

FOLKESTONE & HYTHE: OPTIONS FOR GOVERNANCE CHANGE

1. This report has been prepared by the Centre for Governance and Scrutiny (CfGS) on the factors for consideration when contemplating governance changes. It has been prepared as an independent report, at the request of the Governance Working Group, following their meeting on 11 October 2021.

2. Background

- 2.1 *“That this Council believes that all Councillors should have the ability to participate fully in decision-making and that a range of governance options are available. This council believes that a cross party working group of all group leaders should be set up to consider the issues of moving to a committee system, or an alternative system, at the earliest opportunity reporting back to council.” Council 25 September 2019 (minute 43.2).*
- 2.3 Council made this resolution in 2019, and since then (subject to delay owing to the pandemic) steps have been taken to establish a working group to consider the topic in more detail, and to review options for change.
- 2.4 This paper sets out the result of this work, which has been led by Andrew Campbell at the LGA and more recently by Ed Hammond at the Centre for Governance and Scrutiny.

3. Goals for Change

- 3.1 A key element of this work was the early agreement of a set of “goals for change”, which set out design principles that need to be satisfied in the design of any new system. The approach of agreeing principles to govern the process is recommended in the CfGS publication “Rethinking governance”.
- 3.2 Members of the Working Group agreed the following “goals for change” in February 2020:
 1. **Inclusiveness** – more Councillors should be involved in making decisions. Currently, 7 out of the 30 Councillors make decisions in Cabinet. The aim should be to increase the percentage of Councillors who have a role in making policy and service decisions.
 2. **Representation** – currently, some communities in Folkestone and Hythe, represented by the Green, Labour and Liberal Democrat parties, have no representation in the main decision making processes of the Council. Change should ensure that more communities feel represented in the way decisions are made, and ensure effective engagement with the public.

3. **Accountability** – the current system of portfolio holders gives clear accountability and responsibility for the decisions that are made. Any change should ensure that clear accountability remains.
4. **Effective Scrutiny** – strong scrutiny is to be encouraged. In particular, there should be more emphasis on pre-decision scrutiny to ensure that proposals are explored in detail before decisions are made. In a Committee system this can be achieved through ensuring that each Committee has a clear role in ensuring effective scrutiny. In a Cabinet system, the Overview and Scrutiny Committee can have a stronger and more influential role in decision making (e.g. the Kirklees model) and not just scrutinising decisions once they are made. A process for call in will remain necessary.
5. **Efficiency** – the current model is reasonably streamlined. Any change should not increase the overall number of meetings that are held in any year and should be mindful of the capacity of Members and officers alike to attend or service meetings. Any change should not lead to any significant increase in the costs of the Council's decision making.
6. **Transparency** – the forward programme of decisions and the reasons for decisions, once made, should be communicated clearly to all Councillors and to residents and businesses in the District. The number of meetings held in private or confidential papers should be minimal.

4. Progress

4.1 Since the agreement of these goals, a number of tangible steps have been taken to improve current practice. Some of these include:

