

Report to: Council
Date of Meeting: Wednesday 24th June 2020
Public Document: Yes
Exemption: None
Review date for release None



Subject: **Governance Arrangements and committee appointments for the remainder of the Civic Year (2020/21)**

Purpose of report: Report by the Chief Executive and Monitoring Officer to enable the Council to formalise its governance arrangements for the remainder of the civic year following the cancellation of the Annual Meeting due to COVID-19 and the change in the administration of the Council.

The report recommends changes to the Constitution, seeks confirmation of the Committees and their size and terms of reference and agreement to the scheme of delegations. There is a specific requirement to agree the composition of the Standards Committee and Housing Review Board and to confirm the appointment of the Independent Person.

It deals with the allocation of seats on overview, regulatory and other committees to different political groups in accordance with the political balance of the Council along with the councillor appointments to committees together with the appointment of their Chairs and Vice-Chairs.

Recommendation:

That Council;

PART A

- 1. Approves the amended Constitution to determine the committee structure, their size and terms of reference and the scheme of delegations.**

PART B

- 2. Confirms the Conservative Group as the formal opposition.**

PART C

- 3. Approves the allocation to different political groups of seats on the overview, regulatory and other committees as follows;**

Democratic Alliance Group	24 members	40%	46 seats
Conservative Group	20 members	33.33%	38 seats
Independent Progressive Group	7 members	11.67%	13 seats
The Independents	5 members	8.33%	10 seats

Cranbrook Voice	3 members	5%	6 seats
Independent	1	1.67%	0 seats
TOTALS	60	100	113

4. Approves the allocation of seats on individual overview, scrutiny, regulatory and other committees as set out in *Appendix 1*.

PART D

5. Agrees the Membership of the Standards Committee and Housing Review Board (as detailed in Part D of this report) and approves an extension of the appointment of the Independent Person for a further year.

PART E

6. Approves the appointments of Councillors to committees as set out in the table in *Appendix 2*.

PART F

7. Approves the appointments of the Chairs and Vice-Chairs of the committees as set out in *Appendix 3*.

Reason for recommendation:

To ensure that the Council's governance framework reflects the changes to the political balance within the Council and to enable certain of the appointments that would have happened at Annual Council to be agreed for the remainder of the civic year.

Officers:

Mark Williams, Chief Executive
Henry Gordon Lennox, Monitoring Officer

Financial implications:

There are no direct financial implications arising from the recommendations in this report.

Legal implications:

The legal position is detailed in the report.

Equalities impact:

Low Impact

Climate change:

Low Impact

Risk:

Low Risk

Links to background information:

[Revised Constitution](#)
[JNC Conditions of Service – October 2016](#)

Link to [Council Plan](#):

Outstanding Council and Council Services

Part A – Adopting the Constitution (Recommendation 1)

1. Each year the Council adopts the Constitution thereby confirming the Committee structure and the size and terms of reference of the Committees as set out in Articles 7, 8, 9, and 10 (as amended) as well as confirming the scheme of delegations.
2. The detail below contains the main proposed amendments to the Constitution and the rationale behind the changes. There are a few minor typographically and formatting changes that are not detailed but are in track changes in the draft – the link for which is in the background links.

Policy Framework and Budget (p16 & 17)

3. This determines what plans and strategies must be approved by Full Council. The list has been updated to reflect changes to the names of some of the plans / strategies and also to delete reference to those that are now obsolete or which are covered elsewhere (e.g. required to be determined as part of the budget approval) and are therefore duplicated. None of those changes have any real effect but are to bring the list up to date. The list already includes the in-year decision to reserve the Car Parking Strategy for Council to decide. The only substantive change is to include the Commercialisation Strategy as it is appropriate for this to be a Council owned strategy.
4. The budget has had reference to the Council Tax base removed which is instead included within the Terms of Reference of Cabinet. This is because it is a technical exercise and also because there is a very short time period from the date from when the figures can be prepared to the date when the approval must be obtained so that it feeds into the budget setting process. Full Council doesn't usually meet during the timeframe while Cabinet does.
5. Finally, reference to Food Enforcement Service Plan has been removed as this is properly something that now sits under the Council's Regulatory Enforcement and Prosecution Policy which was adopted by Cabinet in April 2017.

