

Council	
Meeting Date	6 October 2021
Report Title	Formal change to the council's governance model
Cabinet Member	Cllr Mike Baldock – Deputy Leader
SMT Lead	Larissa Reed – Chief Executive
Head of Service	
Lead Officer	
Key Decision	Not applicable
Classification	Open
Recommendations	<p>Council is invited to:</p> <ol style="list-style-type: none"> 1. Agree that the council's current leader-and-cabinet governance arrangements will be replaced with a committee system, to come into effect at the annual council meeting in May 2022. 2. Request the cross-party constitution review working group to continue to develop proposals with respect to the detailed working of the new system, including the number and remit of committees, for endorsement by council between now and May 2022.

1 Purpose of Report and Executive Summary

- 1.1 This report summarises the work which has been undertaken to date by the cross-party member working group on constitutional review, and invites council to resolve to move to the committee system from May 2022.
- 1.2 The key drivers for this proposal can be found in the council's fourth corporate plan priority, aimed at renewing local democracy and making the council fit for the future. The cross-party working group is of the view that the committee system could increase all members' opportunities to participate in council decision-making without any undue adverse effects on the speed or quality of that decision-making.

2 Background

Introduction

- 2.1 Objective 4.1 of the council's corporate plan sets out members' ambitions to review the constitution to diffuse decision-making power more widely among councillors and improve the transparency, responsiveness and public accountability of that decision-making.

- 2.2 To date, this commitment has resulted in the establishment of the four area committees, which are developing into a key mechanism for enabling two-way engagement with the public and parish councils, and for empowering ward councillors to take action on matters of concern to their residents. More recently, Swale Borough Council has seen the establishment of cabinet advisory committees, intended to provide a further opportunity for backbench members to play a more active role in influencing the policy decisions taken by cabinet.
- 2.3 While both of these initiatives have required changes to the council's constitution, neither of them has involved a fundamental change to Swale's leader-and-cabinet form of governance. This report invites members to take what is arguably the next logical step along this road and make the more fundamental change to a committee system of governance.
- 2.4 One of the key drivers for this proposal is to create greater inclusivity in decision-making, providing all members with more influence over decisions which are currently taken by the cabinet. It is also clear that members want effective, evidenced-based decisions, but do not want slow or drawn-out decision-making.
- 2.5 In view of the legal implications, this is a more significant decision than has been necessary to implement the previous steps. These implications are set out in subsequent sections of this report.

Outline of the committee system

- 2.6 Under Swale's current leader-and-cabinet model, council is responsible for some decisions and the executive (the collective term for the leader, the cabinet and cabinet members) is responsible for others. While the executive is accountable to council, it does not act under delegated authority from it, and it is not the case that council could choose to take the decisions itself which are in practice taken by the executive.
- 2.7 In a committee system, there is no executive. There is still a leader, elected by council in the same way as in the leader-and-cabinet model, but s/he does not have executive powers. There is no cabinet and no cabinet members, and thus little or no decision-making by individual councillors.
- 2.8 Instead, all decisions are in principle taken by council, but in practice the decisions which in Swale's current model are taken by the executive are in a committee system taken by politically-balanced service committees operating under delegated authority from council. These service committees are generally thematically based, with each committee being responsible for a range of issues and/or a range of council services.
- 2.9 In most models there is one committee, often known as the policy and resources committee, whose membership usually includes senior councillors from each party and often the financial lead councillors for each party. This committee differs from a cabinet primarily in that it is politically balanced, but also in that it is only

the 'first among equals' in relation to the other committees, which typically retain broad decision-making autonomy.

- 2.10 It is important to bear in mind that the changes being considered only affect the way that decisions currently taken by cabinet or cabinet members are made. Regulatory committees such as planning, licensing, audit and standards, which are all committees of the council rather than of the executive, would be unaffected. However under these changes, we are proposing to amalgamate the two licencing committees currently operating. The area committees would continue as currently, as would the joint transportation board.
- 2.11 The role of full council would in practice also remain unchanged. Council is currently responsible for agreeing the overarching policy and budget frameworks which the executive proposes to it and within which the executive then has to operate, and this would be the same under a committee system. The framework would be proposed to council by one or more service committees, and once it was adopted, all service committees would take their decisions in accordance with it.
- 2.12 The scrutiny committee is an essential component of the leader-and-cabinet model, intended to provide council at large with a mechanism for holding the executive to account for its decision-making. Whilst a stand-alone scrutiny committee is a feature of our current system, the scrutiny of decisions made by service committees can operate in a committee system in broadly three ways:
- Scrutiny is usually embedded into the work of individual committees, with each committee responsible for monitoring budgets and performance relating to its functions. In addition, members of the committee could highlight areas of concern and request reports on issues relating to their functions.
 - A stand-alone scrutiny committee could have the responsibility for examining the work of other committees and undertaking the council's statutory scrutiny requirements. This is unusual as committee decisions are made by a politically balanced group.
 - Scrutiny could be conducted by full council whereby a council-wide debate on an aspect of the work or report of a particular committee could take place. (This option could present legal issues in terms of council making decisions on issues without the necessary information, and is therefore probably not suitable as a primary scrutiny mechanism.)
- 2.13 Most councils that have adopted a committee system since 2012 have chosen to embed scrutiny within the work of each committee. District councils have just one statutory scrutiny requirement under a committee system, which is to scrutinise crime and disorder issues at least once each year. This could be carried out either by a service committee or by the audit committee. The latter committee could also take on part of the current scrutiny committee's role in scrutinising council performance.

