

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 5 March and 16 April 2024. Attendances:

Councillor Glazier (Chair) 2

Councillors Bennett 1, Bowdler 2, Collier 2, Denis 2, Standley 1 and Tutt 2

1. Amendment to Constitution – East Sussex Pension Fund

1.1. The East Sussex Pension Fund (the Fund) undertook a review of decision-making responsibilities in line with the recommendations of the Scheme Advisory Board “Good Governance Review”. An external consultant was appointed to review existing decision-making levels documenting responsibilities into a decision-making matrix. As part of this review, proposed changes to the existing governance structure were identified in order to maximise best practice and ensure alignment with changes to the Constitution and the governance structure approved in 2020.

Financial decisions: Debt Write Off

1.2. The Fund is ring-fenced, with assets held separately from the general assets of the authority; the Fund’s assets must be used for the sole purpose of paying Local Government pension benefits. The operational and financial decisions of the Fund are separate from those of the Council, with the budget, budget monitoring, outturn reports and Annual Report and statement of accounts being approved by the Pension Committee, rather than Full Council. The Pension Committee are charged with governance of all financial matters for the Fund.

1.3. The Financial Procedure Rules are set out in the Constitution. Rule A.13.4 sets out the rules in relation to Write Off of Debts, as follows:

“A.13.4.1 The write-off of debts below £5,000 may be authorised by the Chief Officer. The write-off of debts in excess of £10,000 shall only be authorised by the Lead Member for Resources.

A.13.4.2 All other debts falling between these limits may only be written off by a Chief Officer after consultation with the Chief Finance Officer and Assistant Chief Executive.

A13.4.3 A complete record of debts written off shall be maintained by the appropriate Chief Officer and retained in accordance with Standard Financial Procedures”.

1.4. The Constitution currently states that the Chief Operating Officer and the Lead Member for Resources are the decision makers for write off levels for debts owed to the Pension Fund. However, neither have direct operational oversight or responsibility for the debt or the wider financial position of the Fund. It is therefore proposed that the Constitution be amended so that the write-off of debt for the Fund is delegated to the Chief Finance Officer, in consultation with the Chair of the Pension Committee, who will advise the Pension Committee of such write offs.

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1.5. The Committee is asked to consider an amendment to Rule A.13.4, by adding a new Rule A.13.4.4 as follows:

A.13.4.4 Where the debt is owed to the East Sussex Pension Fund, the write of any value debt may be actioned by the Chief Finance Officer, in consultation with the Chair of the Pension Committee, and reported to the Pension Committee.

Responsibilities of the Chief Finance Officer

1.6. The responsibilities of the Chief Finance Officer are laid out in the Constitution. The existing responsibilities merge those relating to both County Council roles and Pension Fund roles. The Chief Finance Officer, as Section 151 officer, is required to wear two hats in some circumstances where the best interest of the Pension Fund may differ to the best interest of the County Council and it is recommended the role is clearly defined to separate out the Pension Fund responsibilities. A draft version of the revised Chief Finance Officer responsibilities is included as Appendix 1 to this report.

1.7. In addition to the revised format of the Chief Finance Officer responsibilities, it is proposed that decisions with financial implications sit with the Chief Finance Officer and Pension Committee. For example, under current arrangements, decisions relating to staffing (recruitment, training etc) are defined as responsibilities of the Chief Operating Officer. To support the efficient operation of the Pension Fund, it is proposed that the day-to-day operational responsibilities for the Pension Fund, including staffing, administration and investments, are delegated to the Chief Finance Officer and Head of Pensions, in consultation with the Pension Committee and Pension Board, rather than the Chief Operating Officer.

1.8. The Pension Committee, at its meeting of 30 November 2022, agreed for the Chief Finance Officer to have delegated authority to make decisions to invest up to 5% of the Fund assets outside of the defined Investment Strategy Statement, Implementation Plan or rebalancing range in order to react to market risks or opportunities. It is proposed that this delegation is recorded within the delegations to the Chief Finance Officer in the Scheme of Delegations to ensure consistency in the governance documentation.