Investigating and Disciplinary Committee

6. The JNC Conditions of Service for Chief Officers contains advice in relation to the arrangements that should be in place and a model procedure to be followed in relation to the potentially complex and lengthy process of dealing with disciplinary matters against Chief / Statutory Officers. A copy of the Conditions of Service from October 2016 containing the detail of the arrangements that should be in place and model procedure can be found in the background links.
7. While the Council's framework was legally permissible it did not replicate the arrangements that are advised to be in place. The introduction of a five member Investigating and Disciplinary Committee as a standing committee - replacing the Disciplinary Panel – is the main change to remedy this. It will investigate sufficiently serious complaints (covered in the Officer Employment Procedure Rules) and where appropriate make recommendations in relation to disciplinary action as well as having authority to suspend when appropriate. Depending on the disciplinary action proposed the Chief Officer has a right of appeal to the Employment Appeal Committee.
8. Both the Investigating and Disciplinary and Employment Appeals Committees should have at least one member from Cabinet on them and it is recommended that the Chair of the Investigating and Disciplinary Committee is the Deputy Leader given the potential for a conflict. Councillors sitting on the Investigating and Disciplinary Committee are not permitted to sit on the Employment Appeals Committee and vice-versa to ensure separation between the roles and a fair process. Substitutes are required to ensure political balance.

9. The Terms of Reference section has been updated to include this committee and amended in relation to the Employment Appeals Committee to make clear the different responsibilities of the two. There are consequential amendments throughout to reflect these changes.
10. Finally there are amendments to reflect that members are not involved in employment matters outside of Chief Officers and only Full Council can approve their appointment, dismissal and redundancy. The Chief Officer posts do not currently align with the Statutory Officer posts, which they should as the Statutory Officers are all on Chief Officer terms and conditions. Article 11 has been amended to correct this.
11. HR have been consulted on these changes as far as necessary to do so.

Removal of reference to Deputy Chief Executive and officer delegated powers

12. Following the redundancy of the Deputy Chief Executive references to the post have been deleted throughout and revisions made to the Management Team structure chart in Part 7. There are consequential amendments throughout to deal with this.
13. The delegated authorities that sat with that post have been redistributed to go with the Senior Officer now responsible for the management of the Service - the delegations in relation to planning have moved to the Chief Executive while the property related ones have moved to the Strategic Lead (Finance) but with reference to the relevant Service Lead included as well, as that is our convention. The Strategic Lead (Finance) delegations have been revised to make them clearer and more in line with how the other delegations are expressed.
14. In terms of other amendments to the delegations;
 - a. The General Provisions have been amended to remove reference to the Deputy Chief Executive from No.7 (general authority for the Chief Executive to exercise any of the powers in the scheme of delegation) and replaced with the Monitoring Officer but only when the Chief Executive is absent. This simply provides the safety net of having officers able to act if necessary.
 - b. Confirmation of who the deputy Monitoring Officer and S.151 Officer are has been moved / added to the General Provisions section simply for clarity.
 - c. In the planning delegations (No.11) a reference to a paragraph in the NPPF has been updated to reflect the same paragraph in the new NPPF. Wording has been added to clarify that only material departures need to go to committee. In respect of applications where EDDC has a financial interest, this has been amended so that it only needs to be reported to committee when any of the comments received conflict with the officer recommendation – there have been applications taken to committee where everyone is in agreement, which seems illogical.
 - d. Authority has been given to the Monitoring Officer to update the constitution when required to reflect changes to the membership, portfolios / portfolio holders / assistant portfolio holders and committee changes. Given that Council is effectively only rubber stamping these it seems prudent to avoid having to wait for Council to effect changes that Council would simply approve.
 - e. In relation to Community Right to Bid decisions, this has been amended so that it is the responsibility of the Service Lead (Place, Assets & Commercialisation) with the right of appeal (which was to the Deputy Chief Executive) being to the Strategic Lead (Governance and Licensing).
 - f. In Strategic Lead (Finance) the ability to review decisions made under the Council Tax Reduction scheme has been added. The scope for fraud investigations has

been widened to cover all Council services. The awarding of relief has been clarified to make it clear that it can be given in line with Council policy.

- g. In the Strategic Lead (Housing, Health and Environment) the appointment of authorised officers under the Aircraft Regulations has been revised to avoid having to name individuals and then revise the Constitution when they change. A delegation in relation to carrying out climate change related activities in support of the Climate Change Strategy / Action Plan and Cabinet decisions has been included.

