

CONSTITUTION AND ETHICS COMMITTEE	AGENDA ITEM No. 4
9 MARCH 2022	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Fitzgerald, Leader of the Council	
Contact Officer(s):	Fiona McMillan, Director of Law and Governance and Monitoring Officer	Tel. 452409

PETERBOROUGH CITY COUNCIL GOVERNANCE REVIEW
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RECOMMENDATIONS	
FROM: Fiona McMillan, Director of Law and Governance and Monitoring Officer	Deadline date: N/A
<p>It is recommended that the Constitution and Ethics Committee:</p> <ol style="list-style-type: none"> 1. Discusses the options set out at paragraph 4.6 for taking forward a review of the Council's governance arrangements, as outlined in the Council's Improvement Plan agreed by Full Council in December 2021. 2. Agrees which option is preferred. 3. If Option 2 is preferred, to ask officers to bring a report back to the next committee outlining proposals for revisiting the previous review findings, including the option of setting up a new member working group to carry out a review of the previous work and proposals and bring and updated proposal back to the Committee for consideration before recommending to Full Council. 4. If Option 3 is preferred, to ask officers to bring a report back to the Committee with further details and draft terms of reference in order to inform a recommendation to Full Council to commence a full governance review. This report should be based on guidance from the LGA and the Centre for Governance and Scrutiny and outline an indication of the likely costs of such a review. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to the Constitution and Ethics Committee following the recommendation in the Council's Improvement Plan to carry out a review of the Council's governance arrangements.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to outline to the Constitution and Ethics Committee the timelines and possible governance arrangements that are available to the Council. The report will allow any initial feedback from the committee to go forward.

2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1

Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution (including the codes and protocols) subject to the receipt and consideration of a

report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	
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4. **BACKGROUND AND KEY ISSUES**

- 4.1 At Full Council on 16 December 2021 an Improvement Plan was agreed by Council. This included a commitment to “review existing governance structures to see if improvement can be made”. This work should commence before the end of March 2022.

The Committee may wish to consider if any review of governance structures should consider not just existing structures or models but also other aspects of governance, such as the best mechanism for delivering the council’s priorities, decision making processes, culture and risk management.

- 4.2 When reviewing governance in this context it refers to how the Council makes decisions. The decision-making framework is set out in legislation and the Council must make sure that its decision-making framework is legally compliant.

However, the Centre for Governance and Scrutiny (CfGS) emphasise that governance operates differently in every council and “what is most important is culture – the behaviours, values and attitudes that govern how individuals work together”, with officers and members needing to work together to consider their options and decide on the right approach. This is because: “Changing structural models in the hope that people will start to behave differently won’t work. If the plan is to bring about wider cultural change, with a change in structure being part of the way to deliver that change, then it may be worthwhile. But structural change, on its own, won’t do this.”

Its guidance also states: “Having more people involved in the legal act of decision-making does not automatically make a system more democratic. This is because the important thing is for members to be able to influence the content of decisions. This will often mean involvement in policy development well before an issue comes for decision, and robust review of the implementation of that decision to check it has achieved its objectives”.

- 4.3 There are different types of governance arrangements that local authorities can follow which include:

Leader and Cabinet model

This is the current governance model adopted by Peterborough City Council (PCC). In some councils, individual members of the cabinet have decision-making powers; in others, decisions have to be made by the whole cabinet. Cabinet is led by a leader, who is elected by full council for a term determined by the council itself or on a four yearly basis (and will usually be the leader of the largest party on the council). These councils must have at least one overview and scrutiny committee.

It is possible, under this system to involve a wider range of members in decision-making by way of a “pre-scrutiny” system or by way of working groups that support cabinet members.

Mayoral system

This involves a directly-elected executive mayor with wide decision-making powers. The mayor appoints a cabinet made up of other councillors, who may also have decision-making powers. There must be at least one overview and scrutiny committee.

Committee system model

In this model decision-making lies primarily in committees, which are made up of a mix of councillors from all political parties. Councils operating a committee system may have one or more overview and scrutiny committees but are not required to. Under a committee system, there is no scope for individual councillors being given responsibility for decision-making – decisions by councillors need to be made collectively through a committee or sub-committee.

