

COUNCIL - 9 DECEMBER 2014

GOVERNANCE AND CONSTITUTION REVIEW

Report by the County Solicitor and Monitoring Officer

Introduction

1. In April 2013, the Council adopted new governance arrangements which came into effect following the May 2013 elections. The Council asked its Monitoring Officer to review the effectiveness of these decision-making arrangements a year after their coming into operation. In tandem with this, the Monitoring Officer has also undertaken a full review of the Constitution of the Council.
2. This report sets out the Monitoring Officer's recommendations with regard to the Council's governance arrangements and the potential amendments to the Constitution. It outlines the process followed in arriving at these recommendations, summarises the main issues from the review and then sets out the recommendations, in blocks, for Council to determine.
3. It is recognised that, in such an exercise, it is impossible to achieve a solution that pleases everyone. Some views arising from the consultation have been minority views, with little wider support, or have been contradictory when placed alongside other views. The emphasis, therefore, has been on undertaking a thorough consultation and proposing recommendations to achieve a broad consensus.

Background

4. New governance arrangements were implemented following the May 2013 elections. The arrangements had been introduced to achieve the aims of:
 - engaging all members more fully on issues that directly affect their local communities.
 - providing a more focused, integrated approach to the development of policy
 - aligning scrutiny more closely to the business and performance of the Council.
5. Key Changes.
 - Scrutiny: the number of committees had been reduced from six to three, with the intention of tying scrutiny more closely to the business and priorities of the Council
 - Cabinet Advisory Groups: the facility was introduced for Cabinet members to convene start-and-finish groups to advise themselves on areas of policy

with the intention of enhancing decision making through effective prior involvement of members. A standing Transport Advisory Panel had also been created, along the same lines

- **Locality meetings:** nine locality meetings were created at which the county councillors for those areas could receive and share information about issues directly affecting their areas.; the aim being to assist councillors in representing their communities through a more focused flow of information and to enable council managers and service providers to benefit further from councillor perspectives of services 'on the ground'

Process

6. As Monitoring Officer, in considering the governance and constitution reviews, I have attempted to assess the effectiveness of the arrangements introduced in 2013 against their stated purpose. I have also been mindful that the Council could not reasonably increase its resources in the current climate and would not wish to extend its bureaucracy. The emphasis has continued to be on the maximisation of existing resources to better effect.

Consultation

7. It has been important, in carrying out the governance review, to involve councillors and co-opted members, at the outset, as fully as possible, to obtain their views about the arrangements in practice. In the first instance, therefore, the Audit and Governance Committee agreed to my suggestion that a small councillor cross-party 'sounding board' be appointed from within the Committee to assist me in devising and conducting an effective consultation process. I found the assistance of the Sounding Board very useful in doing this and particularly valued their constructive and considered opinion.
8. As a result, the consultation involved:
 - **online consultation:** a questionnaire to all county councillors, co-opted members and senior managers about each aspect of the governance arrangements
 - **formal consideration:** views of members within formal meetings of the decision-making structure including:
 - Audit and Governance Committee
 - Cabinet
 - Performance Scrutiny Committee
 - **senior member/management:** the views of political group leaders and senior management via meetings of:
 - County Council Management Team
 - Political Group Leaders
 - **scrutiny chairmen's meeting:** discussion at the periodic meeting for scrutiny chairmen
 - **political groups:** views of political groups via their own political group meetings
 - **locality meetings:** attendance by the Monitoring Officer at locality meetings

9. This has culminated in formal reports to the Audit & Governance Committee, to Cabinet and now to Full Council.
10. A section-by-section review of the Constitution has also been undertaken both to assess emerging issues from the governance review and also to streamline business more effectively. Again, any potential issues of principle have been reviewed through the meetings structure in 8. above. A summary of the proposed Constitutional changes is included as Annex 1 to this report. A track change version of the Constitution, illustrating the proposed and the administrative ('tidy up') changes, has also been placed in the Members' Resource Centre, as a reference copy for councillors' consideration.
11. A summary of the members' survey responses is included as **Annex 2** to this report.

Issues

Analysis of the Effectiveness of the Governance Arrangements

12. Overall, the governance changes introduced from May 2013 are considered to have been beneficial in engaging members further and in achieving a closer focus on the business of the Council. Generally, there is a consensus that the arrangements should be allowed to bed down and that no major changes are necessary at this time. Greater clarity as to the roles/remits around decision-making and information would, it seems, be welcome. Co-opted members are equally satisfied, on the whole, that they feel engaged and that the arrangements work well for them. The headline issues arising from the governance review are as follows:
 - **Locality Meetings:** these have been very successful with particularly positive feedback from both councillors and officers who found them to be extremely useful in engaging and informing councillors more fully in the interests of their community and in the delivery of council services.
 - **Cabinet Advisory Groups (CAGs):** CAGs are regarded as a useful aspect of the Council's governance, informing service and policy development with the benefit of wider member experience. The challenge appears to be how to raise their profile amongst other members and ensure that their recommendations to Cabinet lead to tangible outcomes and improvements. Improved public awareness about the CAGs is already being facilitated by improvements to the Council website including details of the scope of their work, membership and the outcomes of their work.
 - **Keeping members informed:** an encouraging outcome has been that members consider they are generally being kept more informed about issues affecting their area. Well-informed councillors are crucial to effective democracy, representation and decision-making. It is encouraging that councillors are positive about their access to information.
 - **Full Council:** a high level of dissatisfaction was expressed by members about their experience of Full Council meetings. However there was no

consensus as to how they might be improved. The emphasis has therefore been on refining procedures to streamline effective debate to improve decision-making and this can be achieved within the Constitution.

