

CONSTITUTION & STANDARDS COMMITTEE

17th February 2022

REPORT TITLE:	REVIEW OF THE COMMITTEE SYSTEM
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

This report provides the Committee with an update on the progress made by the Governance Working Group in respect to the review of the committee system and associated constitutional changes.

The report also provides further information in respect to the External Assurance Governance Review undertaken by Ada Burns on behalf of the Department for Levelling Up, Housing and Communities (DLUHC), a report produced by the Local Government Association following meetings they had held with the Political Groups on the Council and the outcomes of an anonymous member survey which was undertaken to inform member discussion.

This is not a key decision.

RECOMMENDATIONS

The Constitution and Standards Committee is recommended to:

1. consider and comment on the currently proposed amendments to the committee governance arrangements of the Council as presented in Appendix 1 of the report; and
2. authorise the Director for Law and Governance, in consultation with the Member Governance Working Group, to develop and draft changes to the Constitution to be presented to Council for adoption for the 2022/2023 municipal year.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The Committee is invited to comment on the outcomes/proposals to date as discussed by the Member Governance Working Group, which was requested to undertake this review at the request of the Constitution and Standards Committee at their meeting in September 2021. The results of that review are now presented for consideration.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Various options are open to the Committee in adopting Constitutional changes and amended committee terms of reference. A comparison of the Council to other top tier councils operating a committee system were the subject of two reports to the Governance Working Group.
- 2.2 The Committee may consider it more appropriate that it makes a formal recommendation to Council of the proposed changes to the Constitution as fully drafted rather than it be a matter of delegated authority to the Director in discussion with the Working Group. If so, one or more extraordinary meetings of the Committee will be called in March or April, following which the recommended changes would be presented directly to the Annual Meeting of Council for approval, to take effect for that municipal year, instead of to the preceding ordinary Council meeting of 21st March as currently timetabled.

3.0 BACKGROUND INFORMATION

3.1 Governance Working Group: Review of the Committee System

- 3.1.1 The Governance Working Group have held a number of meetings to which Group Leaders were also invited. In addition to the planned review, this has been given added direction by the recommendation of the External Assurance Governance Review, undertaken by Ada Burns on behalf of the Department for Levelling Up, Housing and Communities (DLUHC), a report produced by the Local Government Association following meetings they had held with the Political Groups on the Council and the outcomes of an anonymised member survey which was undertaken to inform Member discussion, all of which are set out below
- 3.1.2 In its decision to adopt a committee system form of governance arrangements the Council determined its objectives in doing so, and a primary purpose of the Constitution was to be:
- **Accountability** – responsibilities and accountability should be clear, within the Council and to residents;
 - **Credibility** – governance should assist good decision making, which involve proper and early scrutiny;
 - **Transparency** – the decision-making process should be open and transparent to Members and to the public;

- **Collaboration** - decision making should be collaborative across parties and less combative; and
- **Timeliness** – decision making should be both quick and effective and, when necessary, allow for urgent decision making.

This accords with that in the Guidance that accompanied the introduction of the Local Govt Act 2000 of local governance arrangements of being efficient, transparent and accountable (as defined below).

3.1.3 The discussion was framed around a report to the Working Group setting out the potential governance arrangements for policy committees. For clarity, the statutory Guidance defined "policy committee" as meaning any committee appointed under section 102 of the Local Government Act 1972 which is not a regulatory committee, an area committee or an overview & scrutiny committee. These may be described in different authorities in different ways, and are described in the wider executive sense at Wirral Council as policy and services committees, but for these purposes as a generic policy committee. The advice set out that:

- (a) The policy committee functions naturally divide into three areas
 - (1) corporate direction and resourcing;
 - (2) adults, health, children and family; and
 - (3) place, communities and neighbourhoods.
- (b) This is the minimum structure of committees and should be the starting point for conversation and actions. Comparable councils then subdivide the latter two groups of functions into other committees.
- (c) The statutory guidance issued with the Local Government Act 2000 stated that, for councils with a committee system form of governance, arrangements take the broad form of no more than five committee(s) of the local authority with delegated functions from the full council to implement the policy framework and to put proposals to the full council for future policies and budgets. The relevant excerpt is copied in section 5 below and this was advised should be the starting point of any such conversation.
- (d) It is also founded in practice. There are currently nine unitary or London borough councils/metropolitan borough councils with a committee system. Of these:
 - 1 council has three policy committees (Kingston),
 - 2 councils have four policy committees (Reading and Sutton),
 - 3 councils have five policy committees (Brighton & Hove, Hartlepool and Reading)
 - 2 councils have six policy committees (Cheshire East and Barnet)
 - 1 council has seven policy committees (Wirral)

3.1.4 Similarly, a paper was presented to the working group providing comparative information and guidance concerning decision review and removal of delegation mechanisms as well as the adoption of overview and scrutiny arrangements. This pointed out that most of the comparator councils, of which there are ten, had no

provision for any sort of decision review. Of those that did, the provisions were of a 'call-in' kind with all having access barriers higher than that at Wirral Council.

