REVIEW OF GOVERNANCE ARRANGEMENTS AND THE STANDARDS FRAMEWORK

SUMMARY

1.1   The Localism Act 2011 enables local authorities to review their governance models and to propose changes, including a return to the committee system that preceded the Local Government Act 2000.

1.2   The Localism Act also requires local authorities to promote and maintain high standards of conduct by elected and co-opted members, in the context of the abolition of the Standards Board for England and Wales.

1.3   In response to a request from the Governance Committee, the Scrutiny Management Commission has conducted a comprehensive review of both issues during summer and autumn 2011.

1.4   The recommendations requiring the approval of Council are set out at 2.1 to 2.4 below. Other recommendations, the responsibility for which are delegated to officers, are listed in Appendix 3

RECOMMENDATIONS

2.1   To retain the current political management system with the Strong Leader, Cabinet and Overview and Scrutiny model.

2.2   To amend the Council Constitution to ensure that the chairing of Overview and Scrutiny Commissions is reserved for opposition members.

2.3   To adopt a Local Code of Conduct and retain a Standards Committee with its current composition of four independent and three elected members.

2.4   To ask the Scrutiny Management Commission to conduct a review of the Council's current electoral cycle and make recommendations based on that review.

REASONS FOR RECOMMENDATIONS

3.1   The recommendations are the result of a number of evidence gathering sessions, with opinions and views taken from elected members, independent members of the Standards Committee, senior council officers and expert external witnesses. Commission members considered the evidence with options being discussed and

debated, before the formulation of recommendations.

3.2   A number of witnesses suggested that the Council's electoral cycle, rather than its governance model, could be responsible for confusion around decision-making, giving rise to recommendation 2.4.

3.3   The recommendations, if approved, will ensure continuity of decision making, through a clear political management system and accountability, through a local code of conduct and standards regime.

SUPPORTING INFORMATION

4.1   The detailed evidence-based report is at Appendix 2

4.2   The review brought to light a number of ways in which the effectiveness of the overview and scrutiny model might be improved. In the case of 2.1 to 2.4 the decisions are for Council, but others are within the remit and delegated functions of council officers. These recommendations are included at Appendix 3.

OTHER OPTIONS CONSIDERED

5.1   The Commission considered a return to the committee system that had existed prior to the Local Government Act 2000. On balance it was agreed that speed of decision-making and individual accountability for decisions, was delivered more effectively by the current model.

5.2   The Commission considered a less comprehensive standards regime, but a combination of amendments to the Localism Bill during its passage through Parliament and a series of potential improvements as set out in Appendix 3 led to recommendation 2.3.

This report has been approved by the following officers:

Legal officer	Stuart Leslie – Director of Legal and Democratic Services
Financial officer	Not applicable
Human Resources officer	Not applicable
Service Director(s)	Stuart Leslie – Director of Legal and Democratic Services
Other(s)	Philip O'Brien – Head of Democratic Services

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Background papers:	None
List of appendices:	Appendix 1 – Implications
	Appendix 2 – Detailed evidence-based report
	Appendix 3 – Recommendations of SMC that are delegated to officers

IMPLICATIONS

Financial and Value for Money

1.1   None arising directly from this report

Legal

2.1   The Localism Act 2011 enables local authorities to review and strengthen their governance model. The act also requires local authorities to promote and maintain high standards of conduct by elected and co-opted members.

Personnel

3.1   None arising directly from this report

Equalities Impact

4.1   A good governance model and ethical framework has the potential to benefit all sections of the community.

Health and Safety

5.1   None arising directly from this report

Environmental Sustainability

6.1   None arising directly from this report

Asset Management

7.1   None arising directly from this report

Risk Management

8.1   None arising directly from this report

Corporate objectives and priorities for change

9.1   The Council's decision-making processes and standards regime have the potential

to impact on all objectives and priorities.

Report on the Review of the Council's Governance arrangements and Ethical Standards

Introduction

1. Derby City Council has operated the Leader and Cabinet model of governance with overview and scrutiny since November 2001. This was in response to the Local Government Act 2000, which required local authorities to adopt one of four systems of local decision-making including the Leader and Cabinet model.

2. The recently enacted Localism Act 2011 allows local authorities to review and, where considered appropriate, change their governance arrangements. The Act also abolishes the Standards Board for England and withdraws the requirement for local authorities to have a statutory Standards Committee. However the Act retains the obligation for each Council to have a Member Code of Conduct but gives them more freedom to decide what is in it. Additionally the Act makes it a criminal offence for councillors to deliberately withhold or misrepresent a personal interest, which could result in a criminal conviction for serious misconduct. The current sanction is censure by the Standards Committee. Councils are given powers to adopt a voluntary code of conduct and to take appropriate action if a member breaches the code.

