of the approaches it wishes to recommend to the County Council for approval.

3. Resources

- 3.1 Not applicable.

Factors taken into account

4. Consultation

- 4.1 The approach of neighbouring county councils has been checked. This is a summary of arrangements:

Council	Formal Substitutes on Select (scrutiny) Committees?
Buckinghamshire	Yes
East Sussex	Yes, rarely used
Essex	Yes
Kent	Yes
Hampshire	Yes
Surrey	Yes

5. Risk Management Implications

- 5.1 Providing a facility for a political group not otherwise represented on the committee to speak to the committee would help to ensure that the committee has considered a diverse range of views to provide effective scrutiny of significant topics.

6. Other Options Considered

- 6.1 Some councils operate a system of having substitution but without named substitutes. This lessens the chances that a substitute would have received the training and gained the insight that committee members receive, which might lesson the quality of scrutiny.

7. Equality Duty

- 7.1 Not applicable as this is an internal procedural matter.

8. Social Value

- 8.1 Not applicable as this is an internal procedural matter.

9. Crime and Disorder Act Implications

- 9.1 Not applicable

10. Human Rights Implications

- 10.1 Not applicable.

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Background Papers: None