

Corporate Overview and Scrutiny Management Board

14 February 2018



Review of Overview and Scrutiny Co-optee Arrangements

Report of Lorraine O'Donnell, Director of Transformation and Partnerships

Purpose of Report

- 1 To present a proposal to further update the Council's Overview and Scrutiny co-optee arrangements, for consideration by members.

Background

- 2 The Centre for Public Scrutiny publication "Pulling it all together" sets out the legislative framework which has led to the development of co-option within Overview and Scrutiny since 2000. This can be summarised thus:-

LEGISLATION	CO-OPTION DEVELOPED
Local Government and Housing Act 1989	Section 13 allows the appointment of non-voting co-optees onto Council Committees
Education Act 1996	Section 499 makes provision for the appointment of various statutory education co-optees, to sit on the council's education committee.
Local Government Act 2000	Established Overview and Scrutiny and Section 9FA, (Subsections 4 and 5) states that OSCs may co-opt members from outside the authority (as non-voting members) Parent Governor Representatives (England) Regulations 2001 (SI 2001/478) (PGR 2001) Requirements (clause 3) – LEAs should appoint at least two and not more than 5 PGRs to "each of their education OSCs".
Health and Social Care Act 2001 and associated guidance	Enabled Local Authorities with Social Care responsibilities to co-opt District Council members onto their Health Scrutiny Committees.
Police and Justice Act 2006 and the subsequent Crime and Disorder (Overview and Scrutiny) Regulations 2009	Clause 3 – Crime and Disorder Scrutiny Committees may co-opt representatives of Crime and Disorder Reduction Partnership (CDRP) partners as non-voting members of the committee.

Current position

- 3 Set against this legislative backdrop and in accordance with the Overview and Scrutiny procedural rules contained in the Council's Constitution there are three categories of co-optees: non-voting, non-statutory co-optees; statutory non-voting co-optees and statutory voting co-optees.
- 4 Each category of co-optee is appointed via a specific appointment process to serve on the appropriate Overview and Scrutiny Committee/s (OSCs).

Non-voting, non-statutory co-optees

- 5 Each of the OSCs (AWH, S&S, E&E, ESC and C&YPs OSCs) excluding the Corporate Overview and Scrutiny Management Board (COSMB) can appoint up to two non-voting, non-statutory co-optees. These co-optees act as a non-political voice, bring specialist knowledge and an element of external challenge to the Overview and Scrutiny (O&S) process.
- 6 The non-voting, non-statutory co-optees are appointed in accordance with a protocol which stipulates the application, interview and appointment process to be followed. A full refresh of the appointment process was undertaken in 2014 with those co-optees appointed for two years. The term of appointment of these co-optees was extended by the Overview and Scrutiny Management Board in 2016 for a further two years on the understanding that a further full refresh of the appointment process would be undertaken in 2018.
- 7 Vacancies for non-voting, non-statutory co-optees have been publicised previously using the Area Action Partnerships (AAPs), DCC website and social media and via O&S Chairs/Vice-chairs. It is intended that we use the same approach to publicising the vacancies for non-voting, non-statutory co-optees as part of the appointment process refresh with a slightly bigger emphasis on the use of social media. Discussions are taking place with DCC's Communication and Marketing Manager to determine how we will maximise the use of social media.
- 8 Any vacancies which have occurred between 2014 and 2017 have been filled in accordance with the protocol using the AAPs to highlight the vacancy. There is currently one vacancy on the Economy and Enterprise OSC which will be filled as part of the refresh of the appointment process. The current non-voting, non-statutory co-optees are appointed until June 2018.
- 9 Currently the appointment protocol states that non-voting, non-statutory co-optees serve for a maximum of four years however this would preclude our existing non-voting, non-statutory co-optees from applying for consideration as part of the 2018 refresh of the appointment process. If currently serving non-voting, non-statutory co-optees are precluded from applying as part of the 2018 refresh then there is a danger that O&S will lose the knowledge and expertise of these co-optees unless the protocol is revised. It may also result in the council being unable to fill all of the co-optee vacancies.

- 10 Discussions have been held with the Chair and Vice-chair of COSMB and it is recommended that the protocol is revised to allow currently serving non-voting, non-statutory co-optees to apply as part of the full refresh of the appointment process in 2018 but that all appointments are made on the basis of an individual's knowledge and skill sets.