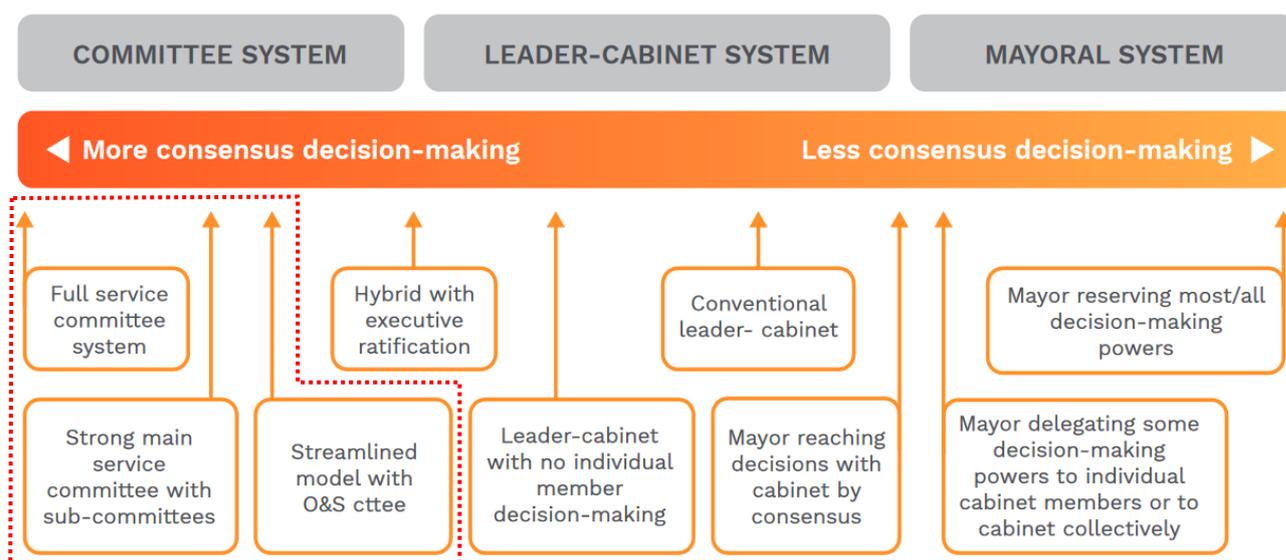
- Improvements to the scrutiny function, in particular the practice of pre-decision scrutiny and the regular review of performance and finance monitoring information. Members of the Working Group note that these arrangements are still relatively new;
- The introduction of a wide range of working groups and all-member briefings, drawing more councillors into decision-making and ensuring that they are all better informed. Members of the Governance Working Group note that attendance by members at some other working groups is fairly low;
- A reduction in the use of confidential papers to support decision-making, which Governance Working Group members have welcomed.
- Appointments to Cabinet have been made on a cross-party basis. An offer has been made to the Labour Group to take up places on Cabinet, but this is not an offer that they have been able to accept. It remains the case that a politically-balanced Cabinet cannot be formally specified in the constitution, and its continuation depends on the majority party.

5. The spectrum of opportunities

5.1 It is worth noting that there are no clear “pros and cons” between different models – the most important thing is culture - the behaviours, values and attitudes of those operating within the system. While structural change can help to embed changes to culture, it will not bring it about automatically. For example, while it is the case that under the leader-cabinet system a majority party holds all legal decision-making power, this is in a practical sense also the case on the committee system, where a

majority party would have most seats on any committee, and hence would be able to win any votes. Ultimately, this reflects the decision of electors.

- 5.2 Governance can most usefully be thought of as being a spectrum, with a range of models being available between those offering most consensus decision-making, to those offering least consensus decision-making – as shown in the diagram below.



6. Options overall

1. Continue with the current pace of evolution of the current arrangements;
2. Accelerate that change by adopting more obviously “hybrid” governance systems;
3. Formally change governance option by adopting the committee system (outlined in the red dotted line in the diagram above).

6.1 We recommend that members contemplate these options further.

6.2 Option 1: The current pace of evolution

A range of positive changes to governance have been made since the “goals for change” were agreed. While these may not have gone far enough for some members, and while some members may be uncertain about the prospect that evolution of the current system at the same pace will deliver their “goals for change”, we think that there may well be opportunities here that could well go some distance to meet expectations without requiring a significant shift to new governance arrangements which would inevitably come with a degree upheaval and disruption.

6.2.1 These might include:

Inclusiveness: more, and more effective, pre-decision scrutiny on matters that are complicated or contentious. Unlike under a hybrid or committee system this would focus member discussion on the matters of greatest importance – but this would require ways to agree on what those matters would be;