Hybrid Model

A hybrid model is one that combines the features of more than one governance model. For example, some councils operate under a leader/cabinet model where scrutiny committees carry out detailed debate and discussion on forthcoming Cabinet decisions, and where Cabinet essentially rubber stamps what they decide. Others operate under a committee system which operate “de facto” cabinets made up of committee chairs. Such structures are often variation of a council’s existing model and are therefore usually seen legally as not requiring a formal change under the Act.

Customised approach

Councils also have the option of suggesting an approach of their own to the Secretary of State. No detailed criteria have been set out for how the Secretary of State will come to a decision about whether or not to approve any option suggested under this part of the Act.

- 4.4 There are advantages and disadvantages with all the models suggested above. In 2015/16 the Council undertook to review its governance arrangements and a working group was set up to carry out this review. Proposals outlined below were presented to Full Council on 27 January 2016 and agreed to be presented to Annual Council on 23 May. However, the proposals were not agreed at that meeting and the current decision-making processes remained in place. The proposals were as follows:

(1) That in accordance with paragraph 9KC of Schedule 2 of the Localism Act 2011,

(a) the Council resolves to make changes to its constitutional arrangements to a hybrid model of executive decision making with a greater involvement of pre-scrutiny recommendations as set out in the report of the Design and Implementation Working Group ([Appendix 1](#)) to take effect from the Annual Meeting of the Council in May 2016.

(b) That copies of the Design and Implementation Working Group’s report setting out the provisions of the arrangements should be made available at the Town Hall, and details of the proposals be published in one or more newspapers circulating in the area.

(2) That Council approves the following changes to the Constitution to take effect from the Annual meeting of the Council in May 2016:

- (a) Overview and Scrutiny Article 7 (Part 2:Section 7)*
- (b) Overview and Scrutiny Functions (Part 3:Section 4)*
- (c) Scrutiny Committee Procedure Rules (Part 4: Section 8)*

(3) That the Council notes that the proposed changes to the Cabinet Procedure Rules will be reported to a future meeting of Cabinet for approval and Council for adoption.

(4) That the following further consequential changes to the Constitution will be brought to the Council meeting in March:

- (a) Cabinet Procedure Rules (Part 4: Section 7)*
- (b) Budget & Policy Framework Procedure Rules (Part4: Section 6)*

(5) That a review should be undertaken prior to the Annual Meeting in May 2017 to ensure the proposed scrutiny structure is effective.

4.5 Some of the high-level principles and options recommended by the Design and Implementation Group are highlighted below. There is further, more detailed, commentary in the report presented to Council in 2016, which is included as an appendix to this report:

Principles:

(a) An efficient, effective and timely decision-making structure, which is open, transparent, accountable, and inclusive.

(b) A system where:

i) The executive would value constructive and sensible input from Scrutiny Committees to improve decisions taken.

ii) Non-executive members feel that they are involved and can influence executive decisions before they are made and there is a mechanism to identify which decisions they wish to influence.

iii) Scrutiny acts as a “critical friend”.

iv) Scrutiny Committee Chairmen and Cabinet Members work in partnership.

(c) Scrutiny Committees should make recommendations to Cabinet/Cabinet Members having regard to officer recommendations. If the Scrutiny Committee did not agree with the officer recommendations, they provide reasons.

(d) Cabinet should take decisions on the advice of scrutiny. The executive would be expected to agree with scrutiny’s recommendations, but they should still be able to take an alternative decision. In such circumstances there would have to be strong reasons for doing so and the relevant Scrutiny Committee would be informed of those reasons.

(e) There would need to be a process to deal with urgent decisions.

Executive decisions:

With regards to Executive decisions, the following ideas were recommended:

(a) The relevant Chairman of a Scrutiny Committee in consultation with a Cabinet Member should decide which decisions should be subject to pre-scrutiny at a meeting at which Officers can provide advice and guidance.

(b) All planned executive decisions should be included in the forward plan for 28 days, where possible.

Cabinet Member Decisions, Minority Reporting, and other safeguards

(a) Cabinet Member Decisions (CMDN): The Working Group considered that CMDNs were beneficial to ensure efficient decisions making. However, they would like to see certain safeguards. If the Cabinet Member were inclined to take a decision that went against the recommendation of the Scrutiny Committee, then the CMDN should automatically be referred to Cabinet and be taken in the public arena.

