

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 1st May 2014
Report of: Head of Governance and Democratic Services
Subject/Title: The Council's Decision-Making and Governance Arrangements

1.0 Report Summary

- 1.1 This report addresses a range of decision-making and governance issues and seeks a recommendation from the Constitution Committee to Council upon proposed constitutional change.
- 1.2 The report seeks to ensure transparency, public accountability and openness in the Council's decision-making and governance arrangements, following the Council's approach of "residents first", and asks the Constitution Committee to make appropriate recommendations to Council to ensure this.

2.0 Recommendations

That the Committee recommends to Council as follows:

- 2.1 The abolition of the Council's existing Scrutiny and Policy Development Group (PDG) arrangements and the creation of five policy and performance commissions, as indicated in the appended PDG/Scrutiny Review report, reflecting Cheshire East Council's five strategic priorities: Communities, Economy, Life Skills, Environment and Health.
- 2.2 The adoption of the terms of reference, appended at **Appendix B** of this report, as the Commissions' terms of reference, with each Commission having all relevant overview and scrutiny powers under the Local Government Act 2000; together with the appropriate Commission having responsibility for the ASDV which best fits within the work of that Commission.
- 2.3 The creation of an overarching Cheshire East Policy and Performance Commission, having all relevant overview and scrutiny powers under the Local Government Act 2000, and the appended terms of reference and scrutiny powers, with those additional responsibilities set out in recommendation 10 of the PDG/Scrutiny Review Report; the powers of this Commission also to include the power to determine which Commission should take responsibility for specific pieces of work, where there may be uncertainty.
- 2.4 The designation of the Communities Commission to deal with crime and disorder issues under the Police and Justice Act 2006; the Environment Commission to deal

with scrutiny of Flood Risk Management arrangements under the Flood Risk management Overview and Scrutiny (England) Regulations 2011; the Health Commission to deal with health scrutiny requirements under the Health and Adult Social Care Act 2012.

- 2.5 That the Life Skills Commission will have the responsibility of co-opting faith and parent-governor representatives to deal with education matters.
- 2.6 The amendment of the existing call-in arrangements as set out in recommendation 13 of the appended PDG/Scrutiny Review Report; including the reduction in the number of Members required to trigger a call-in from 8-6 and the inclusion of provisions requiring reasons for call-in to be stipulated and the empowerment of the Head of Legal Services and Monitoring Officer to be the arbiter if the justification for call-in is disputed.
- 2.7 The number of Council Members who will be members of the Commissions.
- 2.8 The Special Responsibility Allowances (SRAs) paid to the Chairmen and Vice Chairmen of the new Commissions should be the same as those paid to the Chairmen and Vice Chairmen of the Council's existing scrutiny committees and that, if it is legally possible to do so, the Council could seek to recover any of the costs of administering its commissions from the ASDVs.
- 2.9 The membership of those bodies referred to in paragraph 12.2 of this report be reduced as indicated in that paragraph, with the quorum for planning boards and committees being reduced from 5 to 4 members, and the quorum for licensing committees being reduced from 8 to 5 members.
- 2.10 The terms of reference of the Staffing Committee, the Audit and Governance Committee and the Health and Wellbeing Board, as set out in Appendices C,D and E respectively be adopted as the terms of reference of those bodies.
- 2.11 The responsibilities of Deputy Cabinet Members, as contained in **Appendix F**, be noted and included in the Constitution.
- 2.12 Given that a draft job description is now in place in respect of the role of Deputy Cabinet Members and, having regard to the report of the Independent Remuneration Panel presented to Council on 27th February 2014; Special Responsibility Allowances be paid to the newly appointed Deputy Cabinet Members in accordance with the arrangements which currently apply to Cabinet Support Members.
- 2.13 The Head of Legal Services and Monitoring Officer be given delegated authority to make such changes to the Council's Constitution in order to give effect to the wishes of Council, and to make such consequential and other changes as she considers are necessary, and which arise from the recommendations of this report.

3.0 Reasons for Recommendations

- 3.1 The recommendations of this report are made in order to ensure that the Council's decision-making and governance arrangements are properly reflected in the Constitution.

4.0 Wards Affected

- 4.1 Not directly applicable.

5.0 Local Ward Members

- 5.1 Not directly applicable.

6.0 Policy Implications

- 6.1 Much of the content of this report relates to proposed changes to the Council's decision-making and other governance arrangements. If such changes are recommended to, and accepted by Council, the Council's Constitution will need to be amended accordingly.