3. The Governance Committee considered the proposals contained in the Localism Bill at its February meeting and recommended that the Scrutiny Management Commission undertake a review of whether the Council should:

    *   Retain the current Leader and Cabinet model of governance, or return to the committee system
    *   Adopt a voluntary Code of Conduct
    *   Retain a local Standards Committee
    *   and that the Commission make recommendations to Council detailing its conclusions and recommendations.

The Review Process

4. The Scrutiny Management Commission has carried out a detailed review of the Council's Governance structure and its standards framework.

    On the Governance aspect of the review, the Commission sought and received evidence from individuals who have had some experience of both the Committee and the Leader and Cabinet systems. These included:

- Councillors with experience of both the Committee and Cabinet systems
- Professor Steve Leach, Professor of Local Government at Leicester de Montfort University
- Ed Hammond, Research Manager, Centre for Public Scrutiny
- All Strategic and Service Directors, of which the Strategic Director for Neighbourhoods and Directors of Planning and Facilities Management and of Regeneration accepted the invitation
- The Monitoring Officer
- Head of Democratic Services

5. Evidence from Councillors was through completion of a questionnaire, to seek views on advantages and disadvantage of both systems. Of the 18 members who were considered to have some experience of both systems and who were asked to complete the survey, eight returned completed forms.

6. Professor Steve Leach and Ed Hammond provided independent expert evidence in writing and through attendance at specially convened meetings. Similarly senior officers gave evidence at meetings, where commission members questioned them, extensively.

7. On the ethical standards aspect of the review the Commission received evidence from the independent members of the Standards Committee, the Monitoring Officer and the Head of Democratic Services. Professor Steve Leach and Ed Hammond also provided their views.

8. Professor Leach told the commission that Derby was taking the right approach in gathering independent evidence and looking at the issues objectively, before making its decision. In response to a question on the size of scrutiny support function professor Leach stated that from his experience the scrutiny team for a unitary authority the size of Derby should be no less than three officers.

Evidence on Governance arrangements

9. Witnesses to the review were asked to provide what they considered to be strengths and weaknesses of both the Leader and Cabinet system and the Committee system. The points below are collated from the evidence provided by the witnesses.

Strengths of the Committee system

a. The Committee system provides an opportunity for all members to be involved in the formal processes of decision-making and not just at 'full council' level. This opportunity was widely seen as a strong motivation for individuals to seek election to a council.

b. The Committee system enables members to specialise in services of particular interest to them and hence develop their capacity to make informed contributions to policy and decision-making.

c. The Committee system requires majority parties (or coalitions) to have to listen and respond to the views of opposition members. It also provides opportunities for the opposition spokesperson on each committee to develop skills and experience, which equip them for the role of chairperson if there is a change of administration.

d. All parties are represented on the Policy and Resources Committee, equivalent to the Cabinet, where the big cross-service decisions are made.

e. There was an argument which may remain valid, that in particular types of hung authority where no two parties were co-operating in a coalition or joint arrangement, the committee system was an appropriate vehicle for open, transparent decision-making (pre-committee deals being unlikely in these circumstances).

Weaknesses of the Committee system

f. The chair/majority group usually makes decisions before the meeting. The typical pattern in a majority, or coalition, controlled authority was for decisions to be agreed in the pre-committee briefing session involving chief officer, chair and vice-chair (often linked to a majority party pre-meeting session). Hence the idea that other committee members were influencing decisions was (usually) illusory.

g. Decision-making was typically slower than in the Cabinet and Leader system. Often there was a need to refer items up the system (sub-committee, service committee, policy and resources committee, full council).

h. Compared with the Cabinet and Leader system, with individually delegated decision taking responsibilities, the committee system has a more diffuse pattern of accountability. It is easier to identify and hold to account the decision maker in the Leader and Cabinet system than the Committee's collective decision-making process.

i. Scrutiny of recommendations could and did take place at committee meetings, typically led by opposition members, but it was not based on access to independent sources of information and advice, as would be the case in an effective post-2000 overview and scrutiny system.

j. The co-ordination of decisions made by various committees and their integration into a corporate strategy was more difficult because of the fragmented nature of decision-making. However this deficiency could be addressed through a strong Policy and Resources Committee.

k. There is a danger of too much influence by a dominant chief officer, although this could also be said of the Cabinet member decision-making process.

l. Opposition members and particularly the lead opposition member may not have the benefit of expert advice.

m. The committee system is much more costly to administer and had on average 2 -3 more fte support staff, because of the need to service large number of committees.

n. The committee system had a large number of scheduled meetings, which created pressure to fill the agenda unnecessarily. On other occasions there were too many agenda items leading to lengthy meetings.

o. Member involvement in neighbourhood boards and forums, introduced post 2000 means they would have very little time to effectively contribute in the event of a return to the committee system.

