Special Council Meeting

Agenda

Date:	**Tuesday, 5th March, 2019**
Time:	**11.00 am**
Venue:	**The Ballroom, Sandbach Town Hall, High Street, Sandbach, CW11 1AX**

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1.   **Apologies for Absence**

2.   **Declarations of Interest**

     To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3.   **Public Speaking Time/Open Session in Respect of Agenda Item 4 - Notices of Motion - The Council's Governance Arrangements - Briefing Report**

     In accordance with paragraph 1.32 of the Council Procedure Rules and Appendix 7 to the rules, a total period of 15 minutes is allocated for members of the public to speak at Council meetings.

     Individual members of the public may speak for up to 5 minutes, but the Chairman will decide how the period of time allocated for public speaking will be apportioned, where there are a number of speakers.

     Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given. It is not a requirement to give notice of the intention to make use of public speaking provision. However, as a matter of courtesy, a period of 24 hours notice is encouraged.

4.   **Notices of Motion - The Council's Governance Arrangements - Briefing Report** (Pages 3 - 26)

     To consider the content set out in the report in relation to the Notices of Motion submitted in respect of the Council's Governance Arrangements.

This page is intentionally left blank

Cheshire East Council

Working for a brighter future together

Council

Date of Meeting: 05 March 2019

Report Title: Notices of Motion – The Council's Governance Arrangements – Briefing Report

Senior Officer: Kath O'Dwyer – Acting Chief Executive

1.0   Report Summary

1.1   At the Council meeting held on 13 December 2018, the following notices of motion were referred to a special meeting of Council for determination:

   A.   This Council requests that a comparative analysis be published to enable a special meeting of Council, to be held in February 2019, or as soon as possible thereafter, to discuss and debate changing to a committee system form of governance.

   B.   This Council agrees to allocate all chairs of Overview and Scrutiny Committees to opposition members as soon as practicable.

   C.   This Council agrees to allocate all remaining committee chairs across the political groups in line with the principle of proportionality.

1.2   The notices of motion were respectively proposed and seconded by:

   A.   Councillor James Nicholas and Councillor Craig Browne

   B.   Councillor Craig Browne and Councillor Arthur Moran

   C.   Councillor Arthur Moran and Councillor Bernice Walmsley

   and were supported by background information which can be found at Appendix A.

1.3   This briefing report is an objective assessment of the issues within each notice of motion and is presented to support a fully informed debate.

1.4   Council must consider the relevant elements of the notices of motion and determine how it wishes to respond to them.

2.0   Recommendations

2.1   That Council considers the content set out in the report in relation to the following notices of motion:

  A.   Changing to a committee system form of governance.

  B.   Allocation of all chairs of Overview and Scrutiny Committees to opposition members as soon as practicable.

  C.   Allocation of all remaining committee chairs across the political groups in line with the principle of proportionality.

3.0   Background

Notice of Motion A – changing to a committee system form of governance

3.1   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 history, background and reasons for the changes in legislation are attached at appendix B.

3.2   It is important to note that any structure will only work if the key players are fully engaged and the support mechanisms are in place to underpin the process. 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.

4.0   Decision making structures available under current legislation

4.1   The Localism Act 2011 has now given 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:

  4.1.1 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.

  4.1.2 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.

  4.1.3 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 health, crime and disorder and flood risk management, either by full Council or one of its Committees [*under S244 of the National Health, Service Act 2006; under S19 of the Police & Justice Act 2006; and under Section,9FH of the Local Government Act 2000 (as amended by Schedule 2 of the Localism Act 2011*)]. 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).

4.1.4 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 of any Authority which has made such a request.

4.2 Cheshire East Council currently operates under a Leader and Cabinet model. Cabinet comprises of a Leader and seven Portfolio Holders. There is currently one Cabinet Support Member, who does not have formal decision-making powers. There are four overview and scrutiny committees which in the majority of cases meet bi-monthly , while Cabinet meets monthly.

4.3 Overview and scrutiny committees have full access to the forward-plan of key decisions and it is for these committees to select meaningful issues to consider in advance of decisions being made.

4.4 The power of "call-in" is available to members, whereby executive decisions can be challenged before implementation. Members of this Council have used this power appropriately.

4.5 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.

4.6 Examples of authorities that have changed governance arrangements are attached at Appendix C.

5.0 Issues to consider – Leader and Cabinet/Committee arrangements

5.1 The following is a list of key issues which may be considered to be pertinent in this matter; this is not intended to be a definitive list:

5.2 Leader and Cabinet System

1. There would be no need to re-write the constitution.
2. There would be no impact on the timeliness of decision making.

