

Report to: Cabinet
Date of Meeting: 10 July 2019
Public Document: Yes
Exemption: None
Review date for release: None



Subject: Review of the Council's governance arrangements

Purpose of report: At Annual Council it was confirmed by the Leader that the Council would have the opportunity of considering the alternative arrangements of a committee structure in place of the current Cabinet / Leader model. This report gives a brief background to the existing position and options for change and recommends that Members lead on the review of whether or not to adopt alternative arrangements.

Recommendation:

- (1) That Cabinet ask the Overview Committee to carry out a review of the Council's governance arrangements and options for change and reports its findings and recommendations back to Cabinet in due course. The Overview Committee to set the terms of reference for carrying out the review and consideration of the alternative models.**
- (2) That the Portfolio Holder for Transformation establishes a Think Tank for the purpose of investigating the options for change and to enable engagement with the wider membership of the Council on the necessity for and objective of change.**

Reason for recommendation: To enable the Council Membership to fully consider and engage on the review of the Council's governance arrangements and whether or not they should be changed.

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Financial implications: There are no direct financial implication in the recommendations of this report. Any proposals that come forward will need to be accessed for financial implications at that stage.

Legal implications: The legal implications are detailed in the report.

Equalities impact: Low Impact

Risk: Low Risk

Links to background information: .

Link to Council Plan: Continuously improving to be an outstanding Council

Legal background

1. By way of background, the historic position was that Councils operated a committee system model of governance. The committee system involves decisions being made by cross-party groups of councillors, by consensus and/or through the use of votes both in committee and council meetings. Where decisions cut across the terms of reference of more than one body or committee, they were often passed to multiple bodies / committees before the council formally decided to take action.
2. The Local Government Act 2000 introduced the requirement for authorities to introduce one of four governance options – they could be governed by a Leader working with a Cabinet, a directly elected executive Mayor, a council manager working with a directly elected Mayor, or a streamlined committee system, although this ‘fourth option’ was normally only open to shire districts with populations of less than 85,000.
3. There were further prescribed rules around the adoption of either a ‘strong’ or ‘weak’ Cabinet model, the difference relating to the power (or not) of the Leader to appoint Cabinet members and the delegation of powers to them. It also required the appointment of at least one Overview and Scrutiny Committee to act as a challenge to the operation of the Cabinet.
4. The Local Government and Public Involvement in Health Act 2007 made further changes in that it abolished the council manager working with a directly elected Mayor option and required that any Council operating the Leader / Cabinet option should operate the ‘strong’ model – this meant the Leader appointed the Cabinet members and determined the delegation of powers to them.
5. The Localism Act 2011 further changed the landscape of governance. It abolished the ‘fourth option’ as detailed above, rather introducing the option of a committee system for all authorities. It also enabled the Secretary of State to determine further arrangements which can be adopted as an option – however the Secretary of State has not developed any other options at this time.
6. On the basis of the above legislation there are currently three legal models for governance, being; an elected Mayor and Cabinet, Leader and Cabinet or a committee structure. There is some variation within these, as detailed further below.
7. Any change to an authority’s governance arrangements - in the sense of changing between any of the three legal options - requires a resolution of the Council to implement it. Once such a resolution has been taken, an authority may not take another resolution to change the governance arrangements within a 5 year period, other than in prescribed circumstances. The intent being that an authority must stick with change for a period of time before deciding to change again.

Position at East Devon

8. As with all authorities, East Devon had operated under the committee system but we were required to change our governance arrangements as a consequence of the changes introduced by the Local Government Act 2000.
9. Through decisions by the Policy Committee (14th February 2001) and Full Council (28th February 2001) it was determined that East Devon would operate the Leader and Cabinet model.
10. Annual Council in May 2002, adopted the revised Constitution to implement the new regime. We have operated a Leader and Cabinet model since then and are currently operating under the ‘strong’ model.

Comment

11. As will be appreciated each of the three 'legal' models has its own strengths and weaknesses – greater speed of decision making (cabinet model) versus greater member involvement (committee model) by way of example. Establishing the rationale for change is therefore of critical importance as this will help determine whether the preferred solution will deliver a satisfactory outcome and, if so, at what cost / weakness would it do so. One would also want to understand whether the overall weaknesses outweighed the potential benefits to the extent that a less preferred option might ultimately be more desirable.
12. Moreover it is not simply a stark choice between the three 'legal' models as there are, for example, a range of possible options that combine benefits of each – often called hybrid models. One such example is having a Leader / Cabinet model but related to and aligned with the Portfolios of the Cabinet are cross party committees which help develop and deliver the policy work of Cabinet. In the case of East Devon, to change to such a structure wouldn't require a change to the 'legal' model but would only require changes to the Constitution to bring in to effect. In contrast, to abolish the Leader and Cabinet and revert to a pure committee structure would require the resolution of the Council and would result in the Council having to stick with this option for 5 years, unless the specific circumstances permitting a change within that period could be relied on.
13. In light of the above, it is important that Members establish why the necessity for change and what the desired objectives are in terms of the governance arrangements – as opposed to a straight comparison between options – and then assess the three legal models and potential hybrid options to determine which will best deliver the stated objectives and / or how to structure one to meet the objectives.
14. Further, and in respect of the various options, consideration will also need to be given to their costs (both transitional and ongoing), the practical operation of the Council under them, the scheme of delegation (to committee, members and officers) and the impact on operational delivery, what happens in terms of decision making and time taken to take decisions, involvement of scrutiny (before and / or post decision) and impact on partnership working / joint committees or interaction with joint / outside bodies.
15. It is the view of officers that it is for Members to determine why the necessity for change and to establish what the objective of the governance arrangements should be. This is essentially the most crucial step and is why the recommendations are drafted as they are. Both Overview Committee and the Portfolio Holder for Transformation will be able to lead the Member engagement.
16. As part of the review it is likely that Members will want to engage with the public to ascertain their views on the current arrangements and desirability of having alternative options. Again, it is considered that it is for Members to determine the scope of this in light of the overall objectives.