

Constitution Committee

Date of Meeting: 19 March 2020

Report Title: Proposed Change to the Council's Governance Arrangements - Formal Resolution to Move to a Committee System Form of Governance

Senior Officer: Jan Bakewell – Director of Governance and Compliance

1. Report Summary

1.1 Council at its annual meeting held on 22 May 2019 agreed that the following Notice of Motion be referred to the Constitution Committee:

‘This Council is committed to implementing a change in decision-making governance arrangements, comprising the cessation of the current Leader and Cabinet model of governance, and the implementation of a full Committee model of governance; this to be developed during 2019/20 with a view to the new arrangements taking effect from the beginning of the 2020/21 Municipal Year, subject to a legally and constitutionally robust process, led by the Council's Constitution Committee, and agreed by Council’.

1.2 The Constitution Committee subsequently set up a Governance Working Group to progress the Notice of Motion.

1.3 At a meeting held on 21 November 2019, the Constitution Committee decided not to make a recommendation to Council at that stage. The Committee asked officers to produce further detailed work on certain matters with a view to reporting back to the Governance Working Group. Further details on those matters are now set out in this report.

2. Recommendations

1. That the Constitution Committee recommend to full Council that the Council resolve to cease operating the existing Leader and Cabinet model of governance and implement a committee system model of governance, to take effect from the Annual Council meeting in May 2021;

2. That the Constitution Committee agree proposals to recommend to Council the following:
 - a. the structure of the committees (Appendix B, C and D);
 - b. Roles of Leader and Deputy Leader (Appendix E);
 - c. Decision Review Committee (Appendix F);
 - d. Urgency Provisions (Appendix G);
 - e. Role and powers of Committee and Sub-Committee Chairs (Appendix H).
3. That the Director of Governance and Compliance be authorised, in consultation with the Constitution Committee, to prepare such draft constitutional provisions as she considers necessary to give effect to the wishes of the Committee, which will be submitted to the Constitution Committee in phases during 2020/21 for recommendation to Council.
4. That the Director of Governance and Compliance be authorised to recommend such constitutional provisions as reflect the developing nature of the progression to a committee system form of governance and best practice.

3. Background

- 3.1 The Governance Working Group has so far given consideration to:
 - Design Principles
 - Consultation/Engagement options
 - Committee structure, functions and Terms of Reference
 - Committee Procedure Rules
 - Portfolio Holder decisions and levels of decision making
 - Referral
 - Urgent Decisions
 - Role of Leader and Deputy Leader
 - Role and Powers of Committee and Sub Committee Chairs
- 3.2 The Working Group has also considered a desktop evaluation of the governance arrangements of other authorities, and visits to two authorities that have moved to a committee system. Learning from these visits formed part of the Working Group's findings and recommendations.
- 3.3 Three Member Engagement workshops were held across the Borough on 1st, 7th and 12th November 2019. Feedback from these sessions has been considered by the Working Group.
- 3.4 At its meeting on 21st November 2019, the Constitution Committee asked officers to produce further detailed work on certain matters, which would

facilitate the introduction of a committee system in May 2020. Since then, it has been agreed by Group Leaders in a jointly signed letter on 23rd January 2020 that the new governance arrangements will be implemented in May 2021 to allow more time to prepare.

- 3.5 It is proposed that the Council meeting in July 2020 be asked to formally resolve to move to the new arrangements with effect from the Annual Council Meeting in May 2021 and, therefore, preparations must move at pace in order to achieve this.

4. Design Principles

- 4.1 The Working Group acknowledged that it is important to ensure a new form of governance model meets the aspirations of the agreed Notice of Motion. Therefore, the following set of design principles to guide the development of the new Committee system model were agreed:

- Openness
- Quick and effective decision-making
- Legal Requirements
- A modern Committee system

A copy of the agreed Design Principles is attached at Appendix A.

- 4.2 It is important to emphasise the need for a new governance model to reflect modern best practice. It is proposed that the Council's new working arrangements maximise the use of information technology to ensure streamlined, efficient and quick decision-making can continue. It is not intended to replicate a traditional committee system that used to operate prior to 2000, but to provide a modern committee system that meets the contemporary needs of the Council. It is essential that the Council's day-to-day business can continue to deliver the priorities and vision of the Council in a timely manner.
- 4.3 It is proposed to retain desirable elements of the Council's existing arrangements such as public speaking arrangements and a form of the forward plan and petition scheme (although this is no longer a legal requirement).
- 4.4 The Design Principles can be referred to in the future and used to assess whether or not the desired outcomes have been achieved or whether any necessary further amendments to the arrangements and the constitution might be required.