- **Cabinet:** the Leader wishes to engage local members more fully in terms of receiving their views and hearing their questions; and this aspiration can be accommodated within the Constitution. Nonetheless, the members' survey revealed that while Cabinet was considered to be effective, there was some perception that Cabinet could perhaps 'listen more' and have more genuine debate. The two aspirations therefore appear to coincide and recommendations are made to improve wider member participation.
- **Scrutiny:** no specific demand for change emerged as it is considered by most that the arrangements should be allowed to bed down. A small number of members were concerned at the previous changes to the scrutiny of adult services. However, the Chairman of the Performance Scrutiny Committee has already instigated a work programme which will provide a more focused challenge across specialised areas. This work programme will be kept under review.

13. Most of these issues can be taken forward through a greater emphasis on communication, engagement and the alignment of the Constitution. Consequently, no changes are being recommended to the governance arrangements.

Constitution

14. Reviewing the Constitution section by section, alongside consideration of the governance arrangements, has indicated certain changes that would, in principle, appear sensible better to streamline decision-making and members' engagement with it. Other changes, already within the remit of the Monitoring Officer to make, and not requiring formal decision by Council, relate to 'tidy up' measures for:

- providing further clarity to existing provisions
- updating aspects to reflect legislation or other administrative changes e.g. post titles

15. The key issues which could usefully be addressed by minor changes to the Constitution concern improvements, in principle, to aspects of decision making and enabling members to address their views in those settings. The suggested changes are indicated in the schedule at **Annex 1**. Part A of that Annex gives the list of changes that Council is being asked to approve; Part B of that Annex summarises the administrative ('tidy up') changes that the Monitoring Officer is authorised to make under his delegated powers. The principal changes arise for the following reasons:

A. Council:

- **Council Procedure Rules:** provisions for making these meetings more effective by creating greater clarity over the rights to raise motions and questions; and the counterbalancing need for the Chairman of the Council

to have explicit discretion to manage the business in the interests of the efficiency of the meeting

B. Cabinet:

- **Cabinet Procedure Rules:** the Leader of the Council wishes to promote the involvement of members as much as possible before decisions are taken by Cabinet; this means refinement of the rights to speak at meetings of Cabinet, counterbalanced by the discretion of the Leader (chairing Cabinet) to ensure this engagement happens in the best interests of the meeting while also respecting the pre-existing Constitutional rights of the Opposition (e.g. to make statements).

C. Scrutiny:

- **Scrutiny Procedure Rules:** currently there is a commitment that an item will be added to the agenda if received 10-15 days before the meeting with an expectation that this will be accompanied by a report. This practice is out of step with that for other committees where the initial commitment is to an oral report if less than 20 days is given. It is suggested to harmonise the Scrutiny rules with those of council committees generally.
- **Oxfordshire Joint Health & Overview Scrutiny Committee:** The Constitution, operating procedures and protocols revised in the light of regulations made under the Health and Social Care Act 2012.

D. Other Meetings and Public Engagement

- **Locality Meetings:** given the success of these meetings, as noted during the Governance Review, there is consensus to continue them. It is therefore suggested that the Constitution section on the role of members (Article 2) be amended to include reference to purpose and place of Locality Meetings within the Council's decision-making, better to raise public awareness of the Council's commitment to maximising the value of the local councillor perspective.
- **Oxfordshire Growth Boards:** the Oxfordshire Growth Board, leading on partnership and economic issues, is effectively a Joint Committee and needs to be referenced formally as such within the Constitution.
- **Appeals and Tribunals Sub-Committee:** this sub-committee of the Audit & Governance Committee meets from time to time to make decisions on home to school transport appeals. In order to balance democratic accountability and responsiveness, it is proposed that the Panel, when hearing home to school transport appeals, consists of an elected member, an officer and an independent person.
- **Filming and recording of meetings:** The Openness of Local Government Bodies Regulations 2014 now require authorities to provide that the public may record and film non-exempt portions of meetings and to commentate on proceedings (e.g. via social media) during the meeting. This right does not extend to disrupting the meeting. It is opportune to incorporate the fact and extent of these rights within the Constitution in the sections dealing with citizen rights.
- **Petition Scheme:** the Petition Scheme within the Constitution is no longer required by law and in practice no petitioned debate under that scheme has ever been triggered. It is therefore proposed to delete the Scheme as

other mechanisms are available. The public's right to petition and speak, and their separate right to address the Council on any matter on the agenda, remains.