Strengths of the Leader and Cabinet Model of Governance

a. Speed and efficiency of decision- making - The fact that there is one body meeting frequently and taking all executive decisions means in principle that decision-making should be speedier and more efficient. It has the ability to co-ordinate decisions, which impact upon one another at the same forum. Both these strengths will be affected by the arrangements for the delegation of decisions within the cabinet.

b. Better co-ordination of decisions and strategic capacity-The existence of a small executive with a wide range of decision powers will strengthen both co-ordinative and strategic capacity.

c. Clearer accountability - If there is a clear allocation of individual decision responsibilities within the cabinet then it is clear 'where the buck stops' for any specific decision. The more a cabinet decides to operate on a collective basis, the less convincing is this argument. ('The cabinet has decided' is similar to 'the committee has decided').

d. Greater capacity for 'holding to account' - If there is an effective, independent overview and scrutiny system then there is a greater capacity than in a committee system for 'holding to account' albeit on a selective basis. The strength comes from the access of overview and scrutiny to an independent source of advice and the opportunities provided by 'call-in'. If the former is absent however, and the latter ineffective, then the argument about 'holding to account' is less convincing.

e. Strong leadership - There is a view that the cabinet and leader model and in particular elected mayors provide a much greater capacity for 'strong' decisive, visible leadership than was the case in the committee system. This view is difficult to counter in principle, although the capacity involved may be utilised to different degrees and in different ways. There were some undeniably 'strong leaders' who operated through committee systems such as George Mudie (Leeds) and Dame Shirley Porter (Westminster). There is

also an issue of whether strong leadership necessarily leads to effective leadership.

f. More freedom to deal with partnership working arrangements. Partnership working requires decisions to be made which involve a number of local agencies, in a targeted and responsive way. This is difficult when council decisions first have to go through a committee system, which telescopes timescales out to many weeks, or sometimes months.

g. A better ability to direct members' resources where they can add the most value. The committee system tended to involve members in a range of operational decisions. The cabinet system has more of a focus on targeting member time on strategic matters, providing more of a demarcation with officers' roles. This was one of the principal objectives of the change.

h. A more obvious place for the discussion of alternative views. Scrutiny provides a means for issues to be discussed outside of the standard council decision cycle, in a way that is difficult within the work programme of a service committee. Some councils did have policy development task groups, but there are risks that this approach can be hijacked by party political concerns. Scrutiny provides a clear forum for discussion, debate and holding to account in a way that does not exist under the committee system.

i. The current system of holding annual elections by a third does not provide for long- term policy development and delivery by the Council and makes it difficult for scrutiny members to hold the decision makers to account. Changing to all out elections once every four years would give the Cabinet more time to develop and deliver their policies. It would also enable commission members to develop knowledge of their respective commissions' areas of responsibility and provide for more effective scrutiny.

Weaknesses of the Leader and Cabinet Model of Governance

j. Exclusiveness - By its very nature, the Cabinet and Leader model excludes large numbers of members from the decision-making process, although in Derby the opposition leader or deputy is allowed to speak at Cabinet. This characteristic was widely felt particularly in the 2001-05 period to have had a detrimental effect on the motivation of non-executive members.

k. Specialisation is more difficult. For non-executive members it is more difficult to develop a service-based expertise, unless scrutiny committees are organised on a service basis, which is becoming increasingly rare.

l. Marginalisation of opposition. Depending on the political climate and recent history of the authority, it is possible for the determined majority party to marginalise the opposition, for example by excluding them from the cabinet (which is commonplace) and dominating the overview and scrutiny machinery, including taking all the chairs.

m. Marginalisation of non-executive members. It is not just opposition members who can come to feel marginalised. If the overview and scrutiny arrangements are rendered ineffective, by the executive, and if there is no local dimension (e.g. at ward level) to provide an alternative means of engagement, then non-executive majority party members are also likely to feel marginalised.

n. Lack of transparency. Because of the 'closed 'nature of cabinet decision-making (real discussion typically takes place in private beforehand) there is a possibility that important decisions do not always enjoy a fully informed debate in public.

o. It can be very easy for contrary views to be side-lined and in some respects it concentrates power solely in the hands of the cabinet members. Poor resourcing together with lack of agreement about roles and responsibilities has meant that in some authorities scrutiny it has struggled to get on its feet. However, these problems are more cultural in nature than structural. An increasing number of councils are using scrutiny to achieve tangible, positive outcomes for local people, including helping the authority to make significant financial savings.

