

# STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

11<sup>th</sup> June 2019

<b>REPORT TITLE:</b>	<b>GOVERNANCE REVIEW</b>
<b>REPORT OF:</b>	<b>Director of Governance and Assurance</b>

## REPORT SUMMARY

The Annual Meeting of Council required this Committee to look at the Council's governance arrangements. The purpose was to include options to change the Council's form of governance, with an express intention to consider adopting a committee system as well as different executive arrangements. This is to report in September to allow for detailed work to follow for adoption of any new form of governance from the next Annual Meeting.

This report sets out the various options and arguments for the Committee, in brief, and recommends establishing a workshop and working group of the Committee to examine the issues further.

## RECOMMENDATION/S

It is recommended that the Committee establish:

- (a) A cross-party workshop to explore available forms of governance and governance arrangements in greater detail; and
- (b) An all-party working group to consider the outcome of the workshop and make a recommendation to the Committee's meeting of 11<sup>th</sup> September to refer to full Council.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

1.1 The Annual meeting of Council on 14th May 2019 resolved to:

*“charge the Standards and Constitutional Oversight Committee to conduct a review of the governance arrangements of the Council, with the objective to produce, in September 2019, an interim report on options and preferred outline for further consideration.”*

1.2 Set out in the report are the headline considerations and advice concerning a change to the form of governance of the Council and the suggestion of a working group and an all member workshop be held to consider a recommendation to Committee and Council within the desired timeframe.

### **2.0 BACKGROUND INFORMATION**

#### **2.1 Statutory Position**

2.1.1 Prior to the Local Government Act 2000, local authority governance operated entirely under the provisions of the Local Government 1972 (and likewise the Local Government Act 1933), which provided for decisions to be made at full meetings of Council or for authority to be delegated for the exercise of Council functions to be undertaken by committees, sub-committees or an officer of the Council. Over time this was amended, principally by the Local Government (Access to Information) Act 1985 and the Local Government and Housing Act 1989, providing stricter requirements on Member decisions being made in public, the publication of papers to be considered and that committees be made up of councillors from all political groups.

2.1.2 The Local Government Act 2000 introduced a new system of governance for all local authorities, with the exception of councils with a small population. Whilst the 1972 Act remained in place for a defined list of functions, most functions of the local authority were required to be governed by a new executive system. The executive system initially had several variations, but was amended to become either a Leader and Cabinet system or a directly elected Mayor and Cabinet system, each with very similar powers (and similarly referred to in statute as ‘the senior executive member’).

2.1.3 The 2000 Act has since been significantly amended for local authorities in England by the Localism Act 2011, from which time councils may adopt one of the following forms of governance. These are:

- (a) executive arrangements (either a leader or directly elected mayor and cabinet);
- (b) a committee system; or
- (c) prescribed arrangements;

which are briefly described further below.

## **2.2. Executive arrangements (Leader and Cabinet)**

### **2.2.1 The current Cabinet system has the following key principles:**

- (i) The senior executive member, the Leader at Wirral Council, is the holder of all 'executive functions' and so is responsible for specified functions of a local authority and is responsible for most day to day management and service decisions of an authority.
- (ii) The Leader must appoint at least two and a maximum of nine other Members to the executive (known as the Cabinet) to support the Leader in carrying out their role.
- (iii) The Leader determines whether executive decisions are taken by members of the Cabinet collectively, as a committee of Cabinet or individually by the Leader or another single Cabinet member, or by an officer.
- (iv) Political balance rules (requirement to have the same proportion of members of each group on a body as on the Full Council) do not apply to the Cabinet or Cabinet Committees.
- (v) Whilst the Leader determines who makes an executive decision, the Council determines how it is to be made through the executive procedure rules in Council's Constitution. (This is not the same in a directly elected mayoral model, where the mayor's written consent is required before the Council can alter executive arrangements.)
- (vi) The Budget/Council tax and certain policy framework documents, the Corporate Plan and Local Plan (local development framework) for example, are the responsibility of the Cabinet to formulate but are the responsibility of full Council to approve or object to.
- (vii) Decisions reserved for the Council (deemed non-executive) continue to operate under the 1972 Act regime via committees. These tend to be of a quasi-judicial or regulatory nature, for example development control.
- (viii) At least one Overview and Scrutiny Committee must be established with certain powers and functions of scrutiny set out in legislation. These include duties in relation to health, flood risk management and crime and disorder, and 'call-in' of key executive decisions.