5. Proposed Committee Structure

- 5.1 The proposed committee structure, functions and terms of reference for six service committees and a Finance Sub-Committee are attached at Appendices B, C and D, and were agreed by the Governance Working Group at its last meeting on 6 March 2020.
- 5.2 The Constitution Committee is now asked to agree the proposals in Appendices B, C and D and make that recommendation to Council.

6. Roles of Leader and Deputy Leader

- 6.1 The role of the Leader (and in a joint administration also the Deputy Leader) in a Committee system of governance is different from that under the executive system.
- 6.2 One of the key factors defining the roles of Leader and Deputy Leader is that of section 101 of the Local Government Act 1972 which enables local authorities to delegate powers to Committees, sub-Committees and officers. Section 101 does not permit the delegation of powers to individual councillors, and case law has, for many years, shown that it is unlawful to do so. It follows that care must be taken that any allocation of roles to the Leader and Deputy Leader should not exceed the limitation imposed by section 101 of the Local Government Act 1972.
- 6.3 Given the wording of section 101 of the Local Government Act 1972, it is important that in allocating roles to the Leader and Deputy Leader that the clear restrictions on delegation are not exceeded.
- 6.4 Nevertheless there is some scope for enhancing the role of the Leader and Deputy Leader by adding the following attributes, without breaching the requirements:
 - An activity in relation to the development of policy could be established as follows:
“to establish the policy direction and priorities of the Council”
 - In terms of the outward facing aspects of the role the following might be considered:
*“to be the principal ambassadors for the Borough and the Council” and
“to represent the Council on any external body”.*
- 6.5 The proposed roles of the Leader and Deputy Leader are attached at Appendix E, which were agreed by the Governance Working Group at its last meeting.
- 6.6 The Constitution Committee is now asked to agree the proposed wording in Appendix E and make that recommendation to Council.

7 Decision Review Committee

- 7.1 It will be recalled that one of the design principles established in relation to the introduction of a Committee system is that of 'quick decision making'. A system of delegated decision making to Committees, sub-Committees and officers should foster an environment of quick decision making because the decision of the decision maker (be it Committee, sub-Committee) should be 'final' in the sense that it requires no further endorsement.
- 7.2 It may therefore be considered that there should be no mechanism for referral of decisions to Council or other "call in" provision. Some authorities operate in this way and once the decision is made by a Committee, the decision is final and must be adhered to.
- 7.3 However in circumstances where an issue does have a significant profile, and it is considered that the wrong decision may have been made by a Committee, provision can be made for decisions to be referred up to another body. This would have the effect of halting the decision pending referral to another body.
- 7.4 A Decision Review Committee, as detailed in Appendix F, was proposed to the Governance Working Group. However, the Working Group took the view that decisions should be referred straight to Council only, particularly in view of the limited number of call-in requests in recent years. They also considered that a dedicated Decision Review Committee created an additional, unnecessary layer in the decision-making process.
- 7.5 The Constitution Committee is now asked to consider the proposals in Appendix F and make a recommendation to Council.

8. Urgency Provisions

- 8.1 The Council's current Constitution defines an "urgent" decision. That definition sets out a series of factors which enable a determination to be made as to whether a matter is 'urgent'. It is suggested that this definition is comprehensive and would not benefit from further reformulation.
- 8.2 As is currently the case, urgent decisions would be taken by the Chief Executive (or deputy). Cheshire East's existing arrangements (under the Leader/Executive model) allow the Chief Executive (or deputy) to make a decision which would normally be taken by full Council in circumstances of urgency, subject to compliance with procedural requirements, including consultation with the relevant Chair or Vice Chair prior to the decision being made. This approach would also apply to decisions made by Committees and Sub-Committees in addition to those normally made by full Council. The urgency provisions are attached at Appendix G which were agreed by the Governance Working Group.

- 8.3 The Constitution Committee is now asked to agree the proposed wording in Appendix G and make that recommendation to Council.

9. Role and Powers of Committee and Sub Committee Chairs

- 9.1 The responsibility of a Chair for the proper conduct of meetings is formally recognised in law. There are provisions in the Local Government Act 1972 which apply to the holding and chairing of meetings, but much of the detail is supplied in the Council's Procedure Rules, which are standing orders made under powers in the 1972 Act. Appendix H addresses the above, and set out the expectations of Council, outlining the way Chairs are expected to fulfil their roles. This includes the need for positions to be filled based on skills and experience and also to attend the necessary training, as and when required.
- 9.2 The Working Group agreed Appendix H, acknowledging the roles of Chairs and Vice Chairs outside of meetings may be further developed and brought back to the Working Group for consideration.
- 9.3 The Constitution Committee is now asked to agree the proposed wording in Appendix H and make that recommendation to Council.