- 2.14 A further function of the current scrutiny committee which would need to be re-imagined in a committee system is that of the review of controversial decisions, currently achieved through the call-in mechanism. As with scrutiny in general, different mechanisms are used by councils operating under the committee system, with decision review by one particular service committee (generally policy and resources) or by a dedicated decision review committee being the most common.
- 2.15 As with the call-in mechanism, the council would need to develop criteria for decisions to be eligible for review, in order to ensure the system was not used unreasonably to delay the implementation of decisions taken fairly and lawfully by service committees.
- 2.16 Any governance system requires a distinction to be made between strategic and operational decision-making, and needs to ensure that members make the strategic decisions and set policies within which officers can undertake the day-to-day operational work. The scheme of delegation to officers would need to be reviewed in the event of a change to the fundamental governance model, but the principles would remain the same. As with Swale's current model, any committee system the council adopted would need to include provisions for making decisions as a matter of urgency when committees were unable to meet.

Legal background

- 2.17 Prior to the Localism Act 2011, the leader-and-cabinet model was essentially the only permissible type of governance for district councils with populations above 85,000. This requirement had been brought in by the Local Government Act 2000 in an attempt to streamline local authority decision-making by separating executive from non-executive functions and introducing scrutiny as a mechanism for holding the executive to account.
- 2.18 The 2011 Act enabled councils of any size to return to the committee system, but this possibility was not initially popular with more than a handful of councils. More recently – perhaps as a result of what seems to be greater instability and contestability in council election results – more councils have made the move to the committee system, including a small number of county councils.
- 2.19 In most cases the move to a committee system is triggered by a resolution setting out the main features of the proposed arrangements, which needs to be carried by a simple majority at full council. This resolution is contained in the recommendations in this report. The change to the committee system then occurs at either the next annual council meeting or a subsequent annual council meeting specified in the resolution.
- 2.20 Once the resolution to change the fundamental governance model has been carried, the council would be unable to make a resolution to return to the previous system for a period of five years, unless a local referendum was held confirming a public will to do so sooner. However, as with Swale's recent experience of constitutional change within the leader-and-cabinet model (e.g. area committees

and cabinet advisory committees), constitutional changes are also possible within the committee system. These could include, for example, amendments to the number and remits of service committees.

Constitution working group

- 2.21 The proposals in this report have been developed by a cross-party constitution working group, which has been meeting regularly with the chief executive and monitoring officer since the summer. The group's members are Cllrs Baldock, Bonney, Darby, Ingleton, Martin, Simmons, Truelove and Valentine.
- 2.22 The working group has given in-depth consideration to the possible benefits and the likely issues with moving to a committee system, and has had the advantage of being able to hear the experiences of member colleagues in Brighton (where a committee system is working well) and Canterbury (where members are now looking to move back from a committee system to a leader-and-cabinet model).
- 2.23 By way of guiding the proposals, the working group agreed the following three criteria according to which a potential move to the committee system should be evaluated:
- ***Efficiency:*** Any change to the democratic process cannot slow down the business of the council or decision-making.
 - ***Effectiveness:*** Any change to the governance system must improve the effectiveness of the council and of decision making.
 - ***Engagement:*** Any change must enhance the opportunity for councillors and members of the public to engage in the council's democratic processes in appropriate ways.
- 2.24 The proposals outlined in the following section have been developed by the working group with these three considerations very much in mind.

3 Proposals

- 3.1 In considering how these three considerations could best be accommodated within a committee system, the constitution working group has debated issues including how many committees will be appropriate, the number of members on each committee, the frequency of meetings, and the mechanism for ensuring that individual committees are accountable to council for their decision-making.
- 3.2 It is not strictly necessary at this stage for all of these points to be definitively decided: it is sufficient for council to make the decision to move to a committee system and to determine the annual council meeting at which that decision should come into effect. Questions of the number, size and remit of committees can then be determined later – and, of course, adjusted through normal constitutional review mechanisms once the system is in place. The only decision which cannot be undone through those normal review mechanisms is the fundamental one to replace the leader-and-cabinet model with the committee system.