Statutory non-voting co-optees

- 11 The Crime and Disorder (Overview and Scrutiny) Regulations 2009 allows the designated Crime and Disorder Committee (Safer and Stronger OSC) for the purposes of part 3 of the Police and Justice Act 2006 to co-opt representatives from responsible authorities. Responsible authorities are defined by section 5 of the Crime and Disorder Act 1998 and covers probation services, the police, the fire and rescue service and clinical commissioning group.
- 12 In the past, probation and health have provided co-optee representation on the Safer and Stronger OSC however following changes to the structure of probation and health the committee ceased to get co-optee representation from these areas. This is acceptable as it is not compulsory to co-opt additional members from responsible authorities as the regulations state 'the Crime and Disorder Committee of a local authority may co-opt additional members to serve on the committee.'
- 13 The Safer and Stronger OSC currently has co-optee representation from the police and the fire and rescue service. It is felt by the committee that they do not require further co-optee representatives from the Community Safety Partnership however, the committee retains the option in the future to co-opt further partners from the Community Safety Partnership.

Statutory voting co-optees

Faith and Parent Governor Representatives

- 14 The Local Government Act 2000 requires the relevant scrutiny committee dealing with education matters, the Children and Young People's Overview and Scrutiny Committee (C&YPs OSC), to appoint faith and parent governor representative co-optees and that such co-optees have a vote on educational matters.
- 15 It was determined when the Overview and Scrutiny process was established in Durham County Council that in addition to the C&YPs OSC the OSMB (COSMB) would have both faith and parent governor representative co-optees included in its membership as controversial/strategic educational issues affecting the county could be referred to OSMB (COSMB) for consideration. This approach is reinforced through the call-in element of Overview and Scrutiny with the OSMB (COSMB) considering items referred via the call-in process.
- 16 Faith and parent governor representatives are appointed to the relevant OSCs via specific appointment processes. In relation to faith representatives they

are appointed by the relevant Diocesan Boards which tend to appoint Head Teachers or teachers and as the meetings of the OSCs are held on mornings this has resulted in difficulties in both filling vacancies and then retaining representatives. We currently have one (RC) faith representative vacancy on COSMB.

- 17 In an attempt to fill faith representative vacancies DCC's Constitution was recently revised from one faith representative for each faith to two faith representatives from each faith (two C of E representatives and two RC representatives) per relevant committee providing an opportunity for representatives to share the role. It was hoped that this revision will help in filling future vacancies and retaining representatives in the future.
- 18 Concerning the appointment of Parent Governor Representatives (PGRs), the Parent Governor Representatives (England) Regulations 2001 states the appointment process and includes the following eligibility criteria:
- Must be a parent governor - no other type of school governor qualifies, even if they are parents.
 - At the time of election the parent governor must be the parent of a child currently educated by the authority.

And in relation to persons not eligible to stand as a parent governor representative the 2001 Regulations states the following:

- Anyone employed by the local authority.
 - Anyone employed at a school maintained by the local education authority, either as teaching or non-teaching staff.
 - Anyone who is a councillor of any local authority.
- 19 There is currently provision for three parent governor representatives on the COSMB and the C&YPs OSC. We currently have two vacancies and one serving PGR.
- 20 Various work has been undertaken to fill the vacancies including via the Durham County Association of Governors (DCAG), previous O&S Chairs and Vice-chairs and minority group leaders for them to canvas interest with PGs in their local communities. This has previously proven unsuccessful as again the issue would appear to be the timing of the O&S meetings.
- 21 We continue to work with colleagues in the Children and Young People's Service to promote the PGR vacancies via the Durham County Association of Governors (DCAG), the 'School Governor in Durham' magazine and the School Extranet asking schools to make parent governors aware of the vacancies. It is also intended that our current O&S Chairs and Vice-chairs would continue to promote the vacancies with parent governors in their local communities. These options for promoting the vacancies do not incur a cost.
- 22 Under the Parent Governor Representatives (England) Regulations 2001 in the event that more applications to become a PGR are received than vacancies exist, there would be a requirement for a formal election to be undertaken at a significant cost.