7.0 Financial Implications

- 7.1 The main body of this report refers to financial implications. In respect of Cabinet Support Members/Deputy Cabinet Members, the financial implications of the recommendations of this report are neutral. With regard to the financial implications of the acceptance of the report's recommendations on Policy Development Groups/Scrutiny Committees, there would be a saving of approximately £25,000pa.

8.0 Legal Implications

- 8.1 Any legal implications are contained in the main body of this report. The report recommends that changes should be made to the Council's Constitution. In order for such change to take place, there must be a recommendation from the Constitution Committee.
- 8.2 Certain recommendations of this report relate and respond to the report of the Independent Remuneration Panel which was presented to Council on 27th February 2014. Council needs to have regard to the relevant extract from the Panel report, as contained in this report.

9.0 Risk Management

- 9.1 There would not appear to be any risks arising from the recommendations of this report. Indeed, the proposals contained in the report relating to robust scrutiny arrangements in respect of the ASDVs eg those relating to the Policy Development Group/Scrutiny Review will, if agreed by Council, result in measures being introduced to minimise risk in respect of the Council's approach to commissioning and alternative service delivery vehicles.

10.0 Background

- 10.1 Over recent months, tremendous change has taken place in respect of the way in which the Council delivers services. Alternative Service Delivery Vehicles (ASDVs) have been created and more will follow.
- 10.2 Alongside this change is the need to ensure that the work of the ASDVs is transparent to the Council, and that openness and public accountability are at the heart of the way in which these arrangements operate.
- 10.3 When the current Policy Development Group (PDG)/Scrutiny arrangements were established in December 2012, Council resolved that they should be subject to review. This review has now been completed by Professors Steve Leach and Colin Copus of DeMontfort University under the direction of the Constitution Committee, and the PDG/Scrutiny Review Working Group.
- 10.4 Furthermore, the Constitution Committee, the Constitution Member Working Group, and other committees have given consideration to other issues such as:
- The size of certain committees.
 - The terms of reference of committees, in particular those of the Staffing Committee, the Audit and Governance Committee, and the Health and Wellbeing Board.
- 10.5 And further, at its meeting on 27th February, Council gave consideration to the recommendations of the Independent Remuneration Panel, in which the Panel indicated that further thought should be given to the duties of Cabinet Support Members.
- 10.6 Given the pace of change within the authority, and its ambition to continue to transform the way in which it works, this report draws together a number of issues which, it is recommended, should result in constitutional change.
- 10.7 In order for the Constitution to change, a recommendation to that effect is needed from the Constitution Committee.

11.0 PDG/Scrutiny Review

- 11.1 In response to the resolution of Council, made when the current PDG/Scrutiny arrangements were established in December 2012, the Constitution Committee appointed a cross-party Working Group to conduct a review of those arrangements. The Working Group was chaired by Councillor Peter Groves. The Vice Chairman was Councillor David Marren.
- 11.2 The Working Group appointed Professor Steve Leach and Professor Colin Copus, of DeMontfort University to undertake the work required in respect of the Review. Professors Leach and Copus are widely acknowledged for their expertise in scrutiny and other local government matters.

- 11.3 Professors Leach and Copus presented their Review report to the PDG/Scrutiny Review Working Group on 14th April 2014. Their report is appended to this report as **Appendix A**. The Working Group supports the recommendations in the report, which are now presented to the Constitution Committee in order for consideration to be given to what recommendations should be made to Council.
- 11.4 If the Committee is minded to accept the broad thrust of the recommendations of the Review, it is asked to recommend to Council that the accepted elements be immediately adopted by the Council and implemented. However, certain of the recommendations would result in the need for constitutional change, and specific recommendations to Council would therefore be needed upon the following:
- 11.4.1 The abolition of the Council's existing Scrutiny and Policy Development Group arrangements and the creation of five policy and performance commissions, as indicated in the Review report, reflecting Cheshire East Council's five strategic outcomes: Communities, Economy, Life Skills, Environment and Health.
- 11.4.2 The adoption of the terms of reference, appended at **Appendix B**, as the Commissions' terms of reference, with each Commission having all relevant overview and scrutiny powers under the Local Government Act 2000; together with the appropriate Commission having responsibility for the ASDV which best fits within the work of that Commission.
- 11.4.3 The creation of an overarching Cheshire East Policy and Performance Commission, all relevant overview and scrutiny powers under the Local Government Act 2000, and the appended, terms of reference and scrutiny powers, with those additional responsibilities set out in recommendation 10 of the Review Report; the powers of this Commission also to include the power to determine which Commission should take responsibility for specific pieces of work, where there may be uncertainty.
- 11.4.4 The designation of the Communities Commission to deal with crime and disorder issues under the Police and Justice Act 2006; the Environment Commission to deal with scrutiny of Flood Risk Management arrangements under the Flood Risk management Overview and Scrutiny (England) Regulations 2011; the Health Commission to deal with health scrutiny requirements under the Health and Adult Social Care Act 2012.
- 11.4.5 To note the fact that the Life Skills Commission will have the responsibility of co-opting faith and parent-governor representatives to deal with education matters.
- 11.4.6 The amendment of the existing call-in arrangements as set out in recommendation 13 of the Review Report; including the reduction in the number of Members required to trigger a call-in from 8-6 and the inclusion of provisions requiring reasons for call-in to be stipulated and the empowerment of the Head of Legal Services and Monitoring Officer to be the arbiter if the justification for call-in is disputed.