3. There would likely to be fewer meetings than a committee system meaning less demand on Councillors time, less administration and lower costs.
4. There would be no additional impact upon the Democratic Services resource.
5. Member allowances would remain unchanged (other than the usual reviews).
6. Overview and scrutiny task and finish group reviews would continue as an effective way reviewing and if needs be, changing policy.
7. The system enables pre-decision scrutiny.
8. The system allows important decisions to be called in.
9. Portfolio Holders offer a clear point of contact within local authorities. This is a mechanism through which partners can access and navigate the organisation and its information e.g. the system allows partnership organisations to work with cabinet rather than a number of different committees.
10. There are fewer members involved in executive decision making.
11. There would be no additional impact upon officer delegation, contract and financial rules of procedure.
12. The system allows for all functions of the Council to be scrutinised.
13. There would be no requirement to publish formal notices for a change of governance arrangements.
14. The system allows non-executive members to concentrate on scrutiny and their ward issues.
15. There would be no change to member duties or the corporate diary.
16. The system is considered to be easy for the public to understand.
17. The system is considered to be outcome focused rather than concentrating on operational issues.
18. Cabinet consists of all portfolio holders, thus allowing decisions to be made with a holistic view with all aspects of council responsibilities/business being taken into account.
19. The system ensures that there is a clear separation between decision makers and those holding the decision makers to account.
20. Portfolio Holders are responsible and accountable.

5.3 The Committee System

1. The constitution would need to be re-written.
2. Potentially there may be a delay in decision making (if meetings were bi-monthly).
3. The system may require additional Democratic Services resources.
4. There would need to be a review of allowances by the Independent Remuneration Panel.
5. Members gain expertise in their areas of interest.
6. The system is perceived by some to be open, democratic and transparent.
7. Consideration would need to be given on how to work with partners.
8. More members would be engaged in decision making.
9. Additional training, member-briefings and pre-meetings may be required.
10. Officer delegation, contract and financial rules of procedure would need to be amended.
11. There would be cost implications of issuing formal notices to change governance arrangements.
12. There would still be a requirement to scrutinise health, flood risk management and crime and disorder matters.
13. The system may be considered by some to be bureaucratic. There may be additional pressures on member's duties and corporate diaries.
14. Previously the committee system was perceived to be confusing and inefficient as it was inward looking and a significant amount of time was spent on operational issues rather than policy and performance issues.

15. There is a risk of committee decisions being taken in isolation and without a holistic or broader consideration of the matter.
16. Due to committees being politically proportionate, the system allows for cross party debate prior to all decisions being made.
17. There could be a lack of individual responsibility and accountability as decisions are made by a committee.

6.0 Previous Reviews of Governance Arrangements in Cheshire East Council

6.1 The current system has continually responded to change to meet the needs of the council and to ensure that it is fair, democratic and as inclusive as possible.

6.2 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, and to consider whether there should be a return to a committee system.

6.3 The working group concluded that neither a directly elected mayor nor a committee system would meet the needs of the Council, and therefore focused on revisions to the existing Leader and Cabinet model, with the introduction of Policy Development Groups.

6.4 When the Policy Development Group (PDG)/Scrutiny arrangements were established in December 2012, Council resolved that they should be subject to review. Professor Steve Leach and Professor Colin Copus of DeMontfort University were appointed by the working group to undertake the work required in respect of the review. Professors Leach and Copus were widely acknowledged for their expertise in local government matters and overview and scrutiny.

6.5 Following recommendations from the Constitution Committee at its meeting held on 14 May 2014, Council abolished the Policy Development Groups and implemented a more robust overview and scrutiny system.

6.6 At its meeting on 28 June 2018, the Constitution Committee considered a notice of motion requesting that a cross-party working group be convened, at the start of the next municipal year (2019/2020), to consider the implementation of alternative forms of governance, with the recommendations being presented to Council. The Constitution Committee resolved that "*no changes be made to the Council's governance arrangements at this time, given that these had only recently been considered on a cross-party basis, and in view of the proximity of the May 2019 local government elections*".

7.0 The Process for Change

7.1 Should Council determine that the decision-making arrangements for the Council be changed; the following steps would need to be taken:

7.2 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 13 May 2020.

7.3 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.

7.4   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 implementation of the same subject to a local referendum, but it need not do so.

7.5   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 .

7.6   Prior to that, consideration would need to be given to:

    • The Committee structure – paragraph 8.1
    • Amendments to the Constitution - paragraph 8.2
    • Staffing – paragraph 8.3
    • Member allowances – paragraph 8.4

7.7   A petition is currently being promoted which calls for a referendum to "change the Leader and Cabinet system to a more open, transparent and democratic Committee system". This could result in a referendum of Cheshire East Borough Council electors which might, in turn, result in a change to the Council's governance arrangements. Details of a petition and referendum are at Appendix D.

