

## **Constitution Committee**

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**Date of Meeting:** 28 June 2018  
**Report Title:** Notice of Motion – Alternative Forms of Governance  
**Portfolio Holder:** Cllr Paul Findlow – Portfolio Holder for Corporate Policy and Legal Services  
**Senior Officer:** Daniel Dickinson – Acting Director of Legal Services

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### **1. Report Summary**

- 1.1. On 22 February 2018 a Notice of Motion was submitted to Full Council in relation to alternative governance arrangements. Councillor J Nicholas proposed the Notice of Motion, which was seconded by Councillor B Walmsley.
- 1.2. The Notice of Motion requested that a cross-party Working Group be convened, at the start of the next municipal year (2018/2019), to consider the implementation of alternative forms of governance, with the recommendations being presented to Council.
- 1.3. The Notice of Motion was referred to the Constitution Committee for consideration.
- 1.4. This report provides an overview of the alternative options available to the Council and asks the Committee to consider whether it wishes to take any action in response to the Notice of Motion.

### **2. Recommendation**

- 2.1 That the Constitution Committee considers whether or not to convene a cross-party Working Group as requested considering the relatively recent reviews undertaken and the considerations around the timing and resource implications of a further review as set out in this report.

### **3. Reasons for Recommendations**

- 3.1 The recommendation addresses the request made by Council.

## 4. Background

- 4.1 The Local Government Act 2000 changed the way local authorities made decisions by introducing a streamlined cabinet system where executive members make decisions and non executive members scrutinise those decisions. The aim of this was to improve accountability, transparency and efficiency. Prior to that, all decisions were taken through Council Committees, which had powers delegated to them from Council. They were able to establish sub committees and were required to be politically proportionate.
- 4.2 The Localism Act 2011 inserted amendments into the Local Government Act 2000 setting out a clear process for local authorities in England to change their governance arrangements.

### *The Process for Change*

- 4.3 In order for a local authority to change its arrangements it must first pass a resolution of full Council confirming the new governance arrangements and when they will be introduced. Public notice is given by making copies of the documents setting out the new arrangements available for public inspection at its principal office and publishing a notice in at least one local newspaper.
- 4.4 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. However, a resolution to adopt alternative arrangements could require making the implementing of the same subject to a local referendum, but it need not do so.
- 4.5 As soon as practicable after passing the resolution, the local authority must publish in one or more newspapers circulating in the area a notice which advertises the decision to change its governance arrangements and the date upon which the change will take effect .
- 4.6 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 22 May 2019. However, a considerable amount of detailed and careful work would have to be undertaken to achieve that, and the time available would make that challenging.

- 4.7 Following a change in governance, no further change is permitted within 5 years, unless as a result of a referendum. It is important, therefore, that any change is very carefully considered and planned.

#### *Types of Governance Arrangements*

- 4.8 Under The Local Government Act 2000, as amended by the Localism Act 2011, the following types of decision making structures are available.

- 4.8.1 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.
- 4.8.2 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.
- 4.8.3 Committee system – in this arrangement, most decisions are made in committees, which are made up of a mix of Councillors from all political parties. Council appoints members to the committees on a politically proportionate basis and sets their Terms of reference. These Councils may have overview and scrutiny arrangements but are not required to. If the local authority determined not to have Overview and Scrutiny Committees, it would still need to make arrangements for the scrutiny of health and flood risk management, either by full Council or one of its Committees.
- 4.8.4 Alternative forms of Governance – The Secretary of State has the power to approve governance arrangements which do not fall within the three categories highlighted above. Any such alternative forms of governance would be proposed for approval by the local authority in question who must demonstrate that the proposed arrangements would be an improvement on the current arrangements; that they would ensure efficient, transparent and accountable decision making; and that they would be appropriate for all local authorities, or a particular type of local authority. Officers are not aware that any Authority has made such a request.