(b) Cabinet Decisions: It was recognised that reports from Officers were based on professional judgement. If the Scrutiny Committee did not agree with officer recommendations, then they needed to give reasons for that decision. If Cabinet did not agree with Scrutiny Committee recommendations, then Members of the Council had the ability to call in decisions under the existing call-in arrangements.

(c) **Minority Reports:** Where a Scrutiny Committee makes recommendations which other members do not agree, opposing members on the committee should have an opportunity to submit a minority report to Cabinet. The Working Group recommended that the minority report including the alternative recommendations would be submitted to Cabinet at the same time as they receive the Scrutiny Committee's recommendation.

(d) For individual Member Decisions, the Cabinet Member would refer the recommendation and minority report to Cabinet, rather than take the decision themselves.

(e) The Group considered the above proposals would ensure there was public debate at Cabinet before the decision was made.

(f) **Amendments to Call in:** The Working Group noted that under the existing call-in arrangements set out in Part 4 Section 8 of the Scrutiny Procedure Rules, the relevant Scrutiny Committee discusses any requests for call-in and may refer it back to the decision-making body for reconsideration.

(g) The Working Party discussed whether it was appropriate for a scrutiny committee to consider a call in where it had been involved in the original decision and had made recommendations to the Cabinet. They recommended that the Scrutiny Procedure Rules should be amended to state that any request to call-in a decision cannot be considered by the Scrutiny Committee that made the original recommendations to Cabinet. The call in must be considered by another Scrutiny Committee to provide independence.

(h) **Urgency:** Current standing orders provide for urgent decisions. The Working Group considered whether any processes should be put in place where there was no time to go through the "pre-scrutiny decision" process. They considered an informal process was more appropriate and recommended that the Cabinet Member and Chairman of the Scrutiny Committee should agree informally to exemptions to pre-scrutiny of decisions for reasons of urgency as part of their review of the forward plan or where a decision becomes urgent as it goes through the process.

(i) They also recommended that where an individual cabinet member decision (CMDN) had been identified for pre-scrutiny but could not be scheduled for a Scrutiny Committee, the Cabinet Member could take the decision in consultation with the Chairman. The decision would be subject to the existing call-in procedure.

4.6 The options that the committee could now consider recommending going forward are:

1. Maintain the status quo – this would keep the current model of governance and decision making and would follow the standard Leader and Cabinet model with individual members of Cabinet having decision making powers, a model which was designed to be fast and flexible.

2. Revisit the recommendations of the review carried out in 2015/16. These proposals recommended a hybrid model of decision making with greater involvement of pre-decision scrutiny. As extensive work had previously been carried out on this review by the Council, it would be possible to revisit all the information presented and put this forward to Full Council as option.

3. Carry out a full-scale review in line with the LGA/CfGS guidance. This would potentially involve further involvement and support from the LGA or CfGS at a cost to the Council and financial implications would need to be investigated first. As an indication of costs, in 2016 the Centre for Public Scrutiny delivered two days of workshops and some preparatory works which cost a total on £3744. In addition, a consultant was appointed to work alongside the Design and Implementation Working Group.

Outlined below are the suggested plans and approaches if a full-scale review is agreed. This guidance and approach is suggested in the LGA/CfGS publication and is linked below and attached at Appendix A.

4.7 Reviewing the current governance model

The [Local Government Association and the Centre for Governance and Scrutiny](#) have published helpful guidance on approaching a review of governance arrangements. This identifies five stages to a review.

In summary, these are:

Step 1: plan your approach and assess your current position.

- This stage includes, firstly, establishing the purpose of the work: why does the Council want and need to change its governance arrangements? What are the strengths and weaknesses of current arrangements?
- The second element is to establish the scope of the work. Is it just about internal decision-making or are there wider issues involving engagement with other organisations and local residents and businesses.
- How will the review be carried out?

Step 2: consider some design principles

This is about identifying what the Council wants to achieve from the review. Rather than deciding straight away on an alternative model, members should identify the principles that are important to them and be guided by these in developing proposals. The LGA/CfGS give examples of possible design principles, but it will be for PCC to decide what is important for Peterborough. The examples given include:

- Involving all councillors in the development of key policies
- Focusing member involvement on strategic decision-making and officer involvement on operational decisions.
- Providing a key role for councillors in performance management and in-year financial monitoring.