8.0   Changing to a Committee System Form of Governance

8.1   <u>Potential Structure</u>

    8.1.1   There are a number of different approaches which could be taken to the creation of a committee system. The following is just one example; however more committees than suggested may be desirable given the increase in workload.

    8.1.2   If the Council was to move to a committee structure, Cabinet and the Overview and Scrutiny Committees could be replaced with five service committees and one scrutiny committee, meeting six times per year. Meeting six times per year would mean that decisions would not be taken monthly as they are now, with the Cabinet and Leader model and therefore there would be a delay in decision making. A procedure to deal with urgent decisions could be put in place, such as delegating them to chief officers in consultation with the committee chairman.

    8.1.3   All other committees, including the Constitution Committee and Audit and Governance Committee, could remain unchanged. Decisions currently made by full Council could also remain unchanged; it would be possible to reserve more decisions to full Council if considered necessary but this would potentially also create further delay as Council meetings are currently only held 4 times per year. There are some functions which must be delivered by full Council. In summary these include:

- Approval or adoption of key strategies, including development plans, crime and disorder reduction strategies, sustainable community strategy, and youth justice plan
- Approval or adoption of council budgets
- Approval of a scheme of allowances for elected councillors
- Applications for changes in arrangements for elections, such as smaller numbers of councillors or a move from multi-member to single-member wards.

8.1.4   All current Cabinet decisions would be delegated to the relevant service committee, with the Corporate Committee being the parent committee, chaired by the Leader of the Council. Membership could comprise of the other four committee chairman, plus other Members on a politically proportionate basis. All committees would be required to be politically proportionate. A chart outlining this potential structure is outlined at Appendix E.

8.1.5   Consideration would also need to be given as to whether or not to appoint a separate scrutiny committee to deal with statutory scrutiny functions which would still exist, irrespective of a move back to the committee system (health, crime and disorder and flood risk management) or whether these matters should be dealt with through the proposed new committees.

8.1.6   Consideration would need to be given to the size of committees, ensuring that they align with the Councils proportionalities. Twelve Members on each committee has been suggested below as that is the size of the majority of current Overview and Scrutiny Committees. However other options would be available, major Cheshire East committees currently have between 10 and 15 Members. There are generally no restrictions on the number of committees, size of committees or meeting frequency.

Proposed Committee	Number of Committee Places	Existing Portfolio Holder Responsibilities.
Corporate	12	Leader, Corporate Policy and Legal Services, Finance and Communications.
Children and Families	12	Children and Families
Communities and Health	12	Adult Social Care and Integration, Health.
Housing, Planning and Regeneration	12	Housing and Planning
Highways and Environment	12	Regeneration
Scrutiny Committee	12	Health, crime and disorder, flood risk management

	Number of Committees	Number of Committee places	Number of Meetings per year
Existing arrangements (Cabinet and O&S)	5	59	36
Proposed arrangements	6	72	36

with separate scrutiny committee if 2 monthly (would potentially result in delay in decision making)			**(no August recess)**
Proposed arrangements with separate scrutiny committee if held monthly (to prevent delay in decision making)	**6**	**72**	**66** **(no August recess)**

8.1.7   In order for Councillors to contribute effectively to decision-making, more training, member-briefings and pre-meetings would be required. Therefore the lead-in times for reports to go to committee would need to be increased.

8.1.8   Officer delegation, contract and financial rules of procedure would be retained and made fit for a committee system, without changing any of the substantive powers and provisions. Council decisions could also remain unchanged.

8.1.9   If Council decided to move to a committee system, there would need to be a detailed period of preparation to address costings, amendments to the constitution and possible changes to staffing structures.

8.2   Constitution

8.2.1   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. This would be a major and costly piece of work, somewhat akin to the recent major constitutional review. 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. This would be resource-intensive both in terms of officer time and member time and it is quite likely that external legal resource would be needed, as was the case in respect of the recent constitutional review.

8.2.2   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.

8.3   Staffing

8.3.1   A return to the committee system would be likely to require more support from management and service-area officers, as there would be more decision-making committees, a larger number of members making those decisions, and an increase in member briefings and pre-meetings.

8.3.2   The Democratic Services staffing structure would be likely to require additional resource in order to ensure proper support for potential additional meetings, briefings and pre-meetings. An increase in member briefings and pre-meetings would also have an impact on the services in question, which would be likely to

need more officer resource. Staffing, along with the frequency of meetings, could be reviewed after a 12 month period.

8.4   Member allowances

8.4.1   Operating under a committee system would necessitate a review by the Independent Remuneration Panel (IRP) of the proposed new arrangements. The IRP would be required to make recommendations for changes to members' allowances. The role of chairman of a committee is different to that of a cabinet member and remuneration to vice-chairman would also need to be considered. There would potentially be more decision-making meetings taking place, therefore allowances may need to be revised based on responsibilities e.g. responsibilities of vice-chairmen and all members making decisions unlike the present arrangements. It is quite possible that the IRP would recommend an increase in allowances to reflect this.