Rules of procedure

15. In light of recent events it is considered appropriate that the Council should formally agree at the Annual Meeting which party is the formal opposition. This is because it determines which party is entitled to the Chair of the Scrutiny Committee. There is an amendment to the Terms of Reference of the Scrutiny to reflect this.
16. Further, the calling of the recent Extraordinary Meetings has highlighted an inconsistency. It is expressed that the business at EGMs should be '*limited to a single item in the form of a motion...*'. Reference to all business being in the form of a motion is inappropriate because of the nature of what that business may be and the expectation of motions having proposers and seconders. The recent example of the election of a Leader and where Council resolves to hold an EGM demonstrate why the rule doesn't work particularly well. Equally, if the Monitoring Officer calls a meeting then the meeting is likely to be considering a report from the Monitoring Officer and not a motion. So Rules 3.1 and 3.2 have been amended to make it clear that if five members make a requisition to call an EGM then it must contain the motion to be considered and that generally the meeting will be limited to a single item of business which may or may not be in the form of a motion – this latter aspect will essentially be dependent on how / why the meeting is called.

Assistant Portfolio Holders

17. Following the Leader's appointment of Assistant Portfolio Holders during his acceptance speech, a new section has been included within Article 6 to cover their role and how it relates to the Cabinet. Further amendments have been made to the Overview and Scrutiny Procedure Rules (Part 4.5) and the Protocol for Relationships between Members and Officers (Part 5.4) to make clear the delineation in responsibilities between the Executive (Cabinet) and the Assistant Portfolio Holders.

Portfolio Teams

18. The Cabinet had the ability to set up Think Tanks to assist in the work of the Portfolio Holders (as detailed in Article 6.09). These have been changed to be called Portfolio Teams and there are amendments to reflect that these will be cross-party, be up to 15 members on the basis of the political balance as far as possible and that delegated authority given to the Monitoring Officer to work with Group Leaders to constitute the membership of the Teams rather than it being a matter for Council to approve.

Lead Members

19. The new administration is of the view that the role of Lead Member needs review and is in an event likely to be superseded by an effective Portfolio Team approach as well as the work of the Governance Review Working Party. While there is likely to be interest in a small number of members supporting the ongoing work of the Council in relation to relevant but discrete areas, it is not appropriate to determine which ones they should be at this time and in light of the timely need to reset our governance framework. It is accepted that should there be an urgent need to reintroduce these roles in the short term, then this could happen with a properly considered report to Council. The changes are therefore to remove Lead Member roles at this time.

Development Management Committee

20. This is now to be called the Planning Committee. There are consequential amendments throughout to reflect this.
21. Reference to it having the responsibility for determining Local Development Orders has been added as the Constitution was silent on this matter and with a number coming forward in the near future it was deemed appropriate to make it clear which Committee's responsibility it is.

Scrutiny call-in procedure

22. The call-in procedure has been revised to remove the requirement for members to confirm that they have considered the matters that were listed in paragraph 4(iv). It is not considered that that requirement added any real benefit and was effectively more of a technicality than anything else. The requirement to state the reasons for the call-in is retained however.

Panels and Forums

23. The quorum for the Panels and Forums has been reduced from 4 to 3 due to problems convening certain meetings due to lack of attendees.

Financial Regulations

24. In Appendix 1 – Schedule of Financial Authority to Officers, there is an addition in relation to the authority to settle insurance claims. It requires that any claim over £30k is only settled in consultation with the Strategic Lead (Finance) or Strategic Lead (Governance and Licensing). This was essentially happening but wasn't clearly stated anywhere.

Members Code of Conduct

25. Cllr Bailey (as the Portfolio Holder for Corporate Services and Chair of the Member Development Working Party) requested that the requirement for equalities training be added as mandatory training. Paragraph 1.9 now includes this although it will only take effect from the next regular election.

Code of Good Practice for Councillors and Officers dealing with planning matters

26. Paragraph 1.5 has been amended to make it clear that the Code applies when an application is submitted in which you have an interest that would necessitate it going to committee. It has also been updated to reflect the issuing of a revised Probity in Planning document in December 2019.

Council's petition scheme

27. This has been revised to enable submission of e-petitions provided the basic validation requirements are still met. The validation requirements have also been revised to be more conducive to the use of e-petitions.

Other changes

28. These include
 - a. Updating Part 1 to include current Council Plan ambitions and Article 1 to change reference to Corporate Strategy to Council Plan in the Constitutional diagram.
 - b. Updating Portfolio titles and areas of responsibility and post holders and related references throughout.
 - c. Bringing the Joint Bodies list up to date (Part 3 Section 2)
 - d. Additional wording to reflect possibility of urgent meetings (Part 4.2)
 - e. Updating of legislation and guidance dates

RECOMMENDATION

29. That Council approves the Constitution including the amendments to it as shown in the draft and detailed in this report and thereby agree the Committee structure, their size and terms of reference and the scheme of delegations.

PART B – Confirmation of the formal opposition (Recommendation 2)

30. The newly adopted Constitution requires confirmation of the formal opposition at the Annual Meeting. COVID-19 has prevented the Annual Meeting but this meeting is to carry out the business that would have been carried out save for the elections / appointments that have already been dealt with by previous Extraordinary General Meetings. The Conservative Group, as the largest opposition party, are entitled to be recognised as the formal opposition.

RECOMMENDATION

31. The Conservative Group is confirmed as the formal opposition.

PART C - Allocation to different political groups of seats on overview, regulatory and other committees in accordance with the political balance of the council (Recommendations 3&4)

Introduction

32. The Local Government and Housing Act 1989 (sections 15-17) has implications in respect of the representation of political groups on committees, sub-committees of the Council and on specified joint bodies. A political group is treated as constituted when there is delivered to the Chief Executive the requisite notice signed by two or more Members of the Council who wish to be treated as a political group.
33. The Council is required at each annual meeting of the Council (or as soon as practicable afterwards and at such other times as detailed in regulations) to **review** the representation of political groups on committees, sub-committees and specified joint bodies.
34. The Council must as soon as practicable after such review, **determine** the allocation to different political groups of seats to be filled by it. Appointments must then be made to give effect to political groups' wishes as to who is to be appointed to the seats to be allocated to each group.
35. The Council decided (at Policy Committee minute number 29 of 10.10.90) that the review is carried out at each annual meeting (and at such other times as required by the relevant regulations) and a determination then be made as to the allocation to different political groups of seats to be filled by the Council.

Scope of sections 15-16 of the 1989 Act

36. The above provisions affect appointments to committees, sub-committees and some specified joint bodies.
37. It is not a legal requirement for the political balance rules to apply to the Cabinet. The Leader appoints between 2 and 9 other Councillors to the Cabinet. In addition, the political balance rules are applied to some advisory panels/forums where possible but not to appointments to outside bodies.
38. Further details are set out below but, broadly, allocations of seats on committees and sub-committees need to be in proportion to a political group's representation on the

Council. For ordinary committees and sub-committees, the general rule is that Section 15(4) and (5) provides for the following principles to apply as far as reasonably practicable:-

- (a) All the seats on a committee/sub-committee or a joint body must not be allocated to the same political group.
- (b) Any political group which has a majority on the full Council must be allocated the majority of seats on each committee, sub-committee and relevant joint body.
- (c) Subject to the two principles in (a) and (b) above the number of seats, in total, for all the ordinary committees allocated to each political group must bear the same proportion to each group's proportion on the full Council.
- (d) Subject to the three principles in (a) to (c) above, the number of seats on each committee, sub-committee and relevant joint body must be allocated to each political group in proportion to the political group's membership of the Council.

A review of representation of political groups on committees and sub- committees

(a) Overview, regulatory and other committees

- 39. The committee structure agreed by Council at its meeting on 29 April 2015 for the creation of separate Overview and Scrutiny Committees to replace the Overview and Scrutiny Committee is to be retained. The Overview and Scrutiny Committees plus the Housing Review Board will continue to utilise Task and Finish Forums as required.
- 40. In 2020/21 the Overview Committee and Scrutiny Committee will meet when called in accordance with the Temporary Rules of Procedure (COVID-19) (adopted on 14th May 2020) or as may be determined by Council by way of subsequent decision.
- 41. The minutes of the meetings of these Committees will be referred to the next available meeting of the Cabinet.
- 42. Please refer to the Committee membership chart, and the list of Panels, Forum and Joint Bodies for details of all Committees, Sub Committees and Boards.

2020/21 agreed committee structure:

Overview Committee	13 seats
Scrutiny Committee	15 seats
Housing Review Board	5 Councillor seats

plus the following Regulatory and other Committees:

Audit & Governance	10 seats
Planning	16 seats
Investigating and Disciplinary Committee	5 seats
Employment Appeals	7 seats
Interviewing – Chief Officers	7 seats
Licensing and Enforcement	15 seats
Standards Committee	5 seats (inc Chairman of the Council)
Strategic Planning Committee	15 seats

- 43. The allocation of the total of **113 seats** on all of these committees between 60 members of the council is as follows:-

Democratic Alliance group	24 members	40%	46 seats
Conservative group	20 members	33.33 %	38 seats
Independent Progressive Group	7 members	11.67%	13 seats
The Independents	5 members	8.33%	10 seats
Cranbrook Voice	3 members	5%	6 seats
Independent	1	1.67%	0 seats
Total seats	60	100	113

44. The allocation of seats on overview/scrutiny, regulatory and other committees between political groups is as set out on **Appendix 1** to this report.

