

# CHESHIRE EAST COUNCIL

## Governance and Constitution Committee

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**Date of Meeting:** 19 November 2009  
**Report of:** Democratic Services Manager  
**Subject/Title:** Cabinet Support Members

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### 1.0 Report Summary

- 1.1 To enable the Governance and Constitution Committee to consider proposed changes to the existing arrangements for Cabinet Support Members and to make a recommendation to Council in order for changes to be made to the Constitution.

### 2.0 Recommendations

- 2.1 That

- (1) it be recommended to Council that Cabinet Support Members should not be permitted to be members of Overview and Scrutiny Committees and accordingly, the following Members should not take their place on Overview and Scrutiny Committees:

Children and Families – Councillors Rhoda Bailey, Olivia Hunter, Lesley Smetham

Health and Adult Social Care – Councillor Olivia Hunter

Environment and Prosperity – Councillors Rod Menlove, Lesley Smetham

- (2) nominations be sought from the Conservative group to fill the vacancies on each of the above Overview and Scrutiny Committees; and

- (3) it be recommended to Council that the Borough Solicitor be authorised to make such changes to the Constitution as he considers are necessary to give effect to the wishes of the Council..

### 3.0 Reasons for Recommendations

- 3.1 In order to ensure that the roles of Members involved in Executive arrangements are distinct from, and independent of, Overview and Scrutiny.

### 4.0 Wards Affected

- 4.1 N/A

## **5.0 Local Ward Members**

5.1 N/A

## **6.0 Policy Implications**

6.1 Any changes to the Council's governance arrangements which are agreed by Council must be reflected in the Constitution. These will then govern the way in which the Council, its Members and Officers operate.

## **7.0 Financial Implications for Transition Costs**

7.1 There appear to be no financial implications for Transition Costs.

## **8.0 Financial Implications 2009/10 and beyond**

8.1 There appear to be no identifiable financial implications for 2009/10 and beyond.

## **9.0 Legal Implications**

9.1 Any changes to the Council's governance arrangements must be reflected in the Constitution. Constitutional changes cannot take place until a recommendation of the Committee has been considered by Council and Council approval has been given.

## **10.0 Risk Management**

10.1. There would seem to be no risks associated with the proposed changes. The changes proposed will bring further clarity for officers and Members as to the roles of Cabinet Support Members in relation to the work of Overview and Scrutiny Committees and the collective Cabinet.

## **11.0 Background and Options**

11.1 All four Cabinet Support Members appointed by the Leader on 21 April 2009 are also members of Overview and Scrutiny (O&S) Committees.

No constraints have been placed upon the way in which Cabinet Support Members undertake their duties and nothing is documented in the Constitution to this effect, other than their areas of responsibility.

## **12.0 Executive Decisions where Cabinet Support Members have been Involved**

12.1 In accordance with the Scrutiny Procedure Rules, there may be circumstances in which, as a consequence of a Scrutiny Member's role as a Cabinet Support Member, that Member will consider that they should not take part in Scrutiny Committee business. This would accord with Scrutiny Procedure Rule 2.9 ("No Member of the Council

shall be involved in scrutinising a decision where he/she has been directly involved”). “Direct involvement” would have to be interpreted in each case but Members should err on the side of caution. If they have been involved in a matter in a support role, they should not then become involved in the same matter at Scrutiny.

- 12.2 If Cabinet Support Members adopt this cautious approach, it should be assumed that they attend Scrutiny Committees in an "executive" capacity, and like full Cabinet members, should attend in an advisory role to listen and, as appropriate, contribute to the discussion, and help to build constructive relationships with the Scrutiny bodies.

### 13.0 Working Arrangements and Ground Rules

- 13.1 The Centre for Public Scrutiny in its “Good Scrutiny Guide” advises that “non-executives and executives need to agree appropriate working arrangements or “ground rules””.
- 13.2 On the question of establishing roles and relationships, the Guide states that “ Public Scrutineers should be confident of the ground on which they stand – which does not need to be approved or sanctioned by the Executive. This formal independence from the Executive is an important principle which underpins the scrutiny role”.
- 13.3 It was envisaged by Cabinet, when it originally considered the proposal to appoint Cabinet support members, that the support members would also be able to help develop relationships between O&S and Cabinet in sharing work programmes and priorities, review business, and commission scrutiny to undertake policy development work, etc. This reinforces the “executive” nature of the role of Cabinet Support Members and emphasises the need for clarity in relation to O&S activity.

### 14.0 Conflict

- 14.1 For the reasons outlined above, it can be seen that there could be conflict between the role of the four Cabinet Support Members and their current membership of O&S Committees, due to the “executive” nature of their role, albeit without direct responsibility for decision-making.
- 14.2 There are two possible options. The first is that arrangements continue as they are now, with the potential risk that because of their involvement with Cabinet, the four Cabinet Support Members will have to judge, on a case-by-case basis, whether they will have to rule themselves out of formal Scrutiny, under Scrutiny Procedure Rule 9.
- 14.3 Secondly, for the avoidance of doubt and in order to make the two sides of the Council’s political management structure clear and distinct,

Cabinet Support Members should be excluded from membership of O&S committees.

#### 14.4 Prejudicial Interests

14.5 Cabinet Support Members have, on two recent occasions, sought to attend call- in meetings to support of the relevant Portfolio Holder. A strict interpretation of the Scrutiny Procedure Rules would not preclude them from attending call-in meetings since they are not a “member of the Executive” (Para 11(b) Member Code of Conduct).

14.6 However, the spirit of the Member Code of Conduct would appear to suggest that they should not attend such meetings since they would be regarded as being very close indeed to the Cabinet and it may be suggested that their presence might influence the meeting.

#### 15.0 The Way Forward

The Corporate Scrutiny Committee is in the process of producing a “Scrutiny Toolkit” which will set out various protocols to support the Scrutiny Procedure rules. The Toolkit will also include specific guidance to cover the working arrangements between O&S and Cabinet. This will be expanded to cover the relationship between Cabinet Support Members and O&S.

15.1 The Leader of the Council has been consulted on this matter and he has given his support to the exclusion of Cabinet Support Members from membership of O&S Committees. If the Council approves this option, the Governance and Constitution Committee would need to make recommendations to Council to revise the constitution to reflect this position.

#### **16.0 Access to Information**

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

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