9.0   Notice of Motion B - Allocation of all Chairs of Overview and Scrutiny Committees to Opposition Members

9.1   In relation to overview and scrutiny, the most recent Centre for Public Scrutiny annual survey results indicated that 46% of the responding councils allocated all chairman and vice-chairman positions to the majority party, 26% were politically proportionate and 11% allocated all chairs to the minority party with the majority party holding vice-chairman positions.

'There is no concrete evidence to suggest that when chairs are assigned politically proportionately scrutiny is more effective. This being said, the evidence does suggest there is a relationship between how chair and vice-chairs are appointed and how positively scrutiny is viewed in the authority. Evidence shows that the political and organisational culture towards scrutiny is most positive in authorities where the minority party holds the chair position and the majority party holds the vice-chair position. When this is reversed with the majority party holding all the chair positions and the majority party hold the vice-chair positions, the data shows the highest reported rate of negative culture towards scrutiny at almost 40%' – CfPS Annual Survey.

The Centre for Public Scrutiny states that:

9.1.1   '*Legally, the chairing and membership of overview and scrutiny committees is a matter for a council's Annual General Meeting in May. Practically, Chairing in particular is entirely at the discretion of the majority party. Majority parties can, if they wish, reserve all committee chairmanships and vice-chairmanships to themselves. The practice of reserving all positions of responsibility to the majority party is something which usually happens by default, and can harm perceptions of scrutiny's credibility and impartiality*'.

9.2   In the final report produced by Professor Steve Leach and Professor Colin Copus (2014) into the overview and scrutiny arrangements at Cheshire East, it states:

9.2.1   '*The sharing of chairs amongst all represented groups is widely regarded as 'good practice' and conducive to effective scrutiny. Ultimately it is a matter of political judgement as to how far along this route (if at all) it is appropriate to go, given the political culture and tradition of the authority. At the very least, the practice of having an opposition vice-chair of all Scrutiny Committees should be*

continued. The vice-chair of the Scrutiny Co-ordinating Committee should ideally be a high-profile member of the main opposition party. Over the next two or three years, if the majority group were prepared to allocate the chair of one or two of the Commissions to an opposition member, then that would certainly strengthen the perceived inclusiveness of the arrangements. Such a move should be accompanied by an agreed behavioural protocol, this would hopefully minimise the chances of disruptive politically-motivated behaviour. If such behaviour did occur, the majority party could of course reverse its decision'.

9.3   If opposition chairman were appointed then vice-chairmanships could be appointed from within the majority group.

9.4   The Communities and Local Government Committee First Report of Session 2017-19 on the Effectiveness of Local Authority Overview and Scrutiny Committees recommended that DCLG works with the Local Government Association and Centre for Public Scrutiny to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered**.**

      9.4.1   **'***The Government fully accepts that the chair of a scrutiny committee can have a great impact on its effectiveness. The Government also accepts that, in some instances, the election, rather than the appointment, of a chair might help ensure that the right individual is ultimately selected but feels that this is a decision for every council to make for itself. A local authority is already free to elect a chair if it wishes, and the updated guidance will recommend that every council bears this in mind when deciding on a method for selecting a chair'.*

9.5   The updated guidance on the recommendations is expected to be produced in the near future.

10.0   **Notice of Motion C - Allocation of Chairmanships to Opposition Members**

10.1   Committees are required to have a membership that reflects the political balance of a local authority, but there are a range of different approaches for appointing the chairmen and vice-chairmen of committees. No two Councils' circumstances are exactly the same, and it is very much down to local determination to decide how chairmanships and vice-chairmanships are allocated.

10.2   Cheshire East Council currently share vice-chairmanships with opposition groups; however Council has determined that all chairmanships are currently allocated to the majority party.

10.3   The authorities referenced in this report operate under the following arrangements:

- South Gloucestershire - The Scrutiny Committee is co-chaired by the opposition groups with all other committees being chaired by the majority group.
- Brighton and Hove - The Standards Committee and Scrutiny Committee are chaired by the opposition group with all other committees being chaired by the majority group.
- Reading - The Audit and Governance Committee is chaired by the opposition group with the rest of the committees being chaired by the majority group.

- Nottinghamshire – The regulatory committees are vice chaired by the opposition group with all committees being chaired by the majority group.
- Norfolk – committees are chaired by the majority group.
- London Borough of Sutton – Local Committees are chaired by the opposition group with all other committees being chaired by the majority group.

10.4 It is an inescapable fact that, in law, Council must determine the allocation of chairmanships and vice-chairmanships, and that Council reflects the wishes of the electorate.