- 11.5 The Constitution Committee may wish to give some thought to the size of the proposed Commissions. The following is an analysis of current Council composition, and the way in which this would affect potential membership:

Size	Conservative 60.98%	Labour 19.51%	Independent 13.41%	Lib/Dem 4.88%
6	3.659 = 4	1.170 = 1	0.804 = 1	0.293 = 0
7	4.269 = 4	1.366 = 1	0.939 = 1	0.342 = 0
8	4.878 = 5	1.561 = 2	1.071 = 1	0.39 = 0
9	5.488 = 5	1.756 = 2	1.207 = 1	0.439 = 0
10	6.1 = 6	1.951 = 2	1.341 = 1	0.488 = 0
11	6.708 = 7	2.146 = 2	1.475 = 1	0.537 = 1
12	7.32 = 7	2.341 = 2	1.609 = 2	0.59 = 1

- 11.6 The Committee is asked to make a recommendation to Council upon the size of the Commissions. It should be noted that some of the sizes of commissions above do not readily align with the Council's proportionalities: 7, 9 & 10
- 11.7 Given that the proposed Commissions will have all of the powers and responsibilities of the Council's existing scrutiny committees, together with an additional responsibility in respect of one or more ASDV, a recommendation is needed from the Committee as to whether the existing Special Responsibility Allowances (SRAs) paid to the Chairmen and Vice Chairmen of the Council's scrutiny committees should be replicated in those paid to the Chairmen and Vice Chairmen of the new Commissions. The Committee may wish to consider whether the Council could seek to recover any of the costs of administering its commissions from ASDVs. However it is not clear that such costs would amount to a legitimate company expense.

12.0 Size and terms of reference of committees

Size of committees

- 12.1 The Constitution Working Group recently considered the merits of reducing the size of committees to free-up members' time and to make meetings shorter and more manageable, whilst taking into account the responsibilities of each committee.
- 12.2 The Working Group suggested the following reductions subject to further consideration:

Committee (current size)	Proposed size
Audit and Governance Committee (10)	10 (no change)
Constitution Committee (14)	10
Strategic Planning Board (14)	12
Northern Planning Committee (14)	12
Southern Planning Committee (15)	12
Public Rights Of Way Committee (7)	5 (or incorporate functions into planning committees)
Licensing Committee (15)	10
Staffing Committee (8)	8 (no change)
Lay Members Appointments Committee (7)	5
Local Authority School Governor Appointments Panel (8)	5
Appeals Sub-Committee (5)	3

- 12.3 The Committee will therefore need to decide whether to make a recommendation to Council upon the numbers of Members of these bodies.

Terms of reference of committees

- 12.4 Much work has taken place in recent weeks and months in respect of three key areas of the Council's business: Staffing Committee, Audit and Governance Committee and Health and Wellbeing Board.
- 12.5 A Motion proposed at Council on the 18th July 2013 requested a review of the Staffing Committee terms of reference with a view to widening its remit, to encompass matters that are normally entailed in the work of a Staffing Committee, such as employee relations and communications, senior appointments, disciplinary matters and management structures
- 12.6 This motion was passed to the Council's Constitution Committee for consideration and a report was presented to the Committee on the 21st November 2013 outlining the current remit of the Staffing Committee, taking into account the Terms of Reference as detailed in the Council's Constitution, and the practice of the committee since its inception in 2009. It also considered practice in other authorities.