Evidence on the Ethical Framework

10. The Localism Act 2011, which received Royal Assent on 15 November, requires local authorities to promote and maintain high standards of conduct of its elected and co-opted members. The Act also requires authorities to adopt a code that deals with elected and co-opted members' conduct. Authorities are free to revise their existing code or adopt a new code of conduct. However they must have in place arrangements under which allegations can be investigated and where appropriate decisions on allegations can be made. The 2011 Act requires authorities to have at least one independent member whose views are sought and taken into account.

11. The Commission received evidence on the ethical framework prior to the Localism Act being enacted, from independent members of the Standards Committee, the Monitoring Officer and the Head of Democratic Services. Evidence was also provided by Professor Steve Leach of Leicester de Montfort University and Ed Hammond from the Centre for Public Scrutiny.

12. The Commission was informed that Derby was one of the first authorities to set up a Standards Committee and was this was considered as the bedrock for setting up the council's code of conduct. All the witnesses believed that it would be a retrograde step not to have a Standards Committee and no code of conduct. The public needs to have confidence that their complaints will be properly investigated; otherwise this could affect the Council's reputation. There is also a danger that member behaviour may erode if there are no constraints.

13. The Commission was presented with reasons for and against establishing a code of conduct for members.

Pros	Cons
Clear public statement of Council's commitment to high ethical standards	No current national guidance on a code to replace the existing one in the constitution
Continuation of existing Code familiar to Council members	The maximum sanctions would be censure, which could be considered quite punitive enough
Avoids possibility of erosion over time in member standards of conduct in those aspects not covered by alternative controls e.g. respect	Costs entailed in enforcing a voluntary code (which could be reduced with more streamlined process than at present)
Standards committee supports as the bedrock of an ethical framework	
Association of Council Secretaries and Solicitors (ACSeS) strongly recommends a national code and retention of Principles of Public Life	

14. The Commission was informed that the experience of local standards committees have varied considerably and although the changes may not be as effective without statutory powers, there was a strong case for a local regulatory body. There are many good reasons to retain a code and the committee. It is crucial to have independent members and we are fortunate in Derby to have exceptionally good members.

15. The Commission was informed that there is room for improvement in the current system:
    - Currently members are not given any details of the complaint against them. This seems to be unfair
    - The Assessment Sub Committee, which assesses whether there is a case for investigation and acts as a filter could be abolished. This process could be carried out by the chair who would decide whether a complaint is trivial or serious and should be investigated
    - An approach to other peer authorities, with a view to having a reciprocal arrangement to undertake each other's investigations, could reduce the costs of investigations.

16. The Government requires authorities to have at least one independent member whose views are sought and taken into account. Witnesses to the investigation recommended retaining the current size and makeup of the committee consisting of four independent and three elected members. This would meet the Localism Act requirements of having at least one independent member whose views are sought and taken into account. However, it should be recognised that the Act does not explicitly give independent members voting rights, which by implication removes that existing right.

Conclusion

17. Both the cabinet/scrutiny and the committee system have their strengths and weaknesses. The cabinet and leader system has a range of advantages in

terms of the principles of good governance, but this depends on the way it is operated. The committee system has benefits in relation to democracy and may have particular advantages in certain types of hung council. The role and effectiveness of overview and scrutiny is particularly crucial. At best it strengthens the case for the cabinet and leader model and at worst it undermines it.

18. Dissatisfaction with the decision making structure presents an issue and an opportunity around organisational culture rather than an impetus to effect structural change. Structural change does not beget organisational change. If a system is considered to be not working then just moving to a different decision-making structure won't help to tackle wider issues, such as wider member involvement.

19. Overall the evidence suggests that Leader and Cabinet model with overview and scrutiny is considered to be preferable to the committee system as it allows for quicker and more efficient decision making. It has the power of Call –In and can scrutinise decisions after they have been taken which was not possible under the committee system. It is also more flexible to both to executive and non-executive members. This flexibility allows three things.