1.9. The Articles are set out in Part 2 of the Constitution. Article 12.04 sets out the functions of the Chief Finance Officer as a statutory officer, including at Article 12.04(e) that the Chief Finance Officer “*will provide financial information to the media, members of the public and the community*”. It is recommended that Article 12.04(e) is expanded to include *any* Pension Fund specific communications, including financial information, and be included within the Chief Finance Officer’s responsibilities as set out in Appendix 1.

1.10. The Committee recommends the County Council to:

☆ (1) agree to the proposed amendment to the Constitution as set out in paragraph 1.5 of the report; and

(2) agree to amend the Scheme of Delegation to officers as set out at appendix 1 to the report and that the Constitution be amended accordingly.

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2. Appointment of Members to Committees, Sub-Committees, Panels and Other Bodies

2.1 In appointing members to committees, sub-committees, most panels and some outside bodies the Council must comply with section 15 of the Local Government Act 1989 and subsequent Regulations. These provide that places on committees must be allocated to political groups in proportion to the number of seats on the Council held by each group, unless there is agreement, without dissent, that the provisions of the Act should not be applied.

2.2 The allocation of places to party groups must, so far as is reasonably practicable, give effect to the following principles:

- (a) not all of the seats on the body can be allocated to the same political group;
- (b) where more than half the members of the Council belong to one political group, that group shall have a majority on all committees, sub-committees, etc;
- (c) subject to (a) and (b) above, the total number of seats on the ordinary committees (including sub-committees) allocated to a political group reflects that group's proportion of the members of the Council;
- (d) subject to (a), (b) and (c) above, the number of seats on each body allocated to a political group reflects the proportion of the seats on the Council held by the group.

2.3 The rules require seats to be allocated on a proportional basis "so far as practicable" and inevitably there must be some rounding up and rounding down. It is open to the Council to review the size and number of committees and sub-committees at any time.

2.4 Members of the Cabinet may not serve on the Scrutiny Committees or the Regulatory Committee and the Leader and Deputy Leader of the Council may not serve on the Standards Committee.

2.5 The Leader of the Council appoints the Cabinet and allocates portfolios to those Cabinet Members. Political balance provisions do not apply to the Cabinet

2.6 The principle in paragraph 2.2 (c) above applies to appointments to ordinary committees (including sub-committees). Accordingly, before considering the allocation of places to political groups the Council will need to consider whether it wishes to recommend any changes in committees, including their size. The tables in Appendix 2 show the proposed allocation of seats for 2024/25. There are no changes to the allocation agreed by the County Council in September 2023 for 2023/24. The proposals in relation to the ordinary committees and sub-committees, their total membership and the number of seats on each to which the groups will be entitled follows the principles set out in paragraph 2.2 above.

2.7 The party group leaders and independent members have been asked to let the Assistant Chief Executive have nominations to fill the places on committees, sub-committees, panels and other bodies covered in this report provisionally allocated to their group. The final list of nominations received will be circulated to members of the County Council prior to the annual council meeting, for approval by the Council.

2.8 The allocation of seats to the Governance Committee has been proposed to take into account the importance of having one member from each of the four largest political groups. Membership of this Committee normally includes the Group Leaders.

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Other Committees and Panels

2.9 There is no obligation in relation to other committees and panels to aggregate the total number of places and to adjust allocations so that the total number of places allocated to each group reflects its proportion of the members of the Council. It is proposed that places should be allocated on a proportionate basis, unless the Council agrees to waive the political balance provisions which has been the custom for certain panels over many years.

2.10 The practical effect of the proportionality rules for a committee, panel or group of members of any given size from 3 to 12 is set out in Appendix 3, together with the list of current committees and panels to which appointments will need to be made and their membership.