## **2.3 Committee System**

### **2.3.1 A Committee system would have the following key principles:**

- (i) Decisions are taken through committees, appointed by full council. Political balance rules apply to these Committees and any Sub-Committees.
- (ii) Council or each Committee determines whether decisions are taken by Council, a committee or sub-committee of Council or individually by an officer. There are no single Member decisions.

- (iii) There are no restrictions on the number of committees, meeting frequency, or the size of the membership.
- (iv) There may be at least one Overview and Scrutiny Committee established with powers and functions of scrutiny but it is not a requirement. Council may choose not to have a separate overview and scrutiny function, in which case the statutory scrutiny functions in relation to health, flood risk management and crime and disorder would need to be exercised by the authority.
- (v) Full Council sets the budget/Council tax and approves certain policy framework documents, for example the Corporate Plan.
- (vi) Full Council motions, as now, are to be differentiated from decisions made in the exercise of the Authority's functions. Formal decisions will require officer reports and background papers before the matter is considered and a decision is made.
- (vii) There is not a 'Leader' in decision making terms. Nonetheless it is common that a Leader position is created, seen as the principal political spokesperson for the Council with ostensible responsibility for representing its views to the public and external organisations. This person is traditionally also the Chair of the principal committee responsible for development of policy and budgetary matters.
- (viii) To allow for business between committee meetings, extensive delegation is provided to officers. Where urgent and key, such decisions are often exercised by the officer in consultation with the Chair of the relevant Committee or a councillor appointed as Leader.

## **2.4 Prescribed arrangements**

- 2.4.1 'Prescribed arrangements' means an alternative form of governance that is neither a cabinet system or a committee system proposed by the Authority but this must be approved by the Secretary of State and only if those alternative arrangements would be appropriate for other authorities.
- 2.4.2 No Authority has so far adopted or proposed an alternative model, and it is difficult to say what such a system might look like.

## **2.5 Advantages and Disadvantages of the Governance Forms**

- 2.5.1 In considering a change specifically from a Cabinet form of Governance to a Committee system there are a number of advantages of each system which would have to be considered and looked at in close detail. The following is a very brief snapshot of what are often put forward as the pros and cons of each system
- 2.5.2 Key arguments often put in favour of an executive arrangements form of governance include:
  - (i) efficient decision making and delivery and thus speed of reaction to changing circumstances or requirements in a business like way;

- (ii) clear lines of responsibility and transparency;
- (iii) clear leadership of the Council;
- (iv) clear separation between decision makers and those holding to account; and
- (v) easier partnership working.

2.5.3 Key criticisms often made of an executive arrangements form of governance include:

- (i) power concentrated in too few hands;
- (ii) under-utilised backbenchers;
- (iii) decisions taken 'behind closed doors'.

2.5.4 Key arguments often put in favour of a committee system form of governance include:

- (i) all Members have the opportunity to be directly involved in decision making;
- (ii) decisions are made through politically balanced Committees;
- (iii) the resulting greater cross-party debate leads to better decision making and consideration of all alternatives;
- (iv) all decisions in are made in a public meeting.

2.5.5 Key criticisms often made of a committee system form of governance include:

- (i) bureaucratic and much slower decisions;
- (ii) voting on party political lines and application of the 'whip' interferes with properly considering all options and genuine debate;
- (iii) no individual responsibility and accountability and the role of a Leader is opaque;
- (iv) increased officer briefings and support required;
- (v) much higher cost of administration; and
- (vi) slow decision making and the resulting requirement for officer decision making at a higher level.

## 2.6 Permitted Variations – Hybrid systems

2.6.1 The constraints within each form of governance leave individual local authorities with significant ability to address perceived advantages and disadvantages and develop a governance system appropriate to their local circumstances. Within each form of governance, these variations of governance arrangements may be such that the two systems might look almost identical by comparison or vary from each other considerably.