11.0 Implications of the Recommendations

11.1 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 the report.

11.1.1 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.

11.1.2 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.

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

11.2 Finance Implications

11.2.1 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, dependant 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.

11.2.2 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.

11.3 Policy Implications

11.3.1 Policies may need to be to be reviewed following a move to a committee system.

11.4 Equality Implications

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

11.5 Human Resources Implications

   11.5.1 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.

   11.5.2 In accordance with the culture review, our behaviours framework and employee deal, it is important to ensure that decisions are made at the right level.

11.6 **Risk Management Implications**

   11.6.1 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.

11.7 **Rural Communities Implications**

   11.7.1 There are no direct implications for rural communities.

11.8 **Implications for Children & Young People/Cared for Children**

   11.8.1 There are no direct implications for children and young people or cared for children.

11.9 **Public Health Implications**

   11.9.1 There are no direct implications for public health.

11.10 **Ward Members Affected**

   11.10.1 All members are potentially affected.

12.0 Appendices

12.1 Appendix A - Notices of motion, 13 December 2018
   Appendix B - History and reasons for change
   Appendix C - Examples of authorities that have changed governance arrangements
   Appendix D - Details of a petition and referendum
   Appendix E - Potential structure

13.0 Access to Information

CfPS – Rethinking governance (2014)
https://www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf

CfPS – Musical Chairs (2012)
http://www.cfps.org.uk/wp-content/uploads/Musical-Chairs.pdf

LGiU changing to a Committee system in a new era (2014)
 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

Overview and Scrutiny in Cheshire East – Final Report Steve Leach and Colin Copus; DeMontfort University (2014)(Please refer to item 12 Appendix A)
https://moderngov.cheshireeast.gov.uk/ecminutes/ieListDocuments.aspx?CId=239&MId=4959&Ver=4

Centre for Public Scrutiny annual Survey (2014/15)
https://www.cfps.org.uk/wp-content/uploads/Annual-Survey-2014-2015.pdf

The Communities and Local Government Committee First Report of Session 2017-19 on the Effectiveness of Local Authority Overview and Scrutiny Committees.
 https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/369/369.pdf

Audit Commission report 'We can't go on meeting like this' (1990)

Widdicombe Committee enquiry into the conduct of Local Authority Business (1985)

Local Government Act 2000
http://www.legislation.gov.uk/ukpga/2000/22/contents

Party Politics and Scrutiny in Local Government; Clearing the Hurdles (2009)
http://cfps.org.uk.surface3.vm.bytemark.co.uk/domains/cfps.org.uk/local/media/uploads/steveleachls.pdf

14.0 Contact Information

14.1 Any questions relating to this report should be directed to the following officer:

Name: Brian Reed
Job Title: Head of Democratic Services and Governance
Email: brian.reed@cheshireeast.gov

This page is intentionally left blank

Notices of Motion – Council 13 December 2018

A. Comparative Analysis

Proposed by Councillor James Nicholas and Seconded by Councillor Craig Browne

This Council requests that a comparative analysis be published to enable a special meeting of Council, to be held in February 2019, or as soon as possible thereafter, to discuss and debate changing to a committee system form of governance.

Background information:

The Independent Group are calling for a report to be written and presented to Full Council in February 2019, or as soon as possible thereafter, as to why this council should change to a committee system form of governance.

- *Conservative held Canterbury Council unanimously voted to change to a committee system to prevent holding, what they deemed to be, an unnecessary and costly referendum.*
- *Two other Conservative councils were forced to hold referenda and now operate a committee system.*
- *A committee system is considered a more open, democratic and transparent form of governance, which aligns with the current drive to bring about cultural change at CEC.*
- *Residents perception is of a small 'clique' of 8 members having almost total control and decisions being made out of the public arena at informal cabinet.*
- *A cost neutral change to a committee system was achieved in Basildon, West Dorset, Sutton and Reading Unitary Council to name a few.*
- *The Independent Group is organising a petition for a referendum which is being widely supported across the borough.*
- *If a referendum is forced upon residents, the issue cannot be discussed again for a further 10 years. If the Council voluntarily decides to change then the issue can be revisited after 5 years.*
- *The cost to hold a stand-alone referendum is estimated to be between £500 - £700k.*
- *The committee system has wider Councillor engagement in the decision-making process.*
- *Macclesfield, Congleton and Crewe & Nantwich all successfully used the committee system, until it was abolished in 2001.*
- *The committee system was re-introduced by the coalition Government in 2011.*
- *The only negative comments regarding the committee system is the length of time taken for some decisions to be made. However, a fast-track procedure can be incorporated.*

B.   Allocation of Chairs of Overview and Scrutiny Committees

Proposed by Councillor Craig Browne and Seconded by Councillor Arthur Moran

This Council agrees to allocate all Chairs of Overview & Scrutiny Committees to opposition members as soon as is practicable.

