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## Report of the Assistant Chief Executive (Corporate Governance)

### Member Management Committee

Date: 8<sup>th</sup> October 2008

Subject: Substitute Arrangements on Boards, Panels and Committees

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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### Executive Summary

Following concerns expressed by Whips at the adequacy and extent of current substitute arrangements this report details the extent of the current arrangements and examines the scope for increased substitute arrangements, and the reasons why such arrangements may not be necessary or appropriate in certain areas.

The report concludes that increased and/or new arrangements may be appropriate for the Corporate Governance and Audit Committee, Constitutional Proposals Committee and Scrutiny Call-In meetings, that such arrangements are not necessary in relation to the Licensing Committee, and not appropriate in relation to Standards Committee and Scrutiny Boards.

#### 1.0 Purpose of Report

- 1.1 To outline the current extent of substitute arrangements for Boards, Panels and Committees. To respond to concerns expressed by Whips that current substitute arrangements for the Corporate Governance and Audit Committee are not adequate and that substitute arrangements should be introduced in relation to all meetings.

#### 2.0 Background Information

- 2.1 Nationally and for several years there has been doubt legally as to whether substitutes are allowed at all and the conventional way around this, based on Counsel's advice, is for a defined pool of substitutes to be agreed so that at any one time, it is known exactly who is entitled to be a substitute and the potential membership of the Committee.

- 2.2 At the Whips meeting held on 1<sup>st</sup> July 2008 the view was expressed that the provisions of Council Procedure Rule 26.1(d) did not provide an adequate 'pool' of members in relation to the Corporate Governance and Audit Committee to ensure that meetings would always be adequately attended. Whips agreed that they would further discuss what they considered to be an adequate pool. In subsequent email exchanges Whips have supported the general view that substitutes should be allowed on all boards, panels and committees.
- 2.3 The Executive Board Procedure Rules currently provide "A non-executive Member cannot substitute for an Executive Member at a meeting of the Executive or any of its committees. The Executive may invite any Member it considers appropriate to attend its meetings and to speak on behalf of an absent member of the Executive. However, that member will not be able to take decisions and will not be a co-opted member of the Executive". The 2000 Act requires named individuals to be the Executive Members and therefore legally, substitutes are not allowed for the Executive Board.
- 2.4 Council Procedure rule 26.1 provides substitute arrangements for the Regulatory Panels, Member Management Committee, Development Plan Panel and Corporate Governance and Audit Committee – (Procedure Rule 26.1 is attached as appendix 1 to this report).
- 2.5 Substitute arrangements for scrutiny boards did apply in similar terms to those for regulatory panels but were removed from the municipal year 2005/06 following 'best practice' advice from the Audit Commission.
- 2.6 Standards Committee, Licensing Committee and the Constitutional Proposals Committee are the remaining committees appointed by full Council which do not have any substitute arrangements.

### 3.0 Main Issues

- 3.1 In arriving at a conclusion in relation to the arrangements for any committee care must be taken to ensure that they are clear, defined and sufficiently narrow to avoid challenge to the decision making process and preferably to not attract the criticisms which the former scrutiny arrangements drew, particularly on the grounds that Scrutiny Inquiries required continuity.
- 3.2 In respect of the **Executive Board** legally there can be no substitution although, as set out in the Executive Board Procedure Rules, a member can be invited to attend and speak, but they cannot be part of the decision making process and are not a co-opted member of the Board.
- 3.3 At the meeting of the Corporate Governance and Audit committee on 10<sup>th</sup> May 2005 the advice of the Audit Commission in relation to **Scrutiny Boards** was accepted.
- 3.4 It is acknowledged however, that there will be occasions when Members are unable to attend Call In meetings due to the strict timetable required by the Constitution for the convening of Call In meetings.