### *Previous Reviews of Governance Arrangements*

- 4.9 Following a Notice of Motion to Council on 15 December 2011, the Constitution Committee and Corporate Overview and Scrutiny Committee set up a working group to review the Council's governance arrangements, to consider whether there should be a return to a committee system.
- 4.10 The working group concluded that neither a directly elected mayor nor a Committee system would meet the needs of the Council and focused on revisions to the existing Leader and Cabinet model, with the introduction of Policy Development Groups.
- 4.11 Subsequent to this, the Constitution Committee appointed a cross-party member working group to conduct a review of the arrangements relating to the Council's Scrutiny Committees and Policy Development Groups. The Working Group had 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 were widely acknowledged for their expertise in scrutiny and other local government matters.
- 4.12 Following recommendations from the Constitution Committee, at its meeting held on 14 May 2014, Council abolished the Policy Development Groups and returned to a more robust Overview and Scrutiny System.

### *Timing for a Possible Further Review of Governance Arrangements*

- 4.13 In December 2017, the Communities and Local Government Select Committee published its report on the Effectiveness of Local Authority Overview and Scrutiny. The Government has responded to those recommendations and indicated that revised guidance will be published later this year. The revised guidance may be something the Council wishes to factor in to any wider review of its governance arrangements.
- 4.14 The Council is aware that Staffordshire County Council's governance arrangements have recently been reviewed to include All Party Member Groups. These groups produce policy options and recommendations to address the long term needs of the communities of Staffordshire within the broad headings of Innovation, Improvement, Community and External Relationships. Their recommendations are considered by Cabinet or the relevant Cabinet Member or presented to partner organisations as appropriate. The groups have been in operation for just under a year and a report on lessons learnt will be published later this year. Again, any

Cheshire East Council review may wish to take the opportunity to review the details of the expected report.

4.15 It may also be prudent to give further consideration to identifying other recent or upcoming governance reviews at other local authorities to better inform any review undertaken in Cheshire East.

4.16 Furthermore, there is a timing issue in relation to the 2019 elections. Given that any review and any changes to the governance structure would be a resource intensive and lengthy project, the Committee may consider that there is insufficient time to undertake such a project or implement any outcomes until after the 2019 elections, when the newly formed administration may wish to take a view on whether there should be a review and what the scope of any review should embrace.

## **5. Implications of the Recommendations**

### **5.1. Legal Implications**

5.1.1 The statutory background which applies to a proposal to change a Local Authority's governance arrangements is set out within the body of the report.

5.1.2 A change in governance arrangements would have significant legal implications. The outline principles for the new system would have to be considered and agreed and, along-side 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.

5.1.3 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.

5.1.4 The full legal implications will be explored as part of the proposed working group's activities if it is decided that a working group is to be established as requested in the notice of motion.

## **5.2. Finance Implications**

5.2.1 That are no identified financial implications from setting up a cross party working group. The financial implications of any recommendations or requirements of the group will be analysed as necessary and included in any further reporting.

## **5.3. Equality Implications**

5.3.1. The Council's governance arrangements must enable all groups to engage in the decision making process. No equality implications are identified at this stage.

## **5.4. Human Resources Implications**

5.4.1. There are no quantified human resource implications at this stage. The proposed working group would require a higher degree of officer support, given the nature and scale of a project to adopt an alternative form of governance. The impact arising from the implementation of any proposals for change would have to be properly assessed by the working group.

## **5.5. Risk Management Implications**

5.5.1. There are no risk management implications at this stage, beyond ensuring that any working group is properly resourced to ensure any proposals arrived at are comprehensive and sound.

## **5.6. Rural Communities Implications**

5.6.1. There are no direct implications for rural communities.

## **5.7. Implications for Children & Young People**

5.7.1. There are no direct implications for children and young people.

## **5.8. Public Health Implications**

5.8.1. There are no direct implications for public health.

## **6. Ward Members Affected**

- 6.1. No ward Members are directly affected more than any other.

## **7. Access to Information**

- 6.1 CfPS – Rethinking Government

<https://www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf>

CfPS – Musical Chairs

<http://www.cfps.org.uk/wp-content/uploads/Musical-Chairs.pdf>

LGiU – changing to a Committee system in a new era

<https://www.lgiu.org.uk/wp-content/uploads/2014/12/Changing-to-a-committee-system-in-a-new-era.pdf>

Localism Act 2011

[http://www.legislation.gov.uk/ukpga/2011/20/pdfs/ukpga\\_20110020\\_en.pdf](http://www.legislation.gov.uk/ukpga/2011/20/pdfs/ukpga_20110020_en.pdf)

## **8. Contact Information**

- 8.1. Any questions relating to this report should be directed to the following officer:

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