Step 3: think of ways to establish a system that meets the requirements of these principles and put a plan in place

It may be that the objectives and design principles identified at steps 1 and 2 can be met without a formal change in governance, e.g., through bolstering the role that councillors play through the overview and scrutiny process. If change is needed, the LGA/CfGS identify the following non-exhaustive list of options:

- A leader-cabinet system with individual cabinet member decision-making.
- A mayor, with various approaches to cabinet autonomy. Different mayors take different approaches to the appointment of their cabinets, and the amount of powers those cabinets have.
- A traditional committee system with service committees aligned fairly closely with council departments and possibly a coordinating policy and resources committee to knit together work programmes.
- A streamlined committee system consisting of two or three service committees, which may be supplemented by one or more overview and scrutiny committees.
- A hybrid system whereby a cabinet ratifies decisions made by a number of cabinet committees.
- A leader-cabinet system with collective cabinet decision-making

Step 4: making the change

If the Council decides to change the governance model, the changes can only be implemented from an annual meeting of the Council. It cannot then change its governance arrangements for five years, unless changes are approved by a referendum.

A change in formal governance arrangements must occur at a specified “change time”, which is at the council’s Annual General Meeting (AGM). Prior to the change time, the council needs to have resolved formally to make a governance change. There is no minimum period of time between the resolution and the change time, but there does need to have been enough time for the council to formally publish the proposal and consult on it.

Step 5: return to the issue and review how things have gone

It is important to evaluate how things have gone after a year or so, in order to see whether the changes in governance have made the difference you hoped. However, it is important for members to note that a formal change of governance structure is binding on the council for 5 years

4.8 Potential timeline for full review:

June 2022	A provisional additional meeting of the Constitution and Ethics Committee in early June (only if option 3 is agreed) to agree specific recommendations, draft terms of reference and likely cost implications. If agreed, to recommend to Full Council that it approves the commencement of a full governance review.
July 2022	Full Council agrees to set up a formal full review of the governance arrangements and the appropriate forum for this. (Working Group etc). Briefing for all Councillors on potential options.
August – November 2022	Working group meetings identifying the objectives to be achieved from new/different model, pros and cons, what works what doesn’t work currently
November/December 2022	Present findings and recommendations to the Constitution and Ethics Committee. Committee considers and makes recommendations to Full Council.
December 2022	Council considers recommendations of Constitution and Ethics Committee and if approved, resolves to change its governance arrangements, to come into effect in May 2021, and to commence consultation on the proposed new framework for decision-making.
January 2023	Constitution and Ethics Committee reviews consultation responses and recommends new final model to Full Council.
Feb/March 2023	Full Council agrees new framework for decision-making to come into force in May 2023.

5. CONSULTATION

- 5.1 Consultation on any proposals would need to be brought to the Constitution and Ethics Committee before being recommended to Full Council

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 It is anticipated that the process to begin a full review of the governance arrangements would commence following the local elections in May.

7. REASON FOR THE RECOMMENDATION

- 7.1 To outline possible next steps and processes for the governance review and to follow the recommendations as set out in the Council's Improvement Plan.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Alternative governance arrangements for the Council would likely follow the review once it has completed.

9. IMPLICATIONS

Financial Implications

- 9.1 If any changes are made to the way the Council's decision-making process this will require a re-writing of the constitution which may incur costs for this to be carried out by bringing in extra resource.

Legal Implications

- 9.2 Any changes to the decision-making process at the Council will need to ensure it is legally compliant.

The Local Government Act 2000 made available four governance options for councils – leader/cabinet, executive mayor, mayor and council manager and a 'streamlined' committee system for shire districts with populations of less than 85,000. Subsequently, the mayor and council manager option was removed, leaving most councils in England with only two main governance options.

Equalities Implications

- 9.3 There are none.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 Peterborough City Council Improvement Plan agreed at Full Council 16 December 2021
[Full Council report on alternative governance arrangements January 2016](#)
[Report of the Design and Implementation Working Group January 2016](#)

11. APPENDICES

- 11.1 Appendix A – Centre for Governance and Scrutiny, Rethinking Council Governance
Appendix B – Full Council report January 2016
Appendix C – Report of the Design and Implementation Working Group January 2016