SCRUTINY MANAGEMENT COMMISSION
8 NOVEMBER 2011

ITEM 8

DERBY CITY COUNCIL

Report of the Scrutiny Management
Commission

Review of the Council's Governance arrangements and the Ethical Framework

SUMMARY

1.1   Following a request by the Governance Committee, SMC resolved at the June meeting to undertake a review on governance and ethical framework.

1.2   The review has been carried out over summer and autumn period with evidence received from a range of individuals including external expert witness and independent members of the Standards Committee as well elected members with experience of both systems. A report containing summery of the evidence is attached in Appendix 2.

RECOMMENDATION

2.1   That the Commission consider and comment on the report and give its recommendations

REASONS FOR RECOMMENDATION

3.1   The Governance arrangements will decided by the full council.

SUPPORTING INFORMATION

4.1   The Localism Bill allows Councils to review and change their governance arrangements. The Bill also seeks to abolish the Standards Board for England and withdraws the need for local authority to have a statutory standards committee.

OTHER OPTIONS CONSIDERED

5.1   None

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	

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Appendix 1

IMPLICATIONS

Financial and Value for Money

1.1   None arising from this report.

Legal

2.1   The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations SI 2000/3272 govern the production and content of the Forward Plan.

2.2   A key decision is 'any decision that is likely to have a significant impact on two or more wards' or where it involves expenditure or savings of £250,000 (or £25,000 where it relates to a voluntary body).

Personnel

3.1   None arising from this report.

Equalities Impact

4.1   None arising from this report.

Health and Safety

5.1   None arising from this report.

Environmental Sustainability

6.1   None arising from this report.

Asset Management

7.1   None arising from this report.

Risk Management

8.1   None arising from this report.

Corporate objectives and priorities for change

9.1   This report has potentially links with all Corporate Objectives.

Draft report on the Review of the Council's Governance arrangements and the Ethical Framework

Introduction

1. Derby City Council adopted a Leader and Cabinet model of governance in November 2001 in response to the Local Government Act 2000 which required authorities with populations of over 85,000 to introduce cabinet systems of local decision-making.

2. The Localism Bill currently going through Parliament allows councils to review and change their governance arrangements. The Bill seeks to abolish the Standards Board for England and withdraws the need for local authority to have a statutory standards committee. However to counteract this the Government is legislating to make it a criminal offence for councillors to deliberately withhold or misrepresent a personal interest. This could result in a criminal conviction for serious misconduct that currently leads to censure by the standards committee. Councils will be given discretionary powers to adopt a voluntary code of conduct and take action if a member breaches a the code.

3. The Governance Committee considered the proposals contained in the Localism Bill at its February meeting and recommended the SMC undertake a review of whether the Council should:
    *   Retain the current leader and cabinet model of governance or return to 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 conducted a detailed review on Governance and the ethical framework. On Governance the Commission received evidence from a people who have experience of both the Committee and the Leader and Cabinet systems. These include:
    *   Councillors with experience of both the Committee and Cabinet systems
    *   Professor Steve Leach, professor of local government DeMontfort University
    *   Ed Hammond, Research Manager, Centre for Public Scrutiny
    *   The Monitoring Officer
    *   Strategic Director for Neighbourhoods
    *   Director of Planning and Facilities Management
    *   Director of Regeneration
    *   Head of Democratic Services

5. On the evidence from Councillors, members were asked to complete a questionnaire of their experience of the two systems taking into account the following principle of good governance listed below. Of the 18 members who

are known to have experience of both Committee and Cabinet system, only eight completed and returned the questionnaire:

- Accountability - enable decision makers to be held to account by members
- Democracy - opportunity for members to be engaged and contribute to the debate
- Transparency - process decision making is clear and open for all to see
- Effectiveness - decisions making is efficient and achieves positive outcomes, performance is monitored and evaluated

6. Professor Leach and Ed Hammond provided independent expert evidence in writing and attended a meeting of the Commission to answer member queries. Other evidence was received from senior officers of the council in a number of evidence gathering session arranged by the Commission.

7. On the ethical framework part of the review the Commission received evidence from the independent members of the Standards Committee, the Monitoring Officer and the Head of Democratic Services. The external witnesses also provided.

Summary of evidence on Governance arrangements

8. Evidence on the governance looks at strengths and weaknesses of the Leader and Cabinet system and the Committee.

Strengths of the committee system

a. The committee system provides opportunity for all members to be involved in the formal processes of decision-making and not just at 'full council' level. This opportunity has widely been seen as a stronger motivation for seeking election to a council.

