

Review of Governance

1. Introduction

- 1.1. This report has been put together by the Corporate Governance Working Group to outline the options for change for the Council. The review has been Member-led, cross party and taken a variety of approaches. The report sets out 4 options for the Council going forward. The Council is asked to consider these options and agree a way forward, this will be the first step in the process of adopting a new governance model if that is the preferred option for the Council.
- 1.2. If new model approved at full council the process for change will be as follows (option i or iv):
 - Agree model of governance
 - Officer and Member (cross party) Council Working group set up to develop the model in detail.
 - Publicise new model including in at least one newspaper
 - Constitution Amended
 - Model approved prior to or at Annual Council May 2013

2. Mandate for Review

- 2.1. The review was commissioned following a series of events:

A cross party Council motion was passed on 15 December 2010 that "A report be submitted at the appropriate time outlining the advantages and disadvantages of returning to the Committee system and the procedure necessary to achieve this." Following this motion a review of overview and scrutiny was carried out in 2011 by the acting overview and scrutiny manager, culminating in a report to the Scrutiny Coordinating Committee from the Head of Change and Scrutiny. This review resulted in a resolution that a more holistic review of governance and scrutiny be undertaken. The Corporate Governance working group was set up to fulfil the council motion, identify options for governance and review scrutiny and propose the necessary changes.

3. Context

3.1. The Local Government Act 2000 was introduced as part of the Government's modernisation of local government. The Act changed the way councils were governed from a committee system to governance by an Executive held to account by an effective overview and scrutiny function. Maidstone Borough Council adopted a Leader and Cabinet system, and Overview and Scrutiny Committees, in May 2001. Maidstone historically has been held up as an example of best practice in scrutiny nationally and has developed initiatives which have been emulated at other councils. In 2009 the overview and scrutiny system was reviewed with the hope of renewing Members' interest and refreshing scrutiny to make sure it was fit for purpose. The 2009 review of the scrutiny function by Members identified that scrutiny was particularly successful when Councillors were engaged and driving it forward. At the time of this review, concern was expressed that Members were not engaged with scrutiny or using it to its full potential. As a consequence of the review a number of changes were made including to the terms of reference of the committees. However since this review further concerns regarding member engagement in overview and scrutiny and consequently its effectiveness have been raised.

3.2. *The Localism Act*

3.2.1. The Act amends the Local Government Act 2000 to allow the Council to adopt one of the following forms of governance:

- (a) Executive arrangements;
- (b) A Committee System; or
- (c) Prescribed arrangements (to be set out in regulations by Secretary of State);

Under executive arrangements strategic decision making powers lie with a small number of elected members; (Cabinet and cabinet members) with the executive making the majority of the member decisions. Decisions are also delegated to officers as set out in the constitution. Overview and scrutiny should act as a check and balance on the Executive; the committees are responsible for reviewing decisions and developing policy.

3.2.2. A Committee System involves groups of councillors from all parties/groups sitting as committees to make decisions as delegated by Council. A number of the committees present in the Council's current committee structure would remain in the Committee System including Planning and Licensing Committees.

3.2.3. The Localism Act also allows local authorities to make alternative proposals to the Secretary of State as long as the proposed governance arrangements meet the following conditions:

- That they would be an improvement on the arrangements already in place at the authority;
- That they ensure the decisions taken by the authority are done in an efficient, transparent and accountable way; and
- That the arrangements would be appropriate for all local authorities, or particular type of local authority, to consider.

3.3 *Process for Changing the Governance Arrangements*

3.3.1. The Localism Act specifies in order to change from a Cabinet System to a Committee System, local authorities must:-

- Pass a resolution to change their governance arrangements;
- As soon as practicable after passing the resolution, make the provisions of the new arrangements available for inspection by the public; and
- Publish in one or more newspapers circulating in the area a notice which describes the features of the new system and timescales for implementation

3.3.2. Having passed a resolution and complied with the publicity requirements authorities are required to cease operating their old form of governance arrangements and start operating their new arrangements. This must take place at the first annual meeting or a later annual meeting as specified in that resolution.

3.3.3. It should be noted that any change to a new scheme would be a 5 year commitment to that model.

4. The Approach

4.1. A cross party working group made up of seven members was set up to carry out the review of governance. The group was supported by the Head of Change and Scrutiny, Angela Woodhouse. In addition a member of the Audit department, Russell Happleston was involved to provide independent project assurance. A variety of methods were used during the review including desktop research, surveys, workshops and interviews.

- 4.2. The desktop research initially identified 19 Councils who had indicated they may change or who had changed as a result of the Localism Act. (See **Appendix A**) The Councils covered a broad spectrum of political control: 2 Liberal Democrat, 15 Conservative, 1 Green and 1 Labour led authority. The work was split amongst group members to carry out further research to identify suitable case studies. Five were selected for detailed case studies; these are attached at **Appendix B** (Case Studies and Structures). Of the five examined in more detail; 2 were Conservative, 2 Liberal Democrat and 1 Green Party control. Members carried out their own research to identify the catalysts for change, the new structure adopted and any proposed or noted advantages and disadvantages.
- 4.3. Interviews were carried out by a core group of at least three members of the working group. Interviewees included the Corporate Leadership Team, Cabinet, the Head of Democratic Services, All group Leaders and Overview and Scrutiny Chairman, as well as new Members, experienced Members and past Councillors. The group also conducted a survey to which we had 16 responses and conducted an all Member workshop to look at options for Maidstone attended by 15 Councillors. The group has approached this review in an open and objective manner making every effort to involve as many members as possible.