- 6.2.2 **Representation.** Cabinet would still be the primary decision-maker under this system. Additional opportunities to feed in would be informal, rather than being provided as a matter of right.
- 6.2.3 **Accountability.** Individual and collective accountability are clear in the Cabinet system, being provided for through both officer delegation and decision-making delegation to individual Cabinet members.
- 6.2.4 **Effective Scrutiny.** A key component of the Cabinet system is strong and effective scrutiny, and options also exist here for improvement. More, and more effective, pre-decision scrutiny along the lines discussed above is an obvious option. We also think that the opportunity is present to strengthen the way that councillors review and oversee performance information, and other management data about how services are delivered. In combination with member-led audit functions, there is also an opportunity to more generally strengthen financial scrutiny.
- 6.2.5 **Efficiency.** The leader/cabinet system is generally regarded as “efficient” inasmuch as it makes it easier to make decisions quickly and flexibly, and without convening significant numbers of meetings. However, it should be noted that taking action to enhance inclusivity, accountability and so on may negatively impact on “efficiency” in its narrowest sense.
- 6.2.6 **Transparency.** There are a variety of ways under leader/cabinet to enhance transparency. The council could publish process maps and flow diagrams demonstrating more clearly how different decisions are made. This could inform the Forward Plan. Consistent publication of background papers and systems for dealing with member enquiries (including overhauling relevant systems) have also been adopted elsewhere to enhance transparency. There are obviously resource implications for officers here.

6.3 **Option 2: Adopting “hybrid” governance systems**

- 6.3.1 Hybrid systems are generally (legally) leader-cabinet systems with committee system characteristics. This involves the introduction of more radical, structural changes to the way that the council does business.
- 6.3.2 A number of councils have chosen to adopt hybrid arrangements. This generally involves the creation of new formal member structures to provide spaces for member decision. This can for example involve:
- The conversion of scrutiny committees into policy development, or “pre-decision”, committees, where all matters due to be dealt with on the Cabinet agenda are brought before decision. These committees become a place for debate, and then a relevant recommendation is made to Cabinet, which effectively “rubber-stamps” those recommendations to convert them into a formal decision;
 - A similar system to that described above, but where the committees in question are committees of Cabinet, rather than scrutiny committees. Under this model, the chairs of these committees might be Cabinet members, who are empowered to make decisions based on the committee’s recommendations immediately. This can be seen as offering clarity over where accountability and oversight arrangements lie. However, we are aware that involvement in those committees may prove challenging for one minority party on the Council, which is not permitted by its national rules to be involved formally in decision-making systems.

- 6.3.3 Some councils operating hybrid systems will also establish a business committee for Council (often styled as a General Purposes Committee) to provide cross-party ownership for the Council's overall policy agenda.
- 6.3.4 These systems have been adopted in a number of councils and appear to work well. However, they raise some challenges (outlined below) which are pertinent to the "goals for change" and F&H's needs.
- 6.3.5 Assessing against the goals for change
- 6.3.6 **Inclusiveness.** A hybrid form of governance would increase the number of councillors involved in decision-making. However, legal decisions would still only be made by Cabinet, and where delegated to individual Cabinet members and officers, as under the current system. Legally, any new committees could only recommend the adoption of certain decisions, much like the various Working Groups can do now under the current system.
- 6.3.7 **Representation.** Under a hybrid system decision-making would still be the role and responsibility of Cabinet, even though arrangements would look and feel more pluralistic.
- 6.3.8 **Accountability.** Hybrid systems can "fudge" the issue of where a legal decision is made. Legally, Cabinet makes the decision although a political commitment is usually made that the decision will reflect the recommendation of a committee. However, that political commitment can be withdrawn, and this lack of stability and absolute certainty can cause problems in a council with complex political balance arrangements and/or where an issue under consideration is especially controversial.
- 6.3.9 **Effective Scrutiny.** Hybrid systems do not necessarily strengthen scrutiny. Where scrutiny committees are used as the vehicle for policy development discussions, there is the risk that wider challenge over the organisation's strategic direction can be lost, because these committees become de facto "decision-making" bodies rather than ones holding a decision-maker to account.
- 6.3.10 **Efficiency.** The risk is that councils operating hybrid arrangements end up establishing new committees and similar structures to provide more space for member discussion, and that these end up sitting in addition to Cabinet. For example, establishing cabinet committees and/or a separate General Purposes Committee, as set out above, would present significant risks here and demand additional resources.
- 6.3.11 **Transparency.** A hybