

GOVERNANCE ARRANGEMENTS – REPORT OF THE GOVERNANCE WORKING GROUP

Reason for the Report and the Recommendation: following a review of governance arrangements between January 2020 and March 2021, to provide the Council with a report on its work and its recommendations.

RECOMMENDATIONS: that the Council:

- 1 in the absence of a clear mandate for change at this time, keeps the current executive governance arrangements;**
- 2 endorses the continuation of the Policy Development Groups and, in doing so, requests members and officers to find effective and efficient ways to support the groups' future work programmes;**
- 3 asks the Standards Committee to review any proposals for constitutional change which the Head of Legal (Monitoring Officer), the Chairman of the Scrutiny and Audit Committees and/or the Chairmen of the Policy Development Groups put forward in support of the working arrangements for those committees and groups; and**
- 4 thanks the Local Government Association for their valued support to the Governance Working Group.**

Financial Implications: None directly arising from the recommendations, although there will be a cost in terms of time committee and officer time in addressing any constitutional or procedural changes arising from the recommendations.

Budget and Policy Framework: None directly arising from the report. However, a change to the processes for policy review (as opposed to new policy development), may involve a change to the Policy Framework, as the latter maps out the pathways to a decision. This can be looked at as part of any further work arising from or after this report.

Legal Implications: none directly arising from the recommendations as put forward. However, should the Council in future decide that it wishes to change to a committee structure, such a change would only take effect at the annual meeting following the resolution, or such future annual meeting as the resolution specifies. If the Council wishes to direct that changes be made to the Constitution, these should be considered by the Standards Committee first.

Risk Assessment: There is a clear risk that making a change to governance arrangements or making no change will be perceived as unsatisfactory, depending on any individual viewpoint. The key will be in how the Council then goes about making the arrangement work and/or work better. The statutory right to petition for governance change remains, as do the obligations on the Council which flow from such a petition. However, the Council has to decide, as a collective, what it considers to be the best way forward.

Equality Impact Assessment: None directly arising from this report, but impacts must be considered carefully in any decisions which result in a change to current practices affecting those with protected characteristics.

Relationship to Corporate Plan: Our values and priorities – equally important to the ‘what’ we are trying to achieve, is the ‘how’ the organisation operates and conducts itself.

Impact on Climate Change: There is no direct impact upon climate change. However, the Council will wish to be satisfied that its governance arrangements work to deliver its aspirations in this regard.

1.0 Introduction/Background

1.1 On 8 January 2020, the Council resolved to set up a politically-balanced working group to review the governance arrangements of the council. At the meeting, the Council resolved the following in respect of the working group, namely that it:

- (a) comprise 12 members;
- (b) carry out a comprehensive review of Council governance arrangements in order to identify the different options available to bring together best practice and develop a model tailored to the needs and aspirations of Mid Devon’s residents and stakeholders. 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 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

1.2 The working group met for the first time on 27 January 2020 with an initial membership of councillors R J Chesterton, L J Cruwys, Mrs C P Daw, R M Deed, R Evans, Mrs I Hill, B A Moore, R L Stanley, Ms E J Wainwright, A Wilce, Mrs N Woollatt and A Wyer. Cllr Wilce took the Chair and Cllr Moore was chosen as Vice-Chairman. At that first meeting the working group reviewed the instruction from Council and set out their individual and collective thoughts on the way forward for the review.

1.3 The Monitoring Officer had discussions with the Local Government Association about providing support to the Working Group during the course of the review. The Working Group agreed that this would be helpful. Accordingly, Emily McGuinness and Cllr Jim McKenna of the Local

Government offered to provide this support. Emily McGuinness is a Programme Manager at the Local Government Association, is an expert in local authority governance and scrutiny and takes part in peer reviews of councils across the country. Cllr Jim McKenna is an independent councillor at Cornwall Council where he chairs one of their overview and scrutiny committees - and he is also a former council chief executive.

2.0 The Working Group

- 2.1 The working group has met 8 times – there were no meetings in April or May 2020 as the Council gradually introduced virtual meetings on the Zoom platform. From the outset, the emphasis was on the freedom of all members of the group to express their thoughts and concerns - and taking, as far as possible, a consensus approach. Of course, with 12 members from across the political spectrum and with different hopes for the review (process or outcomes), consensus was not always equivalent to unanimity.
- 2.2 There has been some concern expressed about the working group meeting in private. This may be the usual way of working groups at the Council, but the Governance Working Group was alive to the external interest. Nevertheless, it was generally felt that members of the group needed to feel comfortable with discussing and exploring options before going public.
- 2.3 From very early on, the focus of the Working Group was not on selecting a governance model and then deciding whether it would fit – rather, the desire was to understand what underlay the concerns of members and others and identify options to address them. It was recognised that many of the concerns could continue whichever model was adopted if they were not expressed, acknowledged and built into the review.

3.0 Involving the wider membership

- 3.1 In August 2020, the Working Group conducted an initial survey of members through survey monkey. The purpose was to gain a general understanding of the views of the wider council membership. Of the 39 members, 15 members responded. Senior officers were also asked the same questions. All responses were anonymous. A summary of the responses is at **Appendix 1**. The Working Group reviewed the responses on 16th September 2020 and was disappointed by the number of responses in particular. It was recognised that some further internal engagement was needed.
- 3.2 The Working Group held an all-member workshop on 1 December 2020. It was well attended with 28 Members and the Leadership Team. The workshop was facilitated by the Local Government Association. The objective of the workshop was:
 - To explore the principle that effective governance is defined by behaviours to a greater extent than structures. Without clarity on roles, functions and expectations, all decision making structures can fail to deliver transparency, openness and accountability. Using the RACI Model (Responsible, Accountable, Consulted, Informed) as a framework for

discussion, this session aims to support elected members in reflecting on what 'good governance' looks and feels like within their context – and what next steps may be appropriate to make this a reality.

3.3 Prior to this session, the Monitoring Officer had also engaged informally with the Centre for Governance and Scrutiny, which all confirmed that good behaviours underpin all good governance arrangements. The LGA's summary of the workshop is at **Appendix 2**. The Working Group recognised the balance of opinions across the Council – some strong views, but with no clear steer to move away from the current executive arrangements. The issue of scrutiny came across loudly, as indeed had been expressed within the Council during previous months.

3.4 The Chairman of the Working Group (Cllr Moore) reported to Council at every meeting from October 2020 onwards. This was seen as an opportunity to keep members informed of progress, to identify any concerns amongst the membership about that progress/direction and to put the report into the public domain. In October 2020, the Council noted that more time was required for the review and that the Working Group would be likely to report back in the first quarter of 2021. On 6th January 2021, the Council received the update at **Appendix 3** and resolved:

“Council supports the conclusions as set out in the report and agrees that the Working Group proceeds on this basis.”

3.5 The Chairs of Scrutiny, Audit and the Policy Development Groups were invited to attend the meeting of the Working Group on 2 March 2021 and were joined by other members. All were given the opportunity to speak and the Working Group listened carefully – the outcome of that meeting and the decisions made on the recommendations to be made were clearly influenced by the participation of those members.

3.6 In summary, the Working Group concluded that the outcome of the various internal engagement exercises is that, within the Council, there was no clear mandate for structural change, but a very strong desire for behavioural and working relationship change.

4.0 **Involving the public and other bodies/organisations**

4.1 The Working Group agreed to carry out external consultation through writing to certain organisations and holding an invitational Zoom session for anyone to attend and speak. Written responses were also welcomed. The invitation (**Appendix 4**) was sent to -

- Parish and town councils
- Business/trade groups and associations
- The Mid Devon Gazette and Crediton Country Courier (it was published in both)
- The Council's digital and social media platforms – website, Twitter, Facebook

- 4.2 The panel-led session (Cllr Jim McKenna, Cllr Andrew Moore, Cllr Andi Wyer and the Monitoring Officer) took place on 23 November 2020 at 6pm. Six members of the public registered to attend, with five actually doing so. A transcript of the meeting was taken and this is at **Appendix 5** – it also appears on the Council’s website under Governance Arrangements. All attendees agreed to the publication of this document with their names in it. The issues raised were wide-ranging, but with particular emphasis on concerns about decision-making, democratic processes, transparency and public engagement.
- 4.3 In addition to the views expressed directly at the session on 23 November 2020, four individuals submitted comments in writing. These are reproduced at **Appendix 6** – again, the messages are similar to those expressed in the public session.
- 4.5 It is clear that some members of the public with particular interest in this topic hold concerns about the Cabinet system, but across the board there was a spotlight on processes, transparency and public engagement. Whilst these common themes are not directly about the governance arrangements in terms of structure (Cabinet, committee etc.), they are matters which underpin governance in the wider sense and, regardless of the outcome of this review of the governance arrangements, they are matters which clearly need to be at centre-stage of the Council’s ethos and values going forward – and some the Council may wish to undertake some further work in these areas.

5.0 **Progress and evolution of ideas**

- 5.1 In addition to matters arising from the conduct of the review itself (information gathering etc.), the Working Group considered a wide range of topics at their meetings – at a glance and at high level, these were:

March 2020 – member and public involvement in decision-making; interactions with outside bodies; efficiency; costs implications; discussion and balance in decision-making; plan for looking at other councils’ structures that might support these principles in Mid Devon

June 2020 – presentation from LGA on structures at a sample of councils (see further in paragraph 5.2); speed of decision-making; wider community engagement; questioning members’ desire for structural change over improvements to current systems

September 2020 – policy development; pre-scrutiny; inclusivity

October 2020 - this was the consultation/information gathering session

December 2020 – reviewing consultation events, scrutiny, policy development, member involvement

January 2020 – towards a different scrutiny function – options for further exploration

March 2020 – combining scrutiny and policy development into two Overview and Scrutiny Committees – or improving the current

5.2 The Working Group received a presentation from the LGA about some of the arrangements operated elsewhere in the south-west. The examples are shown in **Appendix 7**. However, the key message which underpinned these examples was that there are the two governance arrangements permitted in legislation – executive and committee. Hybrid arrangements are, in effect, where a council has decided to tweak those arrangements to a degree, although it is important to recognise that they (a) have no clear legal basis and (b) are decided by each authority according to their own needs and wishes.

5.3 On 6th January 2021, the Council resolved that it agreed with the following conclusions:

1. Change is needed to improve the Council's governance in line with modern, current best practice. Focus is around attitude, behaviour, and approach rather than the fundamental structure of governance.
2. Implementation of Scrutiny (as a function) needs to be adapted to make engagement more active, potentially to provide earlier engagement in the decision-making process and when required to be an effective post-decision check.
3. Policy Development (as a function) needs to become more influential in the Council's business, taking a greater role in developing new ideas and challenge.
4. Combining the above 2 functions in specific committees should be considered.
5. Engagement by Members needs to be improved to make the Council's operation not only more effective but to be seen to be more effective.
6. Engagement with the residents and businesses needs to be improved through encouragement, better access (e.g. social media and other platforms) and communication (e.g. different focus / less jargon).
7. A systematic process approach should recognise the need for timely decision making, setting out clearly which parties are Responsible, Accountable, Consulted and Informed.

5.4 On 28th January 2021, the Working Group focussed on the potential for improvements to Scrutiny in particular. The paper it considered is at **Appendix 8**. The Working Group asked the Monitoring Officer to prepare a further report on Scrutiny, picking up the option of combining policy development with scrutiny into two Overview and Scrutiny Committees with enhanced roles. The paper considered on 2 March 2021 is at **Appendix 9**. Members of the Working Group concluded that the Council should retain the policy development groups and not move to the proposed Overview and Scrutiny model. However, they were clear that work should take place to improve their functioning through the following measures:

- Moving routine business away to free up time for genuine policy development – avoid policy review dumping
- Routine business may be – e.g. reports to note, straightforward policy review, standard performance reports across all PDGs
- Facilitating and enabling PDGs to generate their own agenda, rather than being presented with a list of business items
- Crossing over the strict policy lines between the PDGs
- Giving the PDGs improved focus on their core business
- Providing early member engagement upstream from the final decision

5.4 It is nevertheless clear that there remains an opportunity to improve the entire scrutiny/audit/policy development function – not just in terms of the procedural rules, but also in the structure of the agendas, a work programme and specifically making it a requirement that the Programming Panel (Chairs of Scrutiny, Audit, PDGs and Leader of the Council) meet at regular intervals and not simply “as necessary”. Further protocols/procedures may be needed, formal or informal.

5.5 The paper and subsequent discussion considered on 2nd March 2021 also touched upon some further issues of interest, namely:

- Overruling the Cabinet and/or inviting reconsideration

The Council cannot overrule Cabinet on a matter which is a Cabinet function. The legislation makes it clear that the vast majority of functions under executive arrangements are the responsibility of Cabinet for which it is also accountable. The courts have affirmed this and expressly stated that the Council cannot assume for itself a decision which is within the remit of the Cabinet. The Council’s procedural rules already allow for the Scrutiny Committee to refer a matter to Council, but the same rules make it clear that any recommendations the Council wishes to make must be referred back to Cabinet.

- Quorum at Cabinet

This can be changed to require a higher number to be present, although Members should take care not to place it at a level where meetings are more likely to be inquorate.

- Majority voting

The legislation stipulates that decisions must be by a simple majority – unless there is a specific provision in legislation governing that decision.

- Abstentions

Members should be aware that abstention is not necessarily seen by the courts as disagreement – in fact it is more likely to be seen as “no objection”, even if it is not tacit approval.

- Audit Committee

There is a general sense that the Audit Committee needs to expand in numbers e.g. 11? This is seen as a means to strengthen this committee and enabling it to break of into task and finish groups i.e. it will have enough members to share the workload

- Informal early engagement/discussions

Particularly important for significant matters for the entire district e.g. local plan

- Better engagement generally

Many members are keen to explore ways to improve the Council’s engagement with communities

6.0 The task set by Council and the recommendations made

- 6.1 The Council asked the Working Group to carry out a comprehensive review of the governance arrangements, these being the current Leader/Cabinet executive arrangement and the other options such as a committee structure or a hybrid version of the two. The Working Group has considered alternative structures, but the presentation did not show that one system would necessarily provide a benefit over another – there are potential advantages and disadvantages in all and where the balance lies will be up to members and their personal viewpoint. It was also felt that, on 6th January 2021, the Council had given a clear steer away from a focus on structural governance arrangements to other matters. This report therefore also sums up the review and addresses the further work taken since 6th January 2021 on scrutiny and policy development.
- 6.2 The Council asked the Working Group to explore the views of the public and other stakeholders. It has done this through the widely publicised event in November 2020, although the level of interest was disappointing; it has also sought the views of other stakeholders by writing to various bodies directly and by reporting back to Council in the public domain at every Council meeting since October 2020, thus giving further opportunity for public questions to be put.
- 6.3 The Council asked the Working Group to take advice from experts in the field. It has done this by working with the close and valued support of the Local Government Association at each and every meeting and event.
- 6.4 The Council asked the Working Group to consider the cost and value implications as part of this process. With the steer from the Council in January 2021 not to focus on structural change, but behaviours etc., this is

more difficult to assess. However, given the desire for efficient working with increased inclusivity/engagement, there is still some work ahead and this may involve further workshops/member development to bring the desired changes to behaviours, engagement and inclusivity. The Working Group is confident that further measures are available to the Council – as outlined in paragraph 5.3 and 5.5 of this report, which could add value to the Council’s work without adding significant costs (other than officer and member time).

- 6.5 The Council asked the Working Group to put its recommendations via the Standards Committee where major changes to the Constitution were envisaged. No such changes are proposed. However, the Standards Committee confirmed that it would consider any changes following a decision of the Council on the way forward – this avoided spending time on constitutional changes which might not then be needed.
- 6.6 The Council asked the Working Group to report back by December 2020. For reasons which were previously explained in October 2020, this was not considered feasible. The Working Group has produced its report in line with the indicated revised timetable, namely in the first quarter of 2021.
- 6.7 The overall conclusion is that the current executive governance arrangements can and do work for effective and efficient decision-making, as can other arrangements. It is just a question of what the Council wants to do next. In the absence of any clear mandate thus far for a change to alternative arrangements, the recommendation is therefore that the current executive arrangements be retained. However, there are specific improvements that can be made (as set out in the report) which the Council may wish to consider and address. Members and the public have been clear that member and public engagement must be a focus, whether it is through the decision-making processes, or specific actions to facilitate a better way of working together.

Report drafted on behalf of the Governance Working Group by Kathryn Tebbey, Head of Legal (Monitoring Officer).

Appendices:

- Appendix 1 – Summary of responses to internal survey
- Appendix 2 - LGA Workshop summary
- Appendix 3 – Update to Council 6 January 2021
- Appendix 4 – Invitation to public session
- Appendix 5 – Transcript of public session
- Appendix 6 - Written responses from public
- Appendix 6 Annex – Additional written response
- Appendix 7 – Examples of governance arrangements
- Appendix 8 - Paper to January 2021 meeting of Working Group
- Appendix 8 – Paper to March 2021 meeting of Working Group