Chairs and Vice Chairs of Scrutiny Committees

2.11 The Council's Constitution provides that the Chairs and Vice Chairs of Scrutiny Committees and Audit Committee should be added together and the positions then allocated to groups in accordance to the number of seats they have on the Council. Within this allocation the Chair of the Audit Committee shall be appointed from the members of the largest Group not represented on the Cabinet. On this basis the allocation of the 8 places would be as follows:

Conservative – 4
Liberal Democrat – 2
Labour – 1
Green - 1
Independent Democrat - 0

2.12 The proposed list of Chairs and Vice Chairs (there are no changes to the allocation agreed in September 2023 for 2023/24) to be appointed by the County Council is:

Committee	Chair	Vice-Chair
Regulatory	Conservative	
People Scrutiny Committee	Conservative	Liberal Democrat
Place Scrutiny Committee	Conservative	Green
Audit Committee	Liberal Democrat	Conservative
Health Overview and Scrutiny Committee	Conservative	Labour
Governance Committee	Conservative	
Planning Committee	Conservative	Conservative
Pension Committee	Conservative	
Standards Committee	Conservative	

2.13 The Committee recommends the County Council to:

- ✧ (1) allocate to the political and other groups the places on, and membership of, the main committees as set out in Appendix 2;

(2) allocate places on the other committees and panels as set out in Appendix 3; and

(3) allocate the Chair and Vice Chair positions on committees as set out in the table in paragraph 2.12.

3. Amendment to the Constitution - Health Overview and Scrutiny Committee (HOSC) Terms of Reference

3.1 The powers of health scrutiny were established in the Health and Social Care Act 2001 and came into effect in 2003. East Sussex HOSC was established under this legislation in 2003.

3.2 Between 2003 and 2022 there were several updates to health scrutiny regulations and guidance, particularly to reflect changes in NHS structures and processes during this time. However, the statutory health scrutiny role and powers have remained largely unchanged. These included a specific role and powers for HOSCs in relation to any proposals for 'a substantial development or variation' to NHS services affecting the residents of the HOSC's area, specifically:

- the requirement for local NHS organisations to formally consult with the relevant HOSC(s) on such proposals, and for the HOSC to respond in its role as the statutory consultee; and
- the power for the HOSC to refer such proposals to the Secretary of State for Health for review on the grounds of either inadequate consultation with the HOSC, or because the HOSC considered the proposals were not in the best interests of health services for the area.

3.3 The Health and Social Care Act 2022 included provision for the Secretary of State to intervene directly in local NHS service changes, without requiring a referral from a HOSC. This has implications for the health scrutiny role and powers, specifically HOSCs' role in response to 'substantial' NHS service changes as set out above. On 9 January 2024 the Department for Health and Social Care (DHSC) issued a suite of new regulations and guidance setting out how the new service reconfiguration process will operate. The new process came into effect on 31 January 2024.

3.4 The majority of health scrutiny powers remain unchanged. This report focuses on the impact of the new service reconfiguration process on HOSC's role and the consequential amendments proposed to HOSC's Terms of Reference. The proposed changes were considered and supported by the HOSC at its meeting on 7 March 2024.

Supporting information

3.5 The arrangements for the new service reconfiguration process are set out through a set of linked regulations and guidance issued by DHSC in January:

- The National Health Service (Notifiable Reconfigurations and Transitional Provision) Regulations 2024: <https://www.legislation.gov.uk/uksi/2024/15/contents/made>
- The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024: <https://www.legislation.gov.uk/uksi/2024/16/note/made>
- "Local Authority Health Scrutiny: Guidance to support local authorities and their partners to deliver effective health scrutiny" (DHSC, 2024). This replaces/supersedes

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guidance of the same name published in June 2014:

<https://www.gov.uk/government/publications/advice-to-local-authorities-on-scrutinising-health-services/local-authority-health-scrutiny>

- New statutory guidance: “Reconfiguring NHS services – ministerial intervention powers” (DHSC, 2024). <https://www.gov.uk/government/publications/reconfiguring-nhs-services-ministerial-intervention-powers/reconfiguring-nhs-services-ministerial-intervention>