45. An apology needs to be given to Council by the Monitoring Officer for bringing a rebalance to Council after Cllr Millar left the Independent Group and sat simply as an Independent. Cllr Millar was allocated two seats but as he wasn't part of a political group at that time he shouldn't have been.

(b) Standards

46. Changes in the structure of the Standards Committee were agreed in June 2012 in compliance with the requirements of the Localism Act. The Standards Committee is now politically balanced (4 Councillors plus the Chairman of the Council) with substitute Council Members for groups entitled to seats, 2 non-voting independent members and 2 non-voting parish council members.

(c) Licensing

47. Under the Licensing Act 2003, it is a legal requirement for the Council's Licensing and Enforcement Committee to have a membership of between 10 and 15. The Gambling Act 2005 gave new responsibilities to this Committee in regulating gambling.

48. It is proposed that the arrangement agreed in 2009 of having one Licensing Sub-Committee be continued. Membership of the Sub-Committee to comprise 3 members of the Licensing and Enforcement Committee, empanelled by the Strategic Lead – Governance and Licensing, as and when required.

(d) Planning Committee

49. Membership is currently 16. Ward members who are also members of the Planning Committee have the right to vote in respect of applications within their own ward. Ward members who are not members of the Committee can speak on applications in their own ward but are not entitled to vote. The Committee may organise a site inspection if Members feel that a site needs to be viewed before a decision can be made.

Determining the allocation to different political groups of seats to be filled and appointments to give effect to groups' wishes

50. By virtue of Section 16(1) of the 1989 Act, the Council must as soon as practicable, after determining the allocation to different political groups of seats to be filled by it on any body, to which Section 15 above applies, (or after a subsequent vacancy on such a body), make appointments to give effect to political groups' wishes as to who is to be appointed to the seats allocated to the group.

RECOMMENDATIONS

51. That the allocation to different political groups of seats to be filled by the Council be determined as follows in respect of overview, regulatory and other committees.

Democratic Alliance Group	24 members	40%	46 seats
Conservative Group	20 members	33.33%	38 seats
Independent Progressive Group	7 members	11.67%	13 seats
The Independents	5 members	8.33%	10 seats
Cranbrook Voice	3 members	5%	6 seats
Independent	1	1.67%	0 seats
TOTALS	60	100	113

52. That the allocation of seats on individual overview/scrutiny, regulatory and other committees be agreed as set out on **Appendix 1** to this report

PART D - Membership of the Standards Committee and Housing Review Board (Recommendation 5).

53. The Standards Committee comprises the following membership;

Council representatives: Chairman of the Council and four other members of the Council to be nominated and appointed.

Substitute members: Three members of the Council to be nominated and appointed.

Non-voting independent representatives: Martin Goscomb with the second representative position currently vacant*

Non-voting parish/town council representatives: Bob Nelson (Broadhembury Parish Council) and Pauline Scott (Sidmouth Town Council).

**Recruitment to replace Tim Swarbrick who resigned earlier this year will commence when it is possible to interview prospective candidates safely.*

For information - The Council's non-voting appointed Independent Person (Alison Willan) is a consultee and not a member of the Standards Committee. The Monitoring Officer consults with an Independent Person when dealing with Code of Conduct complaints. Her original appointment in 2012 was for a term of 4 years, Members approved a second 4-year term in 2016 for the Independent Person so that her experience and knowledge could continue to benefit this Council and support its governance arrangements. In light of the current COVID-19 situation it is recommended that this appointment continue for a further year and that a replacement be sought for recommendation to Council at the Annual Meeting in 2021.

54. The Housing Review Board comprises the following membership;

Council representatives: Five members of the Council to be nominated and appointed.

Tenant and/or Leaseholder representatives (5) - to serve a further year on the Board:
Peter Sullivan, Pat Gore, Cat Summers, Christine Morrison and Cindy Collier.

Independent Community representatives (2) – to serve a further year on the Board:
Christine Drew and with the second representative position currently vacant*.

**Recruitment to fill the vacancy will commence when it is possible to interview prospective candidates safely.*

RECOMMENDATION

55. That the membership of the Standards Committee and Housing Review Board set out above is approved along with an extension of the appointment of the Independent Person for a further year.

PART E - To agree the appointment of Councillors to Committees (Recommendation 6)

56. The table containing the proposed appointments (as provided by the Group Leaders) is contained at **Appendix 2**.

RECOMMENDATION

57. Members are asked to approve the appointments at **Appendix 2**.

PART F – To appoint the Chairs and Vice-Chairs of Committees (Recommendation 7)

58. The table with the proposed appointments is contained at **Appendix 3**.

RECOMMENDATION

59. Members are asked to approve the appointments at **Appendix 3**.