

Governance System - Briefing Note

Motion submitted by Councillor Tim Dant as proposer.

Seconders are Councillors Richard Austen-Baker, Stephie Barber, Tim Hamilton-Cox and Tricia Heath.

“This council believes that it could make better use of the skills of all its councillors and improve the democratic accountability of decision making by ceasing the current leader and cabinet model of governance and implementing a committee system. Council requires the Overview and Scrutiny Committee in conjunction with Cabinet to investigate the best way to introduce a committee system of governance, taking into account the experiences of other councils. The investigation will lead to a detailed, legally and constitutionally sound proposal, including a programme for implementation, to be presented to full Council for consideration on or before its Annual Meeting in May 2020.”

Officer Comments:

The Motion

This briefing note will set out the background relating to governance arrangements and the process of changing those arrangements.

However, regarding the wording of the motion, members should note that requiring the Overview and Scrutiny committee to work in conjunction with Cabinet to carry out investigative work would run contrary to the roles of both bodies. Overview and Scrutiny (O&S) and Cabinet cannot join forces to carry out inquiry work. Whilst it would be appropriate for O&S members to invite Cabinet Members to give their views as ‘evidence’ to the O&S Committee or an O&S Task Group, or be otherwise consulted, that should be the limit of Cabinet Members’ input to any O&S work.

Officers would suggest that an appropriate mechanism for carrying out the investigative work might be to establish a new, politically proportionate, Committee of Council – in the way that the Constitutional Working Group was established last year, for example– with terms of reference as set out in the motion. This approach could be proposed, if Members so wish, by way of amending the motion submitted.

Background

Prior to the introduction of the Local Government Act 2000, local authorities had taken decisions through a committee-based structure whereby most policy and many operational decisions were taken by service-based committees.

The decision-making process via these arrangements was considered to be slow, with two stages to go through to get the most important decisions made. Representation on the committees was on a politically proportionate basis. Some decisions were reserved for full Council; in such circumstances, the role of a committee was to make a recommendation to Council for subsequent decision.

The current Leader and Cabinet system of governance, with overview and scrutiny committees is the most widely adopted process across local government as it provides all of the mechanisms needed to enable full and robust pre-decision and post scrutiny of decisions.

Decision making structures available under current legislation

The Localism Act 2011 gives Councils much more freedom to choose their decision-making structure. The purpose and objective of any decision-making structure is to ensure effective decision making.

Under current legislation, the following types of decision-making structures are available:

Leader and Cabinet – this is the system operated by most local authorities, and this Council. The Leader appoints a Cabinet of at least 2 and up to 9 Councillors. These Councils must have Overview and Scrutiny arrangements.

Directly Elected Mayor and Cabinet – this system allows a directly elected executive mayor with wide decision-making powers. The Mayor appoints a Cabinet made up of other Councillors, who may have decision making powers. These Councils must have Overview and Scrutiny arrangements.

Committee system – in this arrangement, most decision are made in committees, which are made up of a mix of Councillors from across all political groups. Council appoints Members to the committees on a politically proportionate basis, and sets their terms of reference. These arrangements may also include overview and scrutiny, but there is no requirement for this.

If the local authority determined not to have overview and scrutiny committees, it would still need to make appropriate arrangements for the scrutiny of crime and disorder, either by full Council or one of its Committees [under S19 of the Police & Justice Act 2006]

Under the committee system, a local authority is able to decide how its functions are delivered. It is possible for full Council to make all decisions; or to delegate decisions to a committee, sub-committee or officer. However, some functions must still be delivered by full Council (e.g. the Budget and Policy Framework).

The Council currently operates under a Leader and Cabinet model. Cabinet comprises of a Leader and nine Portfolio Holders. There are two Overview and Scrutiny bodies; an Overview and Scrutiny Committee and a Budget and Performance Panel. Members have full access to the list of forthcoming decisions and it is for these committees to select meaningful issues to consider in advance of decisions being made.

The power of “call-in” is available to members, whereby Cabinet decisions can be challenged before implementation.

Any proposed change to the current arrangements must be able to demonstrate substantial improvements and that it is made for the benefit of the Council and its residents. The benefits of changing must outweigh the time and costs associated with making fundamental changes to the current embedded system.

Change of Governance - The Procedure

The Council may change its governance arrangements to a different type (*section 9K, LGA 2000*). However, a resolution is required before the Council is able to do so. A notice must also be published informing the public:

- That the Council intends to change its governance arrangements and a council resolution has been passed in support of this.
- The date that it intends to change its governance arrangements.
- What the main features of the change will be.

- Where copies of any documents detailing the changes can be found, this should be at the Council's principal office and the address of its principal office should also be provided.

(Section 9KC, LGA 2000.)

Once the Council has passed a resolution to change its governance arrangements then it is prevented from doing so again for the next five years (unless a second resolution is approved following a referendum) (Schedule 2, Localism Act 2011 (section 9KC(4), LGA 2000)).

Moving to a new system can only take place at an Annual Meeting of Council in any particular year. If it was proposed that the Council's governance arrangements should change in the way suggested in the Notice of Motion, the earliest date that change in governance could take effect would be from May 2021. There would be insufficient time between this meeting and the Annual Council meeting in 2020 for the work necessary to design and put in place a new governance framework.

There is no requirement for specific consultation under the Localism Act 2011 or to consider any responses that are received in response to the public notice given.

Steps Prior to Change

Prior to the above decision, there would need to be a detailed period of preparation to address costings and other resources required, composition of a new constitution, a complete review of the member allowances scheme and possible changes to staffing structures.

Legal Implications

The statutory background which applies to a proposal to change a local authority's governance arrangements is set out within the body of this note.

The outline principles for the new system would have to be considered and agreed and, alongside that process, a new constitution would need to be developed. An appropriate timeline would need to be established for developing a new constitution culminating in its adoption at the same annual meeting considering the adoption of the new governance arrangements.

The draft constitution would need to set out the format of the new arrangements and, if moving to a committee system, appropriate delegations and the terms of reference of committees drawn up, together with other necessary changes for recommendation to Council. The new constitution would need to be complete in terms of including overview and scrutiny terms of reference (if any), and a new suite of procedure rules. The actions set out above in terms of statutory process would also need to be undertaken.

The full implications will be explored if a decision is made to move towards alternative governance arrangements.

Finance Implications

There may be financial implications of returning to a committee system and additional ongoing costs. These will be established if a decision is made to change governance arrangements. It is not possible to make an accurate assessment of the costs of a committee system, because there are many variables, dependent upon the numbers of committees chosen, information which is not known at this time e.g. the committee briefings and the additional call upon officer time in servicing an unknown model.

Should Council agree to change governance arrangements any increase in costs occurred in the current budget would have to be agreed by Council in consultation with the Section 151 Officer.

Section 151 Officer comments:

Members will need to be aware such a significant change to the Councils governance structure as outlined within the motion will inevitably have financial implications. In the short term in regard to officer capacity and the ability to support the initial feasibility and exploratory work but also longer term support for any additional committees, as well as the need to review key documents such as the Councils constitution and supporting policies, which may require specialist external assistance.

Deputy Monitoring Officer comments:

The Deputy Monitoring Officer would draw attention to the first paragraph of this briefing note regarding the appropriate member body to take this motion forward, should it be passed by Council.