- 3.3 Notwithstanding this level of flexibility within the system, it will clearly be helpful for council to have some sense of the likely initial structure of the system in the event that council decides to implement it. The working group has coalesced around an initial arrangement involving four politically-balanced service committees, each with 12 - 15 members, including a 'policy and resources' committee charged inter alia with the coordination of the work of the other committees. It is expected that each committee would meet at intervals of approximately six to twelve weeks.
- 3.4 The working group has considered an analysis of the number of decisions made by cabinet over the last two years, and the portfolios under which they fell. This analysis has informed the working group's thinking on the optimal number of committees and will be used over the coming months to inform the work on the remit of each committee.
- 3.5 Following the decision by council to move to a committee system, there is a legal requirement to ensure that the decision is publicised. In practice, Swale would want to ensure that there is a high level of public consultation on the detailed arrangements. Consultation methods will include an online survey and public meetings, plus the offer of meetings with parish councils and representative bodies such as KALC. It is important that the governance change has a positive effect on residents' ability to engage with and influence the work of the council, and the consultation will be designed to elicit views on how this can best be achieved.
- 3.6 The decision to move to a committee system will require a wholesale re-drafting of the constitution, much of which – and not only the section dealing with responsibility for functions – is written based on assumption of individual decision-making by cabinet members. It is possible that this work could be split to enable the committee system to be introduced in May 2022 and the rest of the constitution to be brought into line with that system over the course of the following year. The council will need to contract with a specialist corporate governance lawyer to undertake this work.
- 3.7 Council is now invited to:
- **Agree** that the council's current leader-and-cabinet governance arrangements will be replaced with a committee system, to come into effect at the annual council meeting on in May 2022.
 - **Request** the cross-party constitution review working group to continue to develop proposals with respect to the detailed working of the new system, including the number and remit of committees, for endorsement by council between now and May 2022.

4 Alternative Options

- 4.1 The council is under no obligation to move to the committee system, and could decide to remain with the leader-and-cabinet model. The failure of a motion to move to a committee system at a council meeting does not legally preclude a further such motion being moved at a future council meeting. If the resolution is carried, then no resolution to move back to a leader-and-cabinet model would be permissible within five years of the decision.
- 4.2 Council could determine that it does wish to move to a committee system, but that the system should not implemented in May 2022. The implementation date has to be that of an annual council meeting, but the resolution can specify a future such meeting. The date of implementation does not affect the five-year period during which a decision to change governance models again cannot be taken: the five-year period for this purpose always begins on the date of the original decision, not its implementation. An alternative could be to agree the change with an adoption date of May 2023.

5 Consultation Undertaken or Proposed

- 5.1 Consultation to date has been largely internal, and has included the cross-party working group as well as an all-member briefing and invitations to the chief executive to attend a number of political group meetings. The external consultation which would need to take place in the event that the resolution is carried at council is described in paragraph 3.5 above.

6 Implications

Issue	Implications
Corporate Plan	A decision to move to a committee system could contribute to the council's fourth corporate plan priority to 'Renew local democracy and make the council fit for the future'.
Financial, Resource and Property	No implications identified at this stage. Financial, resource and property matters would fall under the remit of one or more committees in the committee system in the same way that they currently fall under a number of cabinet portfolios. The policy and resources committee would have the duty to propose a budget to full council in the same way that cabinet currently does, and once adopted this would be the budget within which all service committees would have to operate.
Legal, Statutory and Procurement	The legal implications of the decision are set out within the body of the report. The most significant point for members to be aware of is the stipulation set out in Schedule 2 of the Localism Act 2011 that once a decision to move to the committee system is taken, a decision to move back to the leader-and-cabinet model cannot be taken within five years of the date of the original decision, unless a local referendum demonstrates public support to move back sooner.

Crime and Disorder	No implications identified at this stage. Crime and disorder matters would fall under the remit of one or more committees in the committee system in the same way that they currently fall under a cabinet portfolio.
Environment and Climate/Ecological Emergency	No implications identified at this stage. Environmental, climate and ecological matters would fall under the remit of one or more committees in the committee system in the same way that they currently fall under a number of cabinet portfolios.
Health and Wellbeing	No implications identified at this stage. Health and wellbeing matters would fall under the remit of one or more committees in the committee system in the same way that they currently fall under a cabinet portfolio.
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified at this stage. Safeguarding matters would fall under the remit of one or more committees in the committee system in the same way that they currently fall under a cabinet portfolio.
Risk Management and Health and Safety	No implications identified at this stage.
Equality and Diversity	It is important that the council consults appropriately on this proposal, and this consultation will need to be designed so as to enable all sections of the community to respond.
Privacy and Data Protection	No implications identified at this stage.

7 Appendices

7.1 There are no appendices.

8 Background Papers

8.1 There are no background papers.