5. Findings

5.1. Case Studies

5.1.1. Five Councils were examined in detail; these were chosen as they were different types of authorities, with different political control, with different systems to give us as diverse a picture as possible:

- London Borough of Sutton
- Nottinghamshire County Council
- Ribble Valley
- Brighton and Hove
- Kingston Upon Thames

5.1.2. When looking across the five Councils the key catalyst for change was the Localism Act as well as a desire to improve councillor participation and involvement in decision making. In terms of structures adopted two opted for a modern committee system, one a streamlined committee structure and two went for Hybrid systems to suit their respective Councils. Full details on the case studies and structure models are attached at **Appendix B** (Case Studies and Structure Charts) along with a summary of the findings. In terms of the process for reviewing governance all was

carried out via working groups involving members. When looking at the potential advantages of the proposals; greater transparency, improving integrity and increased participation and involvement from Councillors was cited. The disadvantages where evidenced were: increased meetings, increased support required and potential increases in costs. The other considerations identified were the need for continuous member development updating the constitution, time to prepare and implement the new system and consultation with the public.

5.1.3. The governance models identified in the case studies were used to inform the member workshop and made available to those who attended to encourage new ways of looking at the governance arrangements for Maidstone.

5.2. Interviews

5.2.1 A wide range of interviews were undertaken by a small section of the working group. In total 20 people were interviewed and two Councillors submitted written evidence. Notes of all the interviews are attached at **Appendix C** (Interview Notes) along with a summary of key points. The review group was keen to hear a range of evidence so both Cabinet, Scrutiny, Experienced and New Councillors were interviewed as well as senior officers.

5.2.2 Cabinet Members gave clear but contrasting views on the effectiveness of scrutiny, generally stating their disappointment that it was not as effective as it could and should be. They also identified that more use could be made of pre-decision scrutiny and a willingness to do so and that scrutiny was not providing an effective challenge. One of the main advantages of the present system was identified as fast, effective decision making. Those with experience of the Committee System identified that it could be slower. Member development, particularly in relation to new members and the effectiveness of the current system was raised as a key issue.

5.2.3 The wider membership gave mixed opinions in relation to how the present system could be changed from a new system to improving what is already in place. It became apparent during the interviews that Members were not aware of all the tools available to them under the present system to influence decision making. New Councillor development was raised and in particular the induction process. It was clear that Member involvement in decision making was an issue as well as the impact and effectiveness of overview and scrutiny. The two former Councillors who were interviewed were both able to give examples of where scrutiny had been effective and the importance of members engaging and leading the process.

5.2.4 Officers believed that the present system worked and the issues were not necessarily about system but culture and how Members were using it. Officers also considered that pre-decision scrutiny was potentially the most effective way for members to influence decisions in the present system. They identified that there could be improved collaboration between scrutiny and cabinet and that scrutiny could be reduced to one committee with working groups to improve clarity and purpose.

5.3. Members Survey

5.3.1 An online survey was sent to all Councillors for completion; 16 Members responded to the survey. The survey asked Members what they liked and disliked about the present system, how it could be improved and for their opinions on different models. The responses are attached at **Appendix D** (Member Survey Results).

5.3.2 On the current system Members:

Liked:

- Speed of decision making
- Ability to be decisive
- Allows clear strategic direction
- Efficiency of decision making

Disliked:

- Lack of transparency
- Not enough members involved in decision making
- Undemocratic
- Disempowerment of ward councillors and their residents

5.3.3. How could it be improved:

- Greater pre-decision involvement
- More input from Members
- More use of the scrutiny system
- Better forward planning of decision making
- More consultation

5.3.4 In terms of the different governance models presented they each had mixed reactions. Hybrid 1, service based Committees with 1 Overview and Scrutiny Committee was seen by some to allow more members to be involved and build expertise and by others to be overly cumbersome and to slow down decision making. It was also questioned whether there would be a need to have overview and scrutiny in the system.

5.3.5 In regard to a hybrid model similar to Kent County Council with Cabinet Advisory Committees views ranged from this is a “fudge that brings the worst of both worlds” to “this is the preferable option”. Finally when asked about returning to a committee model concern was raised by some over the speed of decision making, that we couldn’t go back to where we were because “it was cumbersome and lacked direction” with only one indicating this as a preferred option. It was identified during the course of the review that returning to the old Committee System in its entirety would not be possible due to the changing legal framework of local government.