   - More freedom to deal with partnership working arrangements.
   - A better ability to direct members' resources where they can add the most value. The committee system tended to involve members in a range of operational decisions. The cabinet system has more of a focus on targeting member time on strategic matters and providing more of a demarcation with officers' roles.
   - Scrutiny provides a means for issues to be discussed outside of the standard council decision cycle in a way that is difficult within the work programme of a service committee.

Recommendations

20. Both systems can be made to work and both have their strengths and weaknesses. However Leader and Cabinet model with overview and scrutiny is considered to be preferable to the committee system as it allows for quicker and more efficient decision making. It is therefore recommended that the Council retains the current political management system with Strong Leader and Cabinet and Overview and Scrutiny.

21. For any system to be effective it also needs to have the right culture. Professor Leach considered Derby to have the right structure and the right approach as:

   - opposition members including leader or deputy and scrutiny chairs are allowed to speak at the Council Cabinet
   - opposition members chair overview and scrutiny commissions.

22.	This process could be further strengthened; by amending the Council's constitution and ensuring opposition members chair overview and scrutiny commissions.

22.	The Council should also aim to adopt a culture which encourages draft cabinet reports to be presented to scrutiny at the earliest opportunity and enable scrutiny members to contribute to the decision making process. The Commission recommends that the Chief Executive develops a protocol requiring draft cabinet reports to be presented to relevant commission at the earliest opportunity.

23.	SMC should receive quarterly reports on actions taken by the Council Cabinet in response to commission recommendations.

24.	If minutes of commission meetings reflect details of the debate, as well as the recommendations made, greater insight can be gained into the rationale of those recommendations, when they are considered by Cabinet.

25.	To be most effective, the scrutiny support function must be adequately resourced, commensurate with the size and range of responsibilities of the City of Derby

26.	SMC should seek authority, from Council, to undertake a review of the electoral cycle.

27.	The Council should adopt a Member Code of Conduct and retain the Standards Committee in its current format, with four independent members and three elected members.

28.	There should be a change to the procedure, to allow councillors to receive details about the complaints made against them at the first instance.

29.	The Standards Committee process for considering complaints against Members, should be streamlined, with removal of some steps.

30.	Peer authorities should be approached, with a view to having a reciprocal arrangement to undertake each other's investigations.

Appendix 3

Background to recommendations of the Scrutiny Management Commission, which are delegated to council officers

The review of the governance model and ethical framework, carried out by the Scrutiny Management Commission, at the request of the Governance Committee, yielded a number of recommendations to Council, as set out in 2.1 to 2.4 of the SMC report to Council of 25 January 2012.

In addition, the review, which took place through the summer and winter of 2011, persuaded members of the commission that a number of operational recommendations could improve both the quality of the work of the overview and scrutiny commissions and the efficiency of any local code of conduct and standards regime adopted.

Responsibility for response to, and delivery of those recommendations, are within the delegated functions of a number of council officers.

This summary is included as an appendix to the report to Council as an indication of the breadth and depth of the review. SMC will ask for responses from the officers identified, to be reported after 25 January, if the key recommendations to Council are approved. Any amendments to, or rejection of those recommendations by Council, would negate or alter the need for officers to respond, or the emphasis of their response.

Governance arrangements

If Council approves the retention of the Strong leader, cabinet and Overview and Scrutiny system, SMC recommends:

- that the Chief Executive develops a protocol to ensure that Cabinet reports are presented for consideration by the relevant commission at the earliest opportunity.

Responsibility for response: Chief Executive and Chief Officer Group

- that a quarterly report be presented to SMC, to monitor the impact on Cabinet decisions of commission recommendations.

Responsibility for response: Head of Democratic Services

- that the scrutiny support function be adequately resourced, to deliver effective scrutiny, commensurate with the size and range of responsibilities of the City of Derby

Responsibility for response: Strategic Director of Resources

- ensure that Minutes of commission meetings reflect details of the debate, as well as the recommendations made, so that greater insight can be gained into the rationale of those recommendations, when they are considered, by Cabinet.

Responsibility for response: Head of Democratic Services

Ethical Framework

If Council approves the retention of a Local Code of Conduct and Standards Committee, SMC recommends:

- that the procedure be modified, to enable the councillor, who is subject to a complaint, to be made aware of the nature of the complaint at the earliest point.

- that the procedure be streamlined, to give greater transparency and efficiency.

- That the Council approach peer authorities to assess the effects on the cost of complex cases of undertaking each other's investigations.

Responsibility for responses: The Monitoring Officer