E. Scheme of Delegation

- **Senior officer designations:** The officer scheme of delegation, in the Constitution, sets out the top-level delegations made to the Council's senior officers. It's important for transparent and accountable government that the terminology about senior managers be harmonised to avoid potential confusion.
- **Freeing up decision-making bodies:** The Scheme can be used to delegate to officers the approval of unpaid leave beyond 12 months, which currently lies with the Remuneration Committee. The Remuneration Committee agreed the principle of this delegation in September 2014.
- **Clarification:** It is also sensible to make explicit in the Scheme that any exercise of delegation making incorrect references to any part of the Constitution or law will not invalidate the authorised delegation; this protects effective decision making from purely technical objection or challenge..

F. Policy framework:

- **Corporate Plan:** given the length of applicability of the Council's Corporate Plan, it is intended that the Plan will be approved by Council four-yearly with annual updates on progress being reported to Cabinet

G. Member's conduct, codes and access

- **Planning Code of Practice:** an updated *Planning Code of Practice* (currently an annex to the Code of Conduct) has been drafted, consistent with practice across the City/District Councils in Oxfordshire and with the updated model code from *Lawyers for Local Government*. In addition, I have produced guidance, in consultation with Monitoring Officers from Oxfordshire, on *Bias and Predetermination* which will be made available to councillors.
- **Gifts and hospitality:** guidance will be appended to the Members' Code of Conduct to advise members that, while not statutory to do so, gifts and hospitality should be recorded in order better to protect members (and the Council) from complaints, and to promote openness and transparency.
- **Protocol on members' rights and responsibilities:** in the interests of economy, delete the reference to members' rights to receive hard copy meeting papers unless for exceptional reasons. Formal members of the meetings in question (and their substitutes) would continue to receive hard copies if needed.

H. Contracts & Financial Procedure Rules

- **Contract Procedure Rules:** structural changes to the Contract Procedure Rules would greatly increase the clarity of these important provisions. A restructure more closely aligned to the actual chronology of the procurement process, with the use of chapters, will make it easier to find relevant provisions. Chapters would include:
 - 1. Introduction

- 2. Pre-procurement
- 3. The procurement process
- 4. Contract award
- 5. Post-award
- 6. General

At present it is not intended to revise thresholds or other key factors. Largely this is because a fundamental review of the CPRs will shortly be needed to comply with new legislation; this will revise thresholds, contract clauses, division of contracts into lots and include currently excluded contracts such as those for Public Health. The legislative changes will be the result of the UK Public Procurement Regulations implementing an EU directive. The Council also undertook a benchmarking exercise that demonstrated that the Council is already at the higher end of authority limits and so both myself and the Chief Finance Officer recommend Council that there is no need to amend these further.

- **Finance Procedure Rules:** these have been similarly refreshed to increase clarity. Additionally, the Section 151 Officer (Chief Finance Officer) and myself as Monitoring Officer, have agreed to add guidance on Section 38 (Highways Act 1980) Bond Agreements.

I. Structure of the Constitution

- **Index:** the online copy of the Council's Constitution is the 'main' version of the document. While this also helps electronic searching (e.g. for a section or within sections), it is perhaps sensible to create an index of common subject areas, better to help the public and members identify the range of rights, responsibilities and duties. The Monitoring Officer can arrange for this to be created if members agree.

16. A track change version of the Constitution, illustrating both the principal and the administrative changes envisaged, has been placed in the Members' Resource Centre, as a reference copy, for councillors' consideration.

Financial, staff and legal implications

17. As it is not proposed to amend the governance arrangements significantly, there would be no material financial or staffing implications.

Conclusion

18. The Governance Review has raised no significant concerns either from councillors, co-opted members or senior managers which necessitate changes to the current decision-making arrangements. Rather, the main emphasis is on enabling the arrangements to bed down, raising members' awareness and achieving a greater focus (e.g. in scrutiny) on priority areas. The Constitution Review, while necessarily reflecting the Governance Review, can also achieve a greater clarity on various procedures, assisting in improving efficiency; amendments to the Constitution are being suggested on that basis.

RECOMMENDATIONS

19. **Council is RECOMMENDED to:**
- (a) agree that no structural changes be made to the Council's current decision-making arrangements as implemented following the May 2013 elections;**
 - (b) approve the changes to the Council's Constitution outlined in Part A of Annex 1, as follows:**
 - (1) To amend the Articles of the Constitution**
 - (2) To amend the Council Procedure Rules**
 - (3) To amend the Cabinet Procedure Rules**
 - (4) To amend the Scrutiny Procedure Rules**
 - (5) To amend the Members' Planning Code of Practice**
 - (6) To delete the Petition Scheme**
 - (c) confirm agreement with the Monitoring Officer's intention, under his delegated powers, to make the administrative (tidy-up) changes to the Constitution outlined in Part B of Annex 1;**
 - (d) ask the Monitoring Officer to make any other administrative changes to the Constitution, under delegated powers, consequent on the Council's decisions arising from this report;**
 - (e) ask the Monitoring Officer to provide an index to the Constitution once all changes arising from this report have been made.**

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