Background information:

The Corporate Policy and Legal Services portfolio holder said he "was not against the principle of opposition chairs" at full council on the 19th Oct 2017. Nothing has progressed since.

Taken from the minutes of the Constitution meeting 14th May, 2014 (item 12) said:
That, in acknowledgement of recommendation 12 of the report by Professors Leach and Copus, as set out in Appendix A of the report to the Constitution Committee, the Council move to a position where there is some sharing of committee chairs and vice chairs with opposition parties, subject to an appropriate behavioural protocol being adopted.

The Leach report, commissioned by CEC, in 2014 said:
"The sharing of chairs amongst all represented groups is widely regarded as 'good practice' and conducive to effective scrutiny."

C.   Allocation of Committee Chairs across Political Groups

Proposed by Councillor Arthur Moran and Seconded by Councillor Bernice Walmsley

This Council agrees to allocate all remaining Committee Chairs across the political groups in line with the principle of proportionality.

History and Reasons for Change

1.0   The background to this change in legislation and the growth of the Cabinet and Leader arrangements began around the 1990s, as a consequence of a growing tendency to organise along party lines, political polarisation was becoming widespread. It was becoming more common for major decisions to be made at party-group meetings, and therefore there was a growing feeling that the decision making process needed to be modernised.

1.1   It was also noted at the time, that committees were spending a significant amount of their time on operational matters, rather than policy and performance issues, and that some authorities had significantly more meetings than others to run services of a similar scale.

1.2   The Widdicombe Committee conducted an inquiry into the conduct of Local Authority Business (1985) which found 'that (in common with politics generally) there had been a decline in public confidence in democracy over the preceding twenty years'.

1.3   The Government White Paper 'Modern Local Government: In touch with the People' (1998) which was a precursor to the 2000 Act, was very critical of the Committee system and made the following comments about the committee-based system:

1.4   '*Councils must have political management structures which are effective and command respect. The current committee system is confusing and inefficient, with significant decisions usually taken elsewhere. Many councillors have little influence over council decisions, yet spend a great deal of their time at council meetings. The result is that people do not know who is running their council.*'

1.5   'Only some of local government in England today matches up to the picture of the modern council. The current framework in which local government operates has not kept pace with the way people live their lives today. Councils' political structures - centred on the committee system – are fundamentally the same as they were before women had the vote, or indeed, before the introduction of universal male suffrage. The overall framework does not provide the opportunities councils need to modernise, or the incentives for them to do so. Rather the framework is one which allows inefficiencies to continue, and can reinforce a culture where councils are inward looking, failing to put the interests of their people first.'

1.6   '*So change is needed to drive up standards overall, make best practice more widespread, and address those occasional failures. The aim is not to strangle diversity or create dull uniformity, but to make success universal throughout English local government. This is what the Government wishes to see - strong and effective councils everywhere playing their part in giving people greater opportunities and building a fairer country.*'

1.7   The Local Government Act 2000 then enacted fundamental reform. Status quo was not an option (except for small authorities who were able to continue with a committee system. The explanatory notes which accompanied the 2000 Act explained:

1.8   "27. The objectives of the policy underlying Part II is to deliver greater efficiency, transparency and accountability of local authorities. The new arrangements are intended to ensure that decisions can be taken more quickly and efficiency than the existing committee system, that the individuals or bodies responsible for decision

making can be more readily identified by the public, and that those decision makers can be held account in public by overview and scrutiny committees"

1.9   Professor Steve Leach in 'Party Politics and Scrutiny in Local Government Clearing the Hurdles' states:

1.9.1 *'The illusion of the 'golden days of committees' the reality of the committee system never matched the glowing perception which was accorded to it retrospectively. It did have some advantages, in particular the way in which it allowed a group of councillors to specialise and develop knowledge and expertise in a service of particular interest to them. But comparisons made in the first few years of the new system between committees as genuine decision making bodies and scrutiny committees as powerless irrelevances always reflected an illusion rather than a reality. Committees were dominated by their chair, who enjoyed privileged access to the relevant chief officer(s).   Party groups often met before the final committee meeting, to be guided through the agenda by the chair/chief officer. If there had been a prior discussion in a party meeting to agree a line, members would be reminded of this. There was a decision making process, but it was not one in which ordinary committee members played a significant role'*

1.9.2 *Many of the perceived weaknesses in the current system are not new, and in fact are almost identical to the frustrations experienced by elected Members in the 1990s.*

1.10   *The themes of having little influence, not being involved in the decision making etc resonate as much now as they did 20 years ago. However, if we concentrate on the successes of the current system, which relate in the main to task and finish group work, it can be argued that through well researched evidenced based work, Scrutiny can and does shape policy.*