2.6.2 In considering a change of governance arrangements, the Council could consider a number of alternatives to a formal Executive or Committee system. In each case, the arrangements are agreed by full Council (the 'how' in

executive arrangements and not the 'who' determined by the Leader) and are captured in the council's constitution. Examples would include:

- (a) A 'hybrid system', whereby some councils have created versions of the leader/cabinet system (which means that they do not require a formal change under the Act) that include aspects of the committee system. The most common arrangement is to set up non-decision making group of councillors, usually corresponding to cabinet portfolios, which examine papers and make recommendations about how decisions should be made. The decisions are subsequently made at meetings of the cabinet or by individual cabinet members, and may well follow the recommendations of the 'committees' although they are not legally required to do so.
- (b) An amended Cabinet system – which could involve more or all decisions being taken by Cabinet collectively rather than by individual Cabinet members, together with increased scrutiny from non-cabinet members.
- (c) Enhancing the role of Full Council , which could include a greater role in strategic decisions through an increased Policy Framework and pre-Cabinet decision scrutiny and debate
- (d) An as yet undefined system that would meet the criteria for "prescribed arrangements".

## **2.7 Process of change**

2.7.1 Any change from the current Cabinet system to another form of governance including a committee system would involve:

- (i) Passing a resolution approving the change at Full Council.
- (ii) As soon as practicable after passing the resolution, make the provisions of the new arrangements available for inspection
- (iii) Publish in one or more newspapers circulating in the area a notice which describes the features of the new system and timescales by which the change would take effect. There is no requirement to formally consult on any proposals.
- (iv) The change must be implemented either at the next Annual Meeting following the approval or at a later Annual Meeting specified in the resolution where the approval was given.
- (v) The full Council can therefore decide at which Annual Meeting in future it may wish any new governance arrangements to be introduced.
- (vi) Once the change is made, a change from the new form of governance cannot be made again for 5 years from the date of the approval.
- (vii) It is possible that interim arrangements would be required during a changeover to a new system.

2.7.2 A change of executive arrangements, without changing the form of governance, requires a simple majority of Council.

### **3.0 RESOURCE IMPLICATIONS**

3.1 There are significant implications for the Council in changing its decision making structure to a new form of governance and correspondingly less for amended executive governance arrangements.

3.2 Examples of increased resources as a result includes:

- A comprehensive rewrite of the Council's constitution, governance and decision making processes would be required, for which external legal support will be required (albeit that this is now a necessary project in any event). This will include a comprehensive review of the Scheme of Delegation to officers.
- Those authorities that have changed form of governance successfully have expressed that it is best developed over eighteen months. A shorter time frame may mean increased resource and/or a period of change whilst the new governance arrangements bed down and are amended.
- Impact on the decision flow and relationship with current officer structure, including the design and delivery of the budget and major policies.
- Significant day to day resource implications will be had for those officers involved in formal and informal engagement with Councillors. This will be increased dependent on the decision making structures designed and the number and timings (day or evening) of decision-making meetings.
- Specific significant implications for Democratic Services (and Scrutiny) officers.
- A new approach may be required to engagement with partners and partnerships.
- Review members' remuneration arrangements.
- Additional extensive training for members and officers.

3.3 The majority of these issues will be addressed during this period in greater detail, dependent on the outcome of the initial view of the Committee in its report to Council following its September meeting.

3.4 Beyond this, detailed consideration will be required to be given to the wide ranging implications of any change to the current political system of governance. It will represent a key and integral element of the overall organisational vision of the Council and how it interacts with other stakeholders, including those forming the Wirral Partnership with the Council.

### **4.0 LEGAL IMPLICATIONS AND RELEVANT RISKS**

4.1 The legal provisions, risks and implications are inherent in this report and the investigatory work ahead.

- 4.2 There are clearly major implications for any change in governance arrangements, in terms of resources, transparency of decisions, effective engagement with the public and effective use of Council and officer time.
- 4.3 A clear fundamental principal of any governance review must be that any system of governance must reflect and be designed to meet the requirements of the Council so that it can function effectively and efficiently and that it supports its functional and service delivery framework to the community.

## **5. BACKGROUND PAPERS / REFERENCE MATERIAL**

- 5.1 A paper produced jointly by the Local Government Association and by the Centre for Public Scrutiny, "*Rethinking governance - Practical steps for councils considering changes to their governance arrangements*" can be found at: [www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf](http://www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf).

REPORT AUTHOR: Philip McCourt  
Director of Governance and Assurance  
Tel: 0151 691 8569