

Policy Development and Review Committee	
Meeting Date	17 July 2019
Report Title	Constitutional Review: Models of Governance
Cabinet Member	Cllr Mike Baldock Deputy Leader and Cabinet Member for Planning
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Head of Service	Head of Policy, Communications and Customer Services
Lead Officer	
Recommendations	This report is for discussion purposes only

1 Purpose of Report and Executive Summary

- 1.1 This report sets out to inform a discussion of whether a constitution review should include a change to Swale’s fundamental governance model, and if so how this would need to happen. It outlines the different models of governance available to local authorities and the extent to which these could prove flexible enough to meet the objectives of the constitution review once these are agreed.

2 Background

- 2.1 The fundamental purpose of a local authority’s system of governance is to regulate the allocation and exercise of decision-making power in a way which balances the democratic mandates of all elected representatives while enabling coherent, efficient, timely, transparent and accountable decision-making. In practice, not all of these aims are perfectly mutually compatible, and different models of governance are therefore likely to privilege one subset of aims over another.

Swale’s current governance: the leader-and-cabinet model

- 2.2 Like the majority of councils, Swale currently operates under the leader-and-cabinet model, the essential features of which are set out in the Local Government Act 2000. In this model, all ‘executive’ authority – that is, broadly speaking, authority to make both day-to-day and more strategic decisions in all matters which are not expressly reserved to full council or its committees – is vested in the executive leader. This leader is elected by a simple majority on full council and can be removed at any time in the same way.
- 2.3 The executive leader is obliged to appoint a cabinet of between two and nine further members, each of whom takes on a portfolio of functions, services and responsibilities. The leader’s executive authority is then delegated down to cabinet, and in many cases to cabinet members individually, in order that it can

be efficiently exercised in the practical running of the council's operations. Cabinet members serve at the pleasure of the leader, and can be dismissed at any time. There is no requirement for cabinet to be politically balanced (i.e. for its membership to reflect the relative strength of different political groups on the council).

- 2.4 Under the leader-and-cabinet model, councils are obliged to appoint at least one scrutiny committee of non-cabinet members, whose role is to hold the cabinet to account on behalf of the full council and which has powers in law to review cabinet decisions, make recommendations to cabinet (which cabinet is obliged to respond to but not necessarily to implement), and in some cases to delay implementation of cabinet decisions until cabinet has responded to scrutiny concerns.

Alternatives to the leader-and-cabinet model

- 2.5 Prior to the Local Government Act 2000, local authorities operated a range of models all loosely based on the concept of functional committees exercising what is now known as executive authority over specified services or thematic areas (leisure, environment, housing, etc). These committees were all politically balanced in the same way that non-cabinet committees such as planning and licensing remain balanced in the leader-and-cabinet model.
- 2.6 The 2000 Act obliged most councils to switch to the leader-and-cabinet model, which was intended to streamline the conduct of council business to make it more efficient and more coherent, even at the cost of considerably disenfranchising a large proportion of members. The analogy of course is with the position of the government vis à vis that of parliament, with scrutiny playing the role of parliamentary select committees.
- 2.7 However, while there are very clear reasons for needing to separate executive from legislative functions in a national government, which needs to be able to react immediately to emerging national and international issues and where the legislative assembly is made up of 650 members, the arguments for doing so in a local authority are perhaps more finely balanced.
- 2.8 With many local councillors reacting unfavourably to the changes brought in by the 2000 Act, the Localism Act 2011 provided councils with the option of returning to a committee-based system. Since then, there have been three possible governance models for councils to choose from:
- Leader and cabinet.
 - Directly-elected mayor and cabinet.
 - Committee system.

The first of these was described above. The second is largely the same as the leader-and-cabinet model but with an even more powerful directly-elected leader known as a mayor. This model is not discussed here as there appears to be little appetite for it among Swale members. The third model is discussed below.

3 Discussion

The committee system

- 3.1 Under a committee system, decisions which are taken by cabinet members either collectively or individually in the leader-and-cabinet model are taken by politically balanced service- or function-oriented committees. In a typical district arrangement, there might be four or five such committees, with one focused on (say) environment, another on housing, etc. There is usually some form of central coordinating committee (often known as the policy and resources committee), which has a role in providing strategic oversight to the service committees. In some cases, this committee is comprised of group leaders and/or the chairs of the service committees.
- 3.2 Depending on the strength of the role allotted to a central coordinating committee, there is generally a need for service committees' terms of reference, which are set by council, to be much more detailed and explicit about what is and what is not included than would typically be the case for cabinet portfolios, in order to avoid conflict between committees on matters which could be argued to pertain to more than one committee. In the leader-and-cabinet model, of course, such issues can usually be resolved within the cabinet, or if necessary by a decision of the leader.
- 3.3 Among other issues that require careful consideration by a council moving to a committee system are the need to find mechanisms to ensure that important issues which cut across multiple service committees' remits (for example health or climate change) do not fall down the cracks between the relatively narrow focus of each committee. Of course this can also be an issue in cabinet systems, but typically less so given the generally higher degree of political cohesion between cabinet members than between service committees.
- 3.4 As with a leader-and-cabinet system, some functions are still reserved to full council under the committee system, and the list of these functions is not necessarily very different in either case. (In the committee system these are known as non-delegable versus delegable functions, as opposed to non-executive versus executive.)
- 3.5 As an example of how this would work in practice, under the committee system one would still expect to see both a planning committee as a committee of the full council making decisions on planning applications, and a service committee with responsibility for strategic planning exercising approximately the same power that the cabinet member for planning has currently.
- 3.6 One or more scrutiny committees are optional under the committee system, whereas at least one such committee is legally mandated under the leader-and-cabinet model. The focus of scrutiny is likely to be different under a committee system given that the committees are themselves committees of the whole council, and it could be that scrutiny of the council's financial and non-financial