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

c. The committee system requires majority parties (or coalitions) have to listen and respond to the views of opposition members, in public arenas. It also provides opportunities for the opposition spokespersons, 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 'cabinet equivalent' – the Policy and Resources Committee – where the big cross-service decisions are made.

Weaknesses of the committee system

e. Decisions are usually made before the meeting by chair/majority group - Even though opposition parties are represented on each committee. 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.

f. 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, P and R Committee, full council).

g. Compared with the cabinet and leader system with individually delegated decision responsibilities, the committee system has a more diffuse pattern of accountability. 'The committee has decided' is different from 'I have decided' and 'the buck stops here'.

h. Scrutiny of decision proposals 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.

i. 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 strong P and R Committee.

j. 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).

k. There is danger of too much influence by dominant chief officer

l. Lead role member role lacks expert advice

m. Views of opposition do not have the benefit of expert advice

n. There are fewer members now with experience of old and new systems

o. Committee system is much more costly to administer and had on average 2/3 more support staff due to large number of committees.

p. Committee had scheduled meetings and there is often a pressure to fill the agenda. On other occasions there were too many agenda items

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 (because of the

ability of 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 coordinative 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 has decided to operate on a collective basis, the less convincingly can this argument be made. ('The cabinet has decided' is similar to 'the committee has decided').

d. Greater capacity for 'holding to account' - If there exists 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 – George Mudie (Leeds) and Dame Shirley Porter (Westminster) to name but two! 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

Weaknesses of the Leader and Cabinet Model of Governance

i. 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 is allowed to speak at the 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.

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

k. 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.

l. 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.

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

n. It can be very easy for contrary views to be sidelined – in some respects in concentrates power solely in the hands of ten cabinet members. Poor resourcing in some authorities has meant that scrutiny it has struggled to get off its feet, and a lack of agreement about roles and responsibilities has, in some authorities, confined it the nursery slopes of policy development. But these problems, again, 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.

Professor Leach has compared the two systems

❖ In principle 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; at worst it undermines it

Summary of Evidence on the Ethical Framework

9.   The Commission received evidence on the ethical framework from the independent members of the standards committee, the Monitoring Officer, Head of Democratic Services, Professor Leach, De Montfort university and Ed Hammond for the Centre of Public Scrutiny.

10. It was stated that should the Localism Bill becomes law, the present standards arrangements will be abolished during 2012. However, there will still be a duty on local authorities to promote and maintain high standards of conduct by members. Voluntary codes of conduct, especially relating to member/officer relationships have usually proved helpful to good governance in the authorities which have adopted them. Derby was one of the first authorities to set up a standards committee and was considered as bedrock for setting up the council's code of conduct.

11. Everyone who gave evidence on this issue believed that it would be a retrograde step not to have a standards committee and no the code of conduct. The public needs to be confident that complaints swill be properly investigated otherwise this will affect Council's reputation. There is also a danger that member behaviour may erode if there are no constraints.

12. There are pros and cons for having a voluntary 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	

13. The experience of local standards committees have varied considerably and although the changes will not have the same level of bite without statutory powers, there is a strong case for a local regulatory body. It does not mean that the current process cannot be improved:

- The current process is not fair to members as they are not told details of the complaint against them.
- The Assessment sub committee could be could abolished. Trivial complaints need a filter process and the chair could decide whether complaints are trivial instead of having to take it to the Assessment sub committee.
- There are a lot of good reasons to retain code and the committee. It is crucial to have independent members and we are fortunate to have exceptionally good members.
- Could cooperate with peer authorities to support one another's investigation and keep the costs down

14. The Government is giving authorities a choice whether to keep or retain independent members. It was suggested that we retain the current process with four independent members together with the three elected members.

Conclusion

15. Both the cabinet/scrutiny and the committee system have their advantages and disadvantages. Structural change does not beget organisational change. Just moving to a different decision-making structure won't help to tackle wider issues, such as wider member involvement in decision-making. The committee system does not automatically make decision-making more collegiate or more democratic. In many authorities the Chairmen of service committees acted as a de facto cabinet anyway. It's difficult to make overarching points, such as "the committee system is best at x" or "the cabinet system is best at y" because so much depends on the culture of the organisation concerned.

16. Dissatisfaction with the decision-making structure in an authority presents an issue and an opportunity around organisational culture rather than an impetus to effect structural change with no defined end-goal other than implementing that structural alteration.

17. Overall the evidence suggests that current system of Leader and Cabinet model allows for quicker and more efficient decision making. 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