- 12.7 The Constitution Member Working Group, in consultation with the Chairman of Staffing Committee, progressed the review of the terms of reference. Following this work, new draft terms of reference were prepared. These appear as an appendix to a report to the Staffing Committee (24th April 2014), the whole of which being appended to this report as **Appendix C**. It should be noted that the draft terms of reference also take into account the powers allocated to the Staffing Committee by the meeting of Council on 10th April 2014.
- 12.8 Whilst the Staffing Committee, at its meeting on 24th April 2014 may make comments to the Constitution Committee, the Constitution Committee is responsible for making a recommendation to Council upon the adoption of the draft Staffing Committee terms of reference, as reproduced at Appendix C.
- 12.9 Audit and Governance Committee terms of reference:
- 12.10 The Constitution Member Working Group has undertaken a review of the terms of reference of the Audit and Governance Committee. The Working Group felt that the Committee's current role was largely a passive one, responding to, and noting, reports initiated by officers. The Working Group felt that the Committee's work programme should be much more member-driven. The Committee's current terms of reference did not allow the Committee a sufficiently active and robust role in scrutinising and challenging the Council's governance arrangements and initiating its own investigations and reviews.
- 12.11 At its meeting on 3rd March 2014 the Working Group considered model terms of reference for local authority audit committees which had been produced by CIPFA. These had been considered by the Audit and Governance Committee on 30th January 2014 and referred to the Working Group for consideration. The aim of the CIPFA model was to empower local audit committees in providing an independent review of the authority's governance, risk management and control frameworks and in overseeing the financial reporting and annual governance processes.
- 12.12 The Working Group noted that the Audit and Governance Committee was also responsible for the Council's standards regime in respect of the Member Code of Conduct. In this respect, it was noted that the Head of Legal Services and Monitoring Officer was aiming to submit a report to the Audit and Governance Committee in June with revised arrangements covering this aspect of the Committee's work.
- 12.13 The Working Group asked the Constitution Committee to recommend to Council that the CIPFA model terms of reference for audit committees, as Appended to this report at **Appendix D**, be adopted as the terms of reference of the Audit and Governance Committee.

12.14 Health and Wellbeing Board terms of reference:

12.15 The Constitution Committee at its meeting on 20th March 2014 considered a report proposing amendments to the terms of reference of the Health and Wellbeing Board. The proposed terms of reference were agreed by the Committee, with some amendments, including those necessary to clarify the functions required of the Board by legislation, to reflect the restructuring of the Council over the last year, and to ensure that the terms of reference aligned with the Council's Constitution and Committee Procedure Rules.

12.16 The amended terms of reference are attached for information at **Appendix E**. These will now be submitted to Council for approval and adoption and the Committee is therefore asked to note the terms of reference and recommend them on to Council for adoption.

13.0 Cabinet Support Members

13.1 At the 27th February 2014 meeting of Council, the report of the Independent Remuneration Panel (IRP) report was considered. The following is an extract from the report:

"Cabinet Support Members: Having evaluated the role against the matrix and noting the evidence supplied as part of the 2012 review, the Panel concluded that in the absence of a job description or terms of reference, a Cabinet Support Member did not appear to have any individual *responsibility* in order to qualify for an SRA under its criteria. In the Panel's opinion, their role was to provide *support* to the Portfolio Holder and accordingly recommended that the allowance be removed".

13.2 It is now an opportune time for a review of the role of Cabinet Support Members to take place.

13.3 The allocation of Cabinet business, given that it is "executive" in nature, is for the Leader and is not a responsibility of Council. However, the IRP raised a valid point that the role of Cabinet Support Members had never been defined. **Appendix F** is a suggested list of responsibilities of those appointed by the Leader to undertake a support role for Cabinet Members.

13.4 Given the comments of the IRP, it may be appropriate for these roles to be defined in the Constitution and, therefore, a recommendation from the Committee to Council would be required. It should be noted that the Leader has indicated that the title of those appointed to these roles should properly reflect the significant responsibilities they have and has therefore allocated the title "Deputy Cabinet Member" to these positions.

13.5 The IRP concluded that, in the absence of any job description for Cabinet Support Members, it appeared that those appointed to these positions did not have any individual responsibilities. A recommendation is therefore sought from the Committee, having regard to the recommendations of the IRP, as to whether, in the light of the roles in question now being clearly

defined, SRAs should be paid to the newly appointed Deputy Cabinet Members and, if so, whether these should mirror the arrangements which currently apply to Cabinet Support Members.

14.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Brian Reed

Designation: Head of Governance and Democratic Services

Tel No: 01270 686670

Email: brian.reed@cheshireeast.gov.uk