

**CABINET  
19 DECEMBER 2019**

**THE CURRENT AND FUTURE GOVERNANCE ARRANGEMENTS OF MID  
DEVON DISTRICT COUNCIL**

**Cabinet Member(s):** Cllr Bob Deed, Leader of the Council  
**Responsible Officer:** Kathryn Tebbey, Group Manager for Legal Services and Monitoring Officer

**Reason for Report:** to outline the current governance arrangements and discuss the potential for a Governance Working Group to review arrangements and make recommendations.

**RECOMMENDATION: that**

- 1 the Standards Committee be asked to recommend to Council that the changes to the current arrangements set out in part 3 of this report be agreed and the Constitution amended accordingly and the Monitoring Officer be asked to draft the changes to the Constitution required to implement those changes for consideration by the Standards Committee; and**
  
- 2 it be recommended to Council that a politically-balanced Governance Working Group be established, such working group to-**
  - (a) comprise 12 members;**
  - (b) carry out a comprehensive review of the Council's governance arrangements, such review to include –**
    - (i) exploring the views of members and other stakeholders;**
    - (ii) taking advice where appropriate from experts in the field; and**
    - (iii) identifying the cost and value for money implications;**
  - (c) Report its findings, options and make recommendations to the Council (via the Standards Committee where major changes are proposed to the Constitution); and**
  - (d) ensure that such recommendations are made by no later than December 2020 with a view to any changes taking effect for the municipal year 2021/22**

**Financial Implications:** None directly arising from this report, save that the costs of officer time in supporting the review are estimated to be circa £5k-£10k and there may be costs incurred by bringing in external advice/guidance where required.

**Legal Implications:** As set out in this report. Legal advice will be provided on any alternative arrangements considered by the Governance Working Group (if agreed by Council), including on the procedures to implement them. Depending on the outcome, there may be other consequential work which needs to be put in place

before any alternative arrangements can be brought in, including a revised Constitution and the setting of a new members' allowances scheme.

**Risk Assessment:** None directly arising from this report.

**Equality Impact Assessment:** None directly arising.

**Relationship to Corporate Plan:** There are overarching priorities in the Plan – efficiencies and value for money, digital transformation and staff/member development.

**Impact on Climate Change:** None directly arising from this report. However, an increase or decrease in council meetings (regardless of the form of governance arrangements), may result in more or less travel to and from meetings by Members, as the case may be.

## 1.0 Introduction/Background

1.1 The purpose of this report is to consider the current governance arrangements and make recommendations for change, where appropriate. The current governance arrangements operated in Mid Devon District Council are that of the strong leader and executive (cabinet) model.

1.2 Section 9B of the Local Government Act 2000 prescribes the forms of governance which may be adopted by local government bodies. These are executive arrangements, committee system or 'prescribed arrangements'. The Council can only choose between those options.

1.3 Executive arrangements include the Leader/Cabinet system deployed by the Council and set out in the Constitution. A cabinet must consist of the Leader and at least two more councillors appointed by the Leader – as required by section 9C of the Local Government Act 2000. So the Leader appoints and has the sole power to select the Cabinet. The only constraint is that the number of councillors in the Cabinet (in addition to the Leader) must not be less than the minimum (2) nor more than the maximum (10). The political balance rules are expressly dis-applied by law.

1.4 The Council's Constitution transfers the Leader/Cabinet system into its rules and procedures. It is important to recognise that the Council is not free to pick and choose the functions and responsibilities which are to be a matter for the Cabinet. Where a Cabinet system is operated, all functions are to be the responsibility of the Cabinet, unless the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 prescribe otherwise. The 2000 Regulations prescribe the functions which:

- must not be the responsibility of the executive e.g. certain consents, licences, elections etc.

- may be the responsibility of the executive if that is what the Council wants (local choice)
- may or may not be the responsibility of the executive, depending on particular prescribed circumstances e.g. decisions outside the policy framework or budget

1.5 The committee system is what it says it is – there are a number of committees discharging the business of the Council either under delegated powers from the Full Council or by recommending up to Full Council. Some Members may have experienced this arrangement when it was previously in operation at the Council, although that does not mean that new committee arrangements could not be designed in a way which overcomes any historic concerns over how committees operate.

1.6 Prescribed arrangements are additional permitted governance arrangements may be prescribed by the Secretary of State in regulations. They need to be proposed to the Secretary of State with an explanation of how the following conditions would be met:

- (a) the operation of the proposed arrangements would be an improvement on the arrangements in place;
- (b) the proposed arrangements would be likely to ensure that the decisions are taken in an efficient, transparent and accountable way; and
- (c) if prescribed, the arrangements would be appropriate for all local authorities to consider adopting.

## 2.0 **Current arrangements for participation and scrutiny**

2.1 The Strong Leader and Cabinet model enables decisions to be made at pace in line with the policy and budgetary framework and the corporate plan. There are clear lines of accountability. Members naturally want to have the opportunity to influence decisions and to be involved. They want openness and transparency. Whilst the forward plan is no longer a statutory framework, it has been retained to show the major decisions coming up. Cabinet meetings are not only open to all members, but all members are entitled to attend and participate – a practice which is now in the Constitution.

2.2 Decisions of the Cabinet can be called in to Scrutiny Committee. Those who can call in are:

- the Chairman of Scrutiny
- any 3 members of Scrutiny

- any 4 members of the Council

On decisions called in, the Scrutiny Committee can already make recommendations to Full Council if it wishes - but the Full Council has no locus to make a decision in respect of a Cabinet function or responsibility unless it is contrary to the policy framework or budget. Full Council cannot override the Cabinet where such a decision is a matter for the executive.

### 3.0 Some options which might enhance the current arrangements

- Option 1 The Leader has suggested that the Cabinet may, at its discretion, “self-refer” to Full Council for a view before making a decision on controversial or locally significant matters - unless the decision is particularly urgent and cannot wait for the next scheduled meeting and an extraordinary meeting would be impractical. That would enable the Cabinet to sound out what all members think on a matter before taking the final decision. Of course, the Cabinet may decide not to go with the views of Full Council, but it will at least have a more detailed understanding of fellow members’ views – and such views can be expressed in the public domain at a formal meeting, rather than through informal consultation. The challenge is the potential for slower decision-making and delay.
- Option 2 Reports to Cabinet should include a section setting out whether the decision is within the Policy Framework and the Budget. This would assist members in understanding whether the decision is purely a Cabinet decision or one which could (or at times, must) be taken by Full Council.
- Option 3 Special urgency – decisions to be published “in any event on the next working day” although the Constitution accords with statute by requiring “as soon as reasonably practicable”.
- Option 4 Special urgency decisions referred to next Full Council, rather than quarterly. This would include decisions taken after the publication of the agenda but before the meeting. At times, it may require a verbal rather than a written report to meet this timescale.

### 4.0 A more thorough review of Governance Arrangements

- 4.1 Some Members have expressed the wish for a more thorough review of governance arrangements. If the Council changes its governance structure, it cannot change again within five years unless a public referendum is held. Any changes would come into effect at the annual meeting in May – so there is time to get things done with careful thought and diligence

- 4.2 If a review takes place, it is essential that the first consideration is what the review is trying to achieve i.e. what is it that the membership thinks is not working for them, the Council and Mid Devon as a whole in the current arrangements and what, in overarching terms, would they like to see in any new arrangements.
- 4.3 A working group may be the best way forward to arrive at some clear proposals. At the same time, there is some clear merit in letting all members feel that they have made a contribution. If a working group is established, as a starting point it would be useful to get some information about why members want to change; the problems they see with the existing governance system, and what they are hoping for in terms of benefits from a new one. What are their key objectives? For example, these could be:
- Making the most of the range of skills and experience of members
  - More involvement of more members in more decision making
  - Greater member participation in policy development at earlier stages
  - Cost and other resource savings
  - A 'better' political balance across all the council does
  - The balance between officers and members
  - Greater transparency and accountability
  - Speed of decision making- does it in reality happen more quickly under the Cabinet?
- 4.4 Until members, officers and any other appropriate stakeholders are asked, it would be difficult for any working group to move forward in a structured review. There is a risk that the working group might arrive at some firm(er) options and ideas for the Council as a whole to consider which would not hit the collective mark. It might therefore be appropriate to hold a workshop open to all members and senior officers discussing the points above and more. Such a workshop could be facilitated by the Local Government Association (if available) or a third party with particular national expertise in local authority governance arrangements. The outcome of the workshop could then be used by the working group to finalise the terms of reference, any further consultation plans (including surveys perhaps) and its work programme.
- 4.5 It is important that the working group is representative of the Council as a whole – it does not have to be politically-balanced, but members might feel that to be an important element to achieving consensus. A working group of 12 members would provide a good sample of views across the Council and, with the current membership, allow for an easy political balance calculation.

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**Circulation of the Report:** The Leader; the Cabinet; Leadership Team

**List of Background Papers:** None.