3.6 Key implications for HOSC are as follows:

- HOSCs’ status as statutory consultees on substantial service reconfigurations remains in place, with NHS organisations required to engage as they do currently;
- HOSCs will no longer be able to formally refer matters to the Secretary of State where they relate to these reconfigurations;
- Instead, the Secretary of State will have a broad power to intervene in local services – HOSCs will have the right to be formally consulted on how the Secretary of State uses their powers to ‘call in’ proposals to make reconfigurations to local health services.
- Other aspects of health scrutiny remain unchanged – the power to require representatives of NHS bodies to attend formal meetings, the power to get information from NHS bodies and the power to require NHS bodies to have regard to scrutiny’s recommendations;

3.7 The practical elements of the new service reconfiguration process are set out below:

- NHS commissioners will have a statutory obligation to notify the Secretary of State of planned reconfigurations that are substantial (also referred to as ‘notifiable’ changes in the regulations). The notification given to DHSC should consider the relevant HOSC’s views on a proposal when deciding when to notify and should make clear to the Secretary of State the HOSC’s view on whether this reconfiguration is ‘notifiable’.
- Consultation on a ‘notifiable’/substantial change will take place locally as it does now, including HOSC’s ongoing role as statutory consultee.
- ‘Notifiable’ reconfigurations are not the only proposals that may be ‘called in’ by the Secretary of State;
- Anyone locally (including a HOSC) may make a request to the Secretary of State that a proposal be ‘called in’ – whether that proposal is substantial or not. However, the guidance envisages that a proposal will be ‘called in’ only under exceptional circumstances. There will be certain criteria used to determine this, which include whether the HOSC has been engaged in trying to resolve concerns locally;
- The Secretary of State’s decision to ‘call in’ a service change is discretionary, and they can decide whether or not to call in a service change proposal. When a call in request is received, a process of evidence gathering to support the Secretary of State’s decision-making will be co-ordinated between DHSC and the Independent Reconfiguration Panel (IRP). A range of people may be contacted to provide further information as part of this (which is likely to include the relevant HOSC).
- Should the Secretary of State decide to ‘call in’ a proposal he or she will issue a Direction Letter to the NHS commissioning body, at which point the call-in becomes ‘live’. The Direction Letter will set out the steps that the NHS commissioner is

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permitted to take next (which may or may not include continuing with a consultation). The requester will also be informed and the NHS commissioner and/or DHSC will inform the HOSC;

- A 'live call-in' will involve a review of the proposals which is likely to entail the Secretary of State seeking advice from the IRP. Interested parties will be given the opportunity to make formal representations at this stage – this is likely to include the HOSC;
- The Secretary of State will make a decision within six months. An NHS commissioning body must give effect to any decision made by the Secretary of State on a 'call-in'.

3.8 As set out above, the new process involves a number of roles/potential roles for HOSC at various stages. The updated national legislation means that amendments need to be made to HOSC's Terms of Reference to reflect the changes to HOSC's role and powers in relation to substantial service change. The proposed changes are set out at Appendix 4. In summary these are:

- Replacing references to outdated legislation and referring more generally to relevant health scrutiny legislation and guidance, to more easily accommodate any future updates and the broader range of national guidance which now refers to health scrutiny;
- Removing references to the previous arrangements in relation to referring matters to the Secretary of State;
- Adding references to the new 'call-in' process and HOSC's roles within this;
- Adding specific reference to working with local Healthwatch, as well as with local people more generally, to recognise that the relationship between HOSCs and Healthwatch has been made more explicit in recent DHSC guidance and regulations; and
- Updates to the element relating to joint health scrutiny arrangements with other authorities to clarify fully HOSC's role in establishing joint committees.

3.9 The Committee recommends the County Council to:

- ✧ approve the revised Health Overview and Scrutiny Committee Terms of Reference set out at Appendix 4 to the report and that the Constitution be amended accordingly.

16 April 2024

KEITH GLAZIER
(Chair)