1.11   The 'Rethinking Governance' CfPS Guidance states that:

1.11.1 *No one governance system is intrinsically better than another and no system is more or less expensive to operate; however some systems allow more members to be directly involved in voting on decisions. It is important to note that activity at committee level is not the same as member involvement in policy making. Members' involvement in policymaking is a longer-term more involved process and can happen under any process.*

Councils that have changed Governance Arrangements

1.1 <u>South Gloucestershire Council</u>

    1.1.1 South Gloucestershire Council is a unitary authority with a population of 279,000 and has 70 Councillors. It adopted the Committee System in March 2013 and then in May 2017 resolved to move back to the Leader and Cabinet Model. This decision appears to have been made on the grounds that executive arrangements better reflected the political reality of a majority council and that the operation of executive arrangements provided an opportunity for more streamlined and efficient decision making.

1.2 <u>Brighton and Hove Council</u>

    1.2.1 Brighton and Hove Council is a unitary authority with a population of 288,200 and 54 Councillors. It adopted a Committee System in 2012 comprising of 6 policy committees and separate Overview and Scrutiny arrangements. The committees meet on an 8 weekly cycle.

    1.2.2 If there is a matter of urgency the constitution provides for urgency sub committees to be held at short notice.

1.3 <u>Reading Borough Council</u>

    1.3.1 Reading Borough Council is a unitary authority with a population of 163,100 and 46 Councillors. It adopted the Committee System in 2013 comprising of four standing committees, 3 of which meet 3 times per year and the other which meets monthly. The Council appointed Lead Councillors, who are the members of the majority group on the Policy Committee.

    1.3.2 The Council resolved not to appoint any separate overview and scrutiny committees. The statutory overview and scrutiny functions of the authority are dealt with by individual Committees.

1.4 <u>Nottinghamshire County Council</u>

    1.4.1 Nottinghamshire County Council has a population of 817,900 and 66 Councillors. It adopted a Committee system in 2012 which comprises of 7 Committees and a Health Scrutiny Committee meeting on a 6 weekly cycle.

1.5 <u>Norfolk County Council</u>

    1.5.1 Norfolk County Council has a population of 859,400 and 84 Councillors. It adopted a Committee system in 2014 which comprises of 7 Committees and a Health Scrutiny Committee which meet around 6 times per year. Norfolk County Council will be moving back to a Leader and Cabinet Model in May 2019.

1.6   <u>Sutton Council</u>

    1.6.1   London Borough of Sutton Council has a population of 200,100 and 54 Councillors. It adopted a committee system in May 2012 which comprises of 4 Committees and a scrutiny committee which meet every 6 to 8 weeks.

Petition for change

1.1 The Localism Act 2011 allows a petition to be presented to introduce a leader and cabinet system or committee system.

1.2 A number of referenda have been held as a result of petitions. The minimum threshold for a valid petition is 5% of local government electors registered in the local authority's area. Each local authority must publish its "verification number", i.e. the number of electors which represents 5% of registered electors, each year. The formalities of a petition, e.g. the requirement for each sheet to contain the name of the local authority and the constitutional change which is being sought, are also covered in regulations.

1.3 The signatures on the petition must be collected over a maximum period of 12 months. Each signature must be dated; any signature which is over 12 months' old is not counted when determining whether the verification number has been met. Verification is a long and costly process. Once a petition has been validated, the referendum must be held "no later than" the next "ordinary day of election". This is the first Thursday in May each year (irrespective of the electoral cycle in the local authority in question)

1.4 If this is less than four months away, the next ordinary day of elections would be used. A local authority is free to choose to hold the referendum earlier than this if it so chooses.

1.5 At the time of writing this report, it was understood that the ongoing petition, referred to in paragraph 1 of this report, was supported by over 5000 "signatories". The 5% threshold for Cheshire East would require around 15,000 signatories in order to require a referendum.
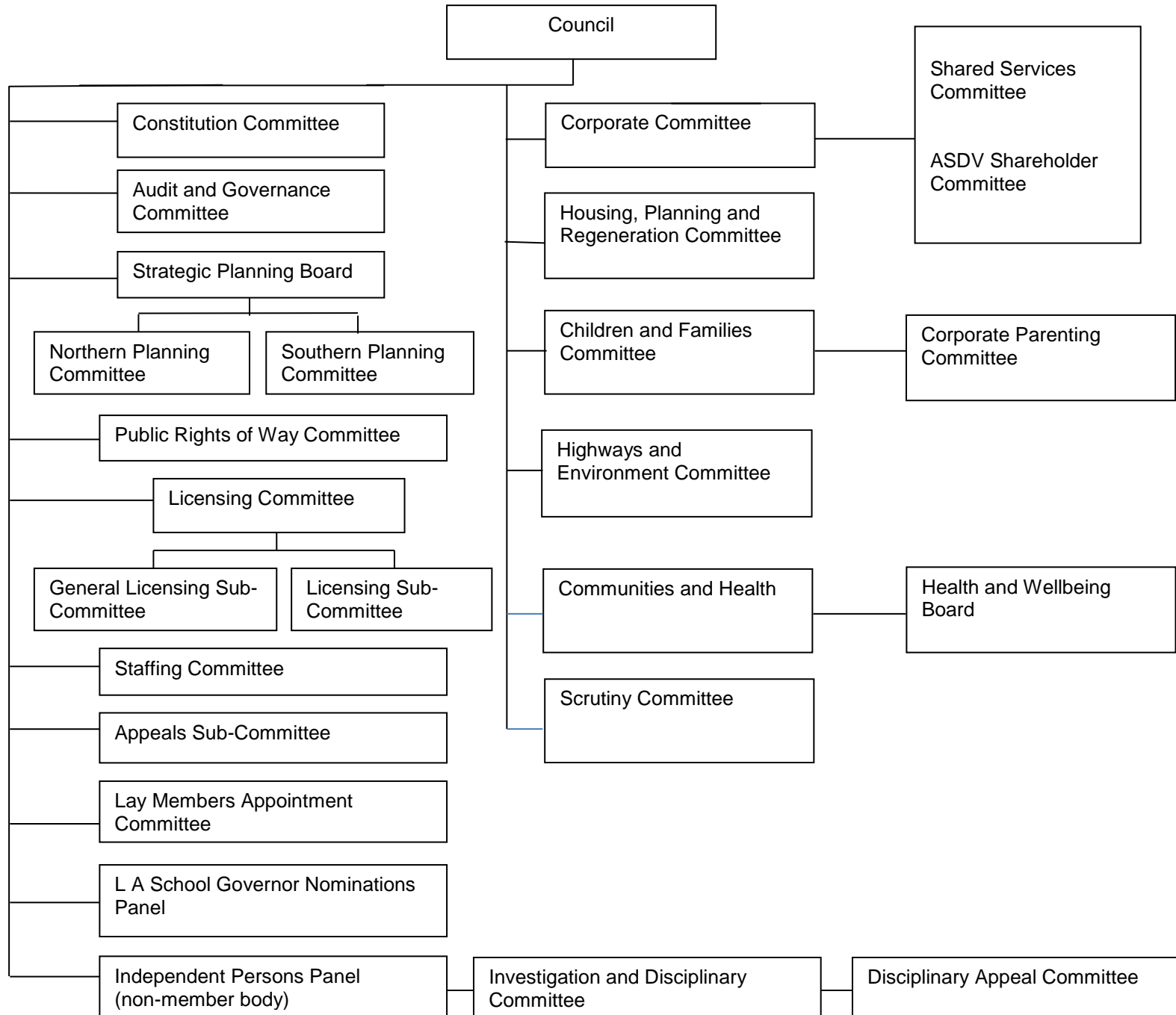
2.0 Referendum

2.1 The Localism Act 2011 permits a referendum to be held on establishing a Leader and Cabinet system, or on using the committee system. Authorities that have changed their governance arrangements as a result of a referendum can only make a further change following another referendum. Where a local authority has held a referendum on its governance arrangements, a further referendum may not be held for ten years. However there is no limit on holding a referendum to reverse a decision made by a resolution of full Council. Fylde Borough District Council and West Dorset District Council have both moved to a committee system following a yes vote at a referendum.

2.2 A referendum could cost Cheshire East well-over £500,000, if its timing necessitated a "stand-alone" ballot. If joined with a scheduled election, the additional cost would still be very significant. Although very difficult to predict, it might be anticipated to cost an additional £100,000 or more in real costs, and would create a significant additional resource burden in terms of the logistics of the election process.

This page is intentionally left blank

Potential Committee Structure

Council

Constitution Committee

Audit and Governance Committee

Strategic Planning Board

Northern Planning Committee

Southern Planning Committee

Public Rights of Way Committee

Licensing Committee

General Licensing Sub-Committee

Licensing Sub-Committee

Staffing Committee

Appeals Sub-Committee

Lay Members Appointment Committee

L A School Governor Nominations Panel

Independent Persons Panel (non-member body)

Corporate Committee

Shared Services Committee

ASDV Shareholder Committee

Housing, Planning and Regeneration Committee

Children and Families Committee

Corporate Parenting Committee

Highways and Environment Committee

Communities and Health

Health and Wellbeing Board

Scrutiny Committee

Investigation and Disciplinary Committee

Disciplinary Appeal Committee

This page is intentionally left blank