- 23 The table attached as Appendix 2 shows that DCC is one of two Local Authorities that currently appoint faith and PGR co-optees to two OSCs (C&YPs OSC and the COSMB) with the remaining Local Authorities appointing faith and PGRs to their respective Children's Overview and Scrutiny Committees only. There is an opportunity to consider ending the appointment of both faith and PGRs to the COSMB by altering the existing OSCs terms of reference in DCC's Constitution to require these representatives to be appointed to the CYPs OSC and that all educational related matters be considered through that OSC only.
- 24 Where issues are subjected to the provisions of call-in as set out within the Council's Constitution, those matters are considered at the COSMB. It is proposed that where such matters subject to call-in relate to education, faith and PGRs are invited to the appropriate COSMB for that call-in issue.
- 25 Discussions have been held with the Chair and Vice-chair of the COSMB and it is recommended that the terms of reference to the COSMB and the C&YPs OSC in DCC's Constitution are altered to state that all educational matters to be considered by Scrutiny are referred through the C&YPs OSC only and that the C&YPs OSC faith and parent governor representatives would only be invited to COSMB in the event of an educational matter being referred back through scrutiny via the call-in process.

Recommendations

- 26 That the appointment protocol for non-voting, non-statutory co-optees is revised to allow currently serving co-optees to apply as part of the refresh of the appointment process to be undertaken in 2018.
- 27 That the Safer and Stronger OSC, the designated Crime and Disorder Committee for County Durham, retains the option in the future to co-opt onto the committee as statutory non-voting co-optees further partners from the Community Safety Partnership.
- 28 That the terms of reference to the COSMB and the C&YPs OSC in DCC's Constitution are altered to state that all educational matters to be considered by Scrutiny are referred through the C&YPs OSC only and that the C&YPs OSC faith and parent governor representatives would only be invited to COSMB in the event of an educational matter being referred back through scrutiny via the call-in process.

Background papers

Review of Overview and Scrutiny Co-optee Arrangements – OSMB Report – 25 March 2014.

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Appendix 1: Implications

Finance – N/A

Staffing – N/A

Risk – N/A

Equality and Diversity/Public Sector Equality Duty – N/A

Accommodation – N/A

Crime and Disorder – N/A

Human Rights – N/A

Consultation – N/A

Procurement – N/A

Disability Issues – N/A

Legal Implications – N/A

Appendix 2

Research of co-optee membership on OSCs – August 2017

Name of LA	Number of OSCs	Name of OSC with Co-optees	Number of non-voting co-optees	Number of Statutory Voting Co-optees
Sunderland City MBC	1 coordinating cttee 3 thematic cttees	Children's OSC		2 Faith; 1 PGR (2 vacancies)
Newcastle City MBC	1 Health Scrutiny Cttee			
Nottingham City MBC	1 coordinating 5 thematic	CYP OSC		2 Faith; 2 PGRs (1 vacancy)
Leeds City MBC	8 Scrutiny boards	C&F OSC ASPHNHS OSC	1 LAC & CL 1 Young lives Leeds 1 Healthwatch	2 Faith (1 vacancy); 3 PGRs (2 vacancies)
Cornwall CC	5 thematic committees	C&F OSC		2 Faith; No serving PGRs (3 vacancies)
Birmingham MBC	6 thematic committees	C&F OSC		2 Faith (1 vacancy); 2 PGRs
Manchester MBC	6 thematic committees	CYP OSC	2 reps from primary and secondary schools	2 Faith; 1 PGR (2 vacancies)
Wolverhampton MBC	1 overarching Scrutiny Board and 6 Scrutiny Panels	CYP OSC Health OSC Economy Vibrant & Sustainable Communities	1 –Youth Council 2 Non-voting 2 Non-voting 4 Non-voting	2 Faith; 1 PGR (4 vacancies)
Lancashire CC	1 overarching Executive Committee 5 thematic committees	Children's Services Education Health* two tier LA	4 Non-voting	3 Faith; 2 PGR (1 vacancy) 12 DC/BC reps
North Yorkshire CC	5 Thematic Committees	Young People's OSC	4 Non-voting	2 Faith (1 Vacancy) 2 PGR
Northumberland CC	6 Thematic Committees			

North Tyneside MBC	Overarching Overview, Scrutiny and Policy Development Committee and 7 thematic committees	Overarching Overview, Scrutiny and Policy Development Committee Children, Education & Skills		2 Faith; 2 PGR 2 Faith; 1PGR (1 Vacancy)
Durham County Council	Overarching COSMB 5 Thematic Committees	COSMB AWH S&S E&E ENV C&YPs	10 Non-voting co-optees in total for all 5 thematic committees	1 Faith (1 Vacancy) 1 PGR (2 Vacancies) 2 (Non- voting statutory co- optees on S&S OSC) 2 Faith and 1 PGR (2 Vacancies) on C&YPs OSC