5.4 Member workshop

5.4.1 A Councillor workshop was held with 15 Members, 5 of whom came from the working group. This was greatly disappointing and was felt to be an indicator of some of the issues with Member engagement at present. The workshop reviewed the present system, how it could be improved and possible options for the future. Various views were expressed at the workshop with two models coming forward as appropriate for Maidstone. These models informed the member survey and represent option 2 and 4 in the options highlighted below. Topics discussed included whether 55 Councillors were too many, the presentation of information to Members, Member development, the role of Scrutiny Chairmen, the importance of overview and the speed of decision making. Notes of the workshop are attached at **Appendix E** (Notes of the Member Workshop).

5.5 Conclusions

5.5.1 It was clear from all the sources of evidence that many Members feel disengaged and uninvolved with the present system. Coming through all the evidence was a need for Members continued professional development. Overview and scrutiny in its present form was criticised as it was evident that it could be more effective and put to better use by Members. Cabinet were seen by some to be autocratic and there was a lack of member involvement prior to decisions being made.

6. Going Forward – Options

6.1. Outlined below are descriptions of the four options for the council with the advantages and disadvantages of each based on the working groups findings during the course of the review.

6.1.1 Option 1 – No Change

This would mean the present system of governance remains as is and the identified issues would not be addressed.

| Advantages | Disadvantages |
|---|---|
| Decisions are made quickly | Lack of Member involvement |
| Clarity regarding who made the decision | Not clear as to how decisions are reached |
| Clear accountability | Members cannot build skills |

The Corporate Services Overview and Scrutiny Committee requested that the tools available to members be highlighted in this report. Member tools currently available to get involved under the present system:

- Councillor Call for Action
- Placing items on Scrutiny Agendas
- Scrutiny Work Programme setting (annual and each scrutiny meeting)
- Requesting that Officers and Members attend scrutiny meetings
- Calling external witnesses to attend scrutiny meetings
- Call-in of Cabinet and Cabinet Member Decisions
- Minority Reports at scrutiny
- Attending as a visiting member at Cabinet and Scrutiny Committees
- Volunteering for a scrutiny working group
- Asking questions at full Council of the Cabinet and Scrutiny Chairmen
- Refer ward matters to Planning Committee (call-in)

- Proposing a motion at full Council

6.1.2. Option 2, A Committee and Scrutiny Hybrid System

What will this look like

A model similar to Sutton's see Appendix B, there will be service based committees making decisions similar to the old Committee system plus a scrutiny committee. There will be a 'policy and resources' style committee to set the strategic direction of the council and take key corporate decisions such as setting the budget. The Member workshop identified that this committee's membership should consist of:

- Leader of Council
- Deputy Leader
- Leader of Opposition
- Deputy Leader of Opposition
- Leader of any other group
- Other Members to make it politically balanced

| Advantages | Disadvantages |
|--|-------------------------------|
| Wider Member buy in and involvement in the decision making process | Decision making is slower |
| Building up of expertise | Blurred accountability |
| Greater Member satisfaction | Some members not contributing |

If this option was approved work would be required to flesh out the model and identify committee remits and roles.

6.1.3. Option 3, Retain Cabinet System with Enhanced Scrutiny

What will this look like?

The working group identified during the course of the review that the present system could be improved through greater use of the tools as indicated in para 7.1.1., available to members and more pre-decision scrutiny. This option would require a re-balancing of scrutiny and cabinet to ensure greater involvement in decisions at a much earlier stage. It will also require the present terms of reference for committees to be re-visited and more membership ownership and leadership than at present.

| Advantages | Disadvantages |
|--|---------------------------------|
| Increased member involvement through more use of pre-decision scrutiny | May not be successful |
| Less change management involved | Members could still disengage |
| Collective responsibility for decisions | Could be seen as a rubber stamp |

6.1.4. Option 4, Retain Cabinet System and Engage Advisory Committees/Boards

What do we mean?

In essence this would be a similar model to that adopted by Kent County Council. There would be a reduced scrutiny function with pre-decision member involvement taking place through Cabinet Advisory Committees or Boards, This would mean more committees like the Strategic Housing Advisory Board and the Spatial Policy and Plans Advisory Group.

| Advantages | Disadvantages |
|---|--|
| More member involvement | Could become a rubber stamp for the administration |
| Wider debate and challenge in pre-decisions | Risk that distinction between the administration and the opposition will be lost |
| Collective responsibility for decisions | Too many cooks may spoil the broth |

7. Cost of Change

- 7.1. The starting point for this research was not what the cost would be, but what would be the best governance model for this borough, however finances are an issue so any system that is chosen cannot be expensive and has to be with manageable costs within present resources. From our research we have found that where there has been change some have cost more, some less and some cost neutral, however in no case has there been vast resource implications. **See Appendix B** (Case Studies and Structure Charts)

8. Recommendations

- a) Council evaluate the four governance models presented and agree which option to take forward:
- i. No Change
 - ii. Hybrid System (Committee System and Scrutiny)
 - iii. Retain Cabinet System with enhanced Scrutiny
 - iv. Retain Cabinet System and Engage Advisory Committees/Boards
- b) If one of the options ii through to iv are selected a politically balanced council working group be appointed by the three group leaders to carry forward and implement the option selected.
- c) Council appoint a Member working group to investigate development needs for Members and how this should be approached by the Council.