- 3.5 The issue of continuity is not an issue for Called In decisions as the matter for discussion relates to a decision taken and not an ongoing Inquiry therefore there is an argument for allowing substitutes for Call In meetings only.
- 3.6 In the event that members consider that the benefits of reintroducing substitute arrangements for Call in meetings of these Boards then they may wish to recommend the Constitutional Proposals Committee, as successor to the Corporate Governance and Audit Committee in this respect, to reconsider the previous decision in relation to Call in meetings.
- 3.7 In relation to the **Corporate Governance and Audit Committee** Council Procedure Rules provide that “the Council shall appoint substitute members via nominations from party whips. Each whip shall nominate one substitute for each member that sits on the Committee. Whips may not nominate any members that would be excluded from full membership under the provisions of Article 9 of the Constitution”. Prior to the Annual Meeting 2008 the effect of this provision was that a pool of substitutes would be nominated on a 2:1:1:1:1 basis. Following the expansion of the Committee membership in May the pool becomes 4:2:2:1:1.
- 3.8 In relation to the **Standards Committee** the Standards Board, the national regulatory body for standards and ethics, have clearly advised that they do not regard substitute arrangements to be appropriate. The Standards Committee have agreed that the advice of the Board should be accepted.
- 3.9 The **Licensing Committee** has a total membership of fifteen and a quorum of five. There is no evidence that any meetings have come close to a difficulty in respect of the quorum. The Licensing Sub-Committees of three members are comprised from the fifteen of the full Committee which is effectively the pool.
- 3.10 The **Constitutional Proposals Committee** is a newly formed Committee with a membership which includes all group leaders and the Whips of the three major groups. Because of the profile of the membership there could be potential for attendance problems. It is anticipated that this Committee will meet as and when required and proposed delegated powers to the Assistant Chief Executive (Corporate Governance) to secure appointment of members between the elections and the Annual Council should address any attendance issues over that period. However, should the Committee be of the view that substitute arrangements are necessary then the 4:2:2:1:1 arrangement, as currently applicable to the Corporate Governance and Audit Committee, could be put forward for approval.
- 3.11 Following consultation with Core Cities and West Yorkshire authorities with regard to substitute arrangements it would appear that none of them operate substantially different arrangements to those currently practiced in this authority.

## **4.0 Implications for Council Policy and Governance**

- 4.1 The need to secure adequate attendance at meetings by the use of substitute arrangements needs to be balanced against the risk that the use of such arrangements could bring the validity of certain decision making processes into question. The 2000 Act makes it clear that there cannot be substitutes for Executive Members. The Standards Board for England clearly recommend that substitutes are not used for Standards Committees and the Audit Commission are equally clear in relation to Scrutiny Boards. In both cases the bodies advising as to best practice have sufficient status to be regarded as arbiters in such matters. To act contrary to their advice could invite criticism that the Council was not applying best practice in these areas and could even bring processes in relation to some decisions into question.

## **5.0 Conclusions**

- 5.1 Acknowledging the concerns expressed by Whips at the current extent of substitute arrangements this report has attempted to balance those concerns against the need to demonstrate that the Council does apply best practice to decision making processes. Arrangements for the Corporate Governance and Audit Committee were effectively extended when the Annual Council increased the membership and similar arrangements could be advanced for the Constitutional Proposals Committee, introduction in relation to Standards and Scrutiny would likely attract criticism and/or challenge in relation to decisions other than Scrutiny Call-In meetings where the continuity is not an issue due to the nature of the meeting. Legally substitute arrangements cannot be introduced for Executive Board. The operation of the Licensing Committee does not seem to demonstrate the need for any arrangements to be introduced.

## **6.0 Recommendations**

- 6.1 That the substitute arrangements identified in this report in relation to the Constitutional Proposals Committee and Scrutiny Call-in meetings be forwarded to the Constitutional Proposals Committee with a recommendation that they be forwarded to Council as proposed amendments to the Constitution.
- 6.2 That the balance of substitute arrangements, as currently in place, be noted.

## **BACKGROUND PAPERS**

Council Procedure Rules

**26.0 SUBSTITUTE MEMBERS**

26.1 Allocation

- (a) In relation to each Regulatory Panel, the Council shall appoint substitute members, comprising all other members of the other Regulatory Panels and the Development Plan Panel. A nominated member shall be entitled to attend meetings in place of a regular member, subject to the substitute member having received appropriate training.
- (b) In relation to the Member Management Committee, an Executive Member, Deputy Executive Member, Whip or Assistant Whip shall be entitled to attend meetings in place of a regular member of the Committee.
- (c) In relation to the Development Plan Panel, the Council shall appoint substitute Members, comprising all Members of the Regulatory Panels. A nominated Member shall be entitled to attend meetings in place of a regular Member, subject to the substitute Member having received appropriate training.
- (d) In relation to the Corporate Governance and Audit Committee, the Council shall appoint substitute members via nominations from party Whips. Each Whip shall nominate one substitute for each member that sits on the Committee. Whips may not nominate any members that would be excluded from full membership under the provisions of Article 9 of the Constitution.