3.1.5 As a Council with a committee system form of governance, there is no requirement to have any overview and scrutiny committee function. The legislation now provides a choice for councils with a committee system as to whether to apply the overview and scrutiny provisions or not. If it does, there is a specific set of Regulations designed for committee system overview and scrutiny that the Authority must apply.

3.1.6 The discussions of the Governance Working Group continue, which will result in detailed drafting instruction and preparation of constitutional changes for presentation to Council. Whilst there was not necessarily unanimous agreement on all matters, the key changes for consideration that currently reflect a majority view of Working Group are attached as **Appendix 1** to this report. The changes are subject to consultation within the political groups and further discussion within the Governance Working Group.

3.2 External Assurance Governance Review

3.2.1 The Council has adopted the comments and recommendations of the External Assurance Review commissioned by the Secretary of State as a response to the Council's request for extraordinary financial assistance (capitalisation). The Review was made up of two reports, on finance and on governance. The Governance Report was conducted by Mrs Ada Burns and submitted in September 2021. The report is publicly available on the Government website at [Governance review: Wirral Metropolitan Borough Council](#). The principal recommendation, of which this review is the implementation of, was for:

“Members to work with the Director of Law and Governance to review the committee system to reduce the number of Committees, assign authority to the Policy and Resources Committee in respect of financial recovery, and significantly reduce the related administrative burden.

3.2.2 When undertaking the review, the working group were therefore highly mindful of the Review, particularly in respect to the number of Council Committees, the scheme of delegation and the efficiency of decision making. Whilst the report in its entirety can be viewed as a link, the working group discussed a number of key points contained, namely:-

- The move to a committee system, implemented in the middle of the pandemic has clearly improved Member engagement but poses a further risk to the improvement journey because of its immaturity, its over-elaborate design, and the administrative burden it is placing on Officers.
- There are significant risks to the ability of the system to support swift and sustained progress on finances. The risks sit with the division of responsibility and resources into seven Policy Committees, with the retention in addition of a Decision Review Committee. This poses a risk of fragmentation and delay, for example where corporate and service savings strategies need sign up from all Committees.

- The number of Committees and requirements to ensure appropriate briefing of all the five Political Groups in the lead up to each meeting is posing a significant resource burden on the Council. The volume of papers and length of agendas is both an administrative burden and a likely distraction from a necessary focus on key decisions.
- The forthcoming review should ensure that the committee system is fit for purpose and should ensure in particular that the Policy and Resources Committee exercises leadership for the development and implementation of a robust financial recovery plan.

3.2.3 The Independent Panel members have submitted comments concerning the proposed amendments to the committee governance arrangements of the Council. These are presented as boxed annotations to the draft proposals set out in Appendix 1 and marked as '**N.b.** The Committee is advised ...'

3.3 Local Government Association

3.3.1 Throughout November and December of 2021, the Local Government Association (LGA) ran a number of sessions with the political groups in light of publication of the two external assurance reports, but also in view of the fact that the committee system was now over a year into its existence. The project undertaken by the LGA was completed in three-key stages: desktop research, structured conversations with all political groups of the Council, and a cross-party discussion on emerging findings and considerations for improvement.

3.3.2 The full report and recommendations can be found at **Appendix 2** to this report, which was shared with the Governance Working Group at their February meeting. Whilst many of the key considerations are outlined in Section 6 of the LGA report, the Director of Law & Governance will submit a report to the June meeting of the Constitution & Standards Committee to enable discussion of proposed actions against the key considerations, thus enabling a comprehensive response to be shared with the LGA. Both the Director of Law & Governance and the Head of Democratic & Member Services are in regular contact with colleagues at the LGA and updates on progress will be reported to Members via the Governance Working Group.

3.4 Member Survey Outcomes

3.4.1 To inform the review, the Governance Working Group requested the Head of Democratic and Members Services to undertake a survey of members in respect to a variety of issues relating to the committee system, Constitution and the running of Council and Committee Meetings. The results of the survey were reported to the Governance Working Group at their meeting of 12th December 2021 to inform the subsequent discussion and resulting proposals.

4.0 **FINANCIAL IMPLICATIONS**

4.1 At this stage there are no financial implications arising from the report. Should the Council agree to reduce the number of Committees there will be a consequential impact on officer time and costs. There may be an additional consequential impact the Members' Allowances Scheme.