performance would sit better either with individual committees and/or with any central coordinating committee.

- 3.7 Committee chairs can be extremely powerful under the committee system, not least because there is generally a mechanism enabling them to take urgent decisions which can be ratified retrospectively by the committee. For this reason it is important that the constitution sets out clear rules on how these chairs are appointed.
- 3.8 It is also worth reflecting briefly on the differences between the political dynamics at play in councils operating the different models. Clearly, where a single group has a majority in a leader-and-cabinet council, that group is likely to monopolise all the executive authority in the council. Groups forming coalitions in leader-and-cabinet councils in no overall control can either do so on the basis of a joint programme, if one can be agreed, or on the basis of very autonomous portfolios, so that one group provides the cabinet member for environment while another does so for housing, and those groups do more or less as they please within the portfolios they control.
- 3.9 Under the committee system, any party with an overall majority will have a corresponding majority on all the committees, so is likely to monopolise decision-making just as much as under a leader-and-cabinet model: the difference, of course, is that the power dynamics *within the group* are likely to be altered.
- 3.10 Most interesting is the case of a council in no overall control operating the committee system, because this opens the possibility of groups forming alliances with other groups in order to achieve a majority on individual committees, or indeed on individual decisions, without there necessarily being any expectation that such alliances will be of long duration or extend across functions and services to other committees.

Hybrid models

- 3.11 It is worth noting the flexibility inherent in the leader-and-cabinet model, which could provide a means of meeting the objectives of a constitutional review without the need for a formal change to the committee system. The leader's executive power can be delegated in a fairly flexible way, and there is no legal reason to prevent this including delegations to politically balanced committees.
- 3.12 The residual role of cabinet in this scenario would need to be carefully considered, but there is probably a point at which a highly devolved leader-and-cabinet model sees power apportioned within a council in a way which to all practical intents and purposes is very similar to a committee system with a strong central coordinating committee.
- 3.13 Another option which could merit further investigation would be to expand the number and/or remit of policy development and review committee(s), for example allowing them to make recommendations to cabinet on all or most decisions before they are taken. This approach has been used in Tunbridge Wells for some

time, as a means of addressing the perceived disenfranchisement of backbench members in a more traditional leader-and-cabinet arrangement.

- 3.14 It should be noted that once a council has changed from the leader-and-cabinet model to the committee system (or the other way round) it cannot change back for five years. In the case of more minor changes to the existing system, these would be susceptible to being changed back at any point in time were a future cabinet minded to do so.
- 3.15 It is also worth noting that area committees can form part of a council's governance arrangements under both the leader-and-cabinet and committee systems.

Process and timescales for moving to a committee system

- 3.16 The Localism Act specifies that in order to change from one model of governance to another a local authority must first pass a resolution to do so, and then, as soon as possible after that, make the provisions of the new arrangements available for inspection, including by publishing the features of the new system and the timetable for implementation in a local newspaper. The new constitution can then be adopted at the next annual council.
- 3.17 If the intention at Swale were to adopt the new constitution at annual council in May 2020, we would want to pass the resolution probably at some point in late 2019. There is no minimum period which has to elapse between the resolution and the annual council meeting, but it would be important to allow time to undertake meaningful public consultation.
- 3.18 However, it would also be possible to move towards a committee system in a phased way, utilising the flexibility of the leader-and-cabinet model to introduce either area committees and/or cabinet advisory committees (whether in a single phase or as separate phases) and to develop these in a way which would render cabinet increasingly redundant before moving in a final stage to scrap cabinet altogether.

4 Alternative Options

- 4.1 This report makes no recommendation to agree a specific proposal, so there are no alternative options at this stage.

5 Consultation Undertaken or Proposed

- 5.1 None undertaken to date.

6 Implications

- 6.1 Cross-cutting implications have not been fully analysed at this stage because the report is for discussion only and does not contain any recommendations for decision.

6.2 However, the most significant implication to note at this stage is the financial one. The Council has a constrained revenue budget position and is highly dependent upon funding streams whose future is unclear. Any constitutional changes which resulted in higher direct staff costs and/or increased demands on senior management resources would need to be offset by ceasing other activities.

7 Appendices

7.1 None

8 Background Papers

8.1 None