10. Next Steps

- 10.1 The legislation provides that, as soon as practicable after the Council has passed a resolution to change the form of its governance arrangements, it must:-
- a. secure that copies of the document setting out the provisions that are to have effect following the resolution are available at its principal office for inspection by members of the public.
 - b. publish in one or more newspaper circulating in its area, a notice which:-
 - states that the authority has resolved to make a change in its governance arrangements;
 - states the date on which the change is to have effect;
 - describes the main features of the change;
 - states that copies of a document setting out the provisions of the arrangements that are to have effect following the resolution are available at the authority's principal office for inspection by members of the public; and
 - specifies the address of the authority's principal office.
 - c. the legislation provides that the earliest date by which a change in governance form may be implemented is from the following Annual Council Meeting (in this case for the municipal year beginning in May 2021) or a later Annual Council Meeting specified in the resolution.

11. Implications of the Recommendations

11.1 Legal Implications

- 11.1.1 The ability for the Council to change from one of the permissible forms of governance arrangements of a local authority to another is provided for by Chapter 4 of the Local Government Act 2000 (as amended by the Localism Act 2011). Section 9KC of the Act straightforwardly states that a “resolution of a local authority” (a simple majority) is required in order for the council to make such a change in governance arrangements.
- 11.1.2 It should be noted, however, that a local authority may not then pass another resolution that makes a change from one to another of the permissible forms of governance arrangements ‘before the end of the period of 5 years’ beginning with the date the first resolution is passed, unless that change is by way of referendum.
- 11.1.3 A resolution passed by the Authority to change from one of the permissible forms of governance arrangements to another will then be implemented only during-
- a. the first annual meeting of the local authority to be held after the resolution to make the change in governance arrangements is passed, or
 - b. a later annual meeting of the local authority specified in that resolution.

11.2 Finance Implications

- 11.2.1 There are direct costs associated with making the change from one form of governance to another. These costs are associated with redrafting the constitution. There will also be associated costs with the training of members and officers.
- 11.2.2 Member allowances will require further consideration and a separate report with recommendations from the Independent Remuneration Panel will be considered in due course.
- 11.2.3 It is acknowledged that once implemented, one form of governance need not cost more than another.
- 11.2.4 By using every available opportunity to streamline decision-making; use available technology and optimise the officer support arrangements it is intended where possible to contain the cost of running the new system to a minimum with no net increase in resources.

11.3 Policy Implications

11.3.1 Any relevant policies will need to be amended to reflect a committee system form of governance.

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 significant human resource implications in relation to training and development. Any staffing issues as a result of moving to a Committee system will continue to be considered as the proposals are developed further.

11.6 Risk Management Implications

11.6.1 A change to a committee system will introduce a system of decision making that is new to members, officers and partners. Training and briefing will be required to ensure that the transition is smooth and that there is not a delay in decision making.

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/cared for children.

11.9 Public Health Implications

11.9.1 There are no direct implications for public health.

11.10 Climate Change Implications

11.10.1 There are no direct climate change implications.

11.11 Ward Members Affected

11.11.1 All wards are equally affected.

11.12 Consultation & Engagement

11.12.1 There is no legal requirement to consult the public on a proposed change to the Council's governance model. Notwithstanding this, the Governance Working Group considered a report at its meeting on 14 October 2019 in

relation to consultation and engagement options. The Working Group agreed they did not wish to consult on the proposals. Due to the fact that the Notice of Motion had already been agreed by Council, they did not consider there was any benefit in undertaking public consultation at that stage. Members were keen to ensure that residents and staff were kept updated about the proposals. To this end, an article was published in the November edition of 'The Voice' along with various updates on the intranet for staff.

11.12.2 Three Member Engagement Workshops have taken place to inform the development of these proposals. The feedback from these sessions has been considered by the Working Group.

11.12.3 As soon as practicable after full Council has passed a resolution to change its form of governance arrangements, a public notice of the Council's resolution must appear in one or more newspapers, as detailed in paragraph 10.1.

12. Access to Information

Previous reports to the Constitution Committee provide the background to the governance review which are available on the Council's website.

13. Appendices

Appendix A – Agreed Design Principles

Appendix B – Proposed Committee Structure Chart

Appendix C – Proposed Committee Functions

Appendix D - Draft Terms of Reference

Appendix E – Roles of Leader and Deputy Leader

Appendix F – Decision Review Process

Appendix G – Urgent Decisions

Appendix H - Role and Powers of Committee and Sub-Committee Chairs

14. Contact Information

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