5.0 LEGAL IMPLICATIONS

- 5.1 Section 9P of the Local Government Act 2000 (as amended for England) requires that a local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—
- (a) a copy of the authority's standing orders for the time being,
 - (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
 - (c) such information as the Secretary of State may direct, and
 - (d) such other information (if any) as the authority considers appropriate
- 5.2 The additional requirement to comply with a Direction of the Secretary of State as to what information a constitution must contain has been repealed (for England) since the last Council Constitution was drafted. The original Direction remains a useful checklist, however, containing as it does some eighty-two items of information that should be available to the public through a council's constitution.
- 5.3 The Constitution therefore contains a mixture of those standing orders and requirements that are a matter of choice for the Authority and those that are mandatory, including those pursuant to the now applicable Local Authorities (Committee System) (England) Regulations 2012.
- 5.4 The Guidance on “Modular constitutions for English local authorities” as issued has now been archived but remains extant and relevant, so must therefore be had regard to so far as it has not been superseded by later legislation. A relevant excerpt from the Constitution Guidance reads:
- “9.7 The Secretary of State considers that in the context of local governance arrangements the terms efficient, transparent and accountable should be taken to mean the following:
- efficient: the local authority's arrangements for making decisions include the capability for decisions to be made quickly in response to changing circumstances and the developing needs and aspirations of local communities;
 - transparent: anyone who has dealings with the local authority can easily determine who is responsible for decisions in respect of the matters with which they are dealing with the local authority and that they can also easily determine how best to make representations to that;
 - accountable: the local authority's governance arrangements enable people to find out about decisions which have been taken and include the capability for review and scrutiny of any decision made in respect of any of the local authority's functions by members of the local authority who were not directly involved in making the decision in question.
- “9.8 The Regulations and this guidance provide that alternative arrangements [being a committee system form of governance arrangements] take the following broad form:

- the full council of the local authority sets the policy framework and approves the budget, proposals for which would in general be presented to it from one or more committee(s) of the local authority;
- no more than five committee(s) (excluding regulatory committees, area committees and joint committees) of the local authority with delegated functions from the full council to implement the policy framework and to put proposals to the full council for future policies and budgets;
- one or more overview and scrutiny committee(s) to hold the policy committees to account in public, assist them in policy development and review and examine matters of wider local interest, involving local stakeholders in their deliberations; and
- a Standards Committee (and any sub-committees for parish councils) [repealed].”

5.5 The Guidance included at least one overview and scrutiny committee because the option for councils with a committee system form of governance to not have an overview and scrutiny committee was not then available, being later inserted into the Local Government Act 2000 as section 9JA. It should also be noted that, rather than being established as a result of this statutory guidance, audit committees are part of CIPFA practice guidance.

5.6 If it does resolve to appoint one or more committees as the authority's overview and scrutiny committee, then it must apply all of, those provisions of Parts 3, 4 and 5 of the Local Authorities (Committee System) (England) Regulations 2012 to those committees. If it does not appoint any overview and scrutiny committee, then there remains some statutory overview and scrutiny functions for the Authority to fulfil but these may be carried out by ordinary committees of the Council, which is the current proposal.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no direct resource implications arising from this report.

7.0 RELEVANT RISKS

7.1 There are no risks arising from this report.

8.0 ENGAGEMENT/CONSULTATION

8.1 Governance Working Group Members have met requested that this report be prepared and submitted to the Constitution and Standards Committee

9.0 EQUALITY IMPLICATIONS

9.1 There are no equality implications arising from this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment or climate implications arising from this report.

11.0 COMMUNITY WEALTH BUILDING

11.1 There are no direct Community Wealth Building implications arising from the report.

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APPENDICES

- Appendix 1. Proposed changes to governance arrangements
- Annexe A. Draft committee structure chart
 - Annexe B. Draft amendments to Article 7 (Re-consideration of decisions and overview and scrutiny provisions)
- Appendix 2. Local Government Association Report

BACKGROUND PAPERS

- Reports to Member Governance Working Group 14th December 2021:
 - Approach to review of committee governance arrangements;
 - Approach to review of decision review and overview and scrutiny.
- Committee system internal survey outcomes
- Outcome notes of Member Governance Working Group 14th December 2021
- Outcome notes of Member Governance Working Group 11th January 2022
- Publicly available background resource
- Constitutions of all other unitary, London borough, metropolitan borough or county councils operating committee system forms of governance.
- [External Assurance Review - Governance report: Wirral Metropolitan Borough Council](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030406/Governance_review_Wirral_Metropolitan_Borough_Council.pdf)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030406/Governance_review_Wirral_Metropolitan_Borough_Council.pdf

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Constitution and Standards Committee	14 Dec 2021
	30 Sep 2021
	23 Jun 2021
	24 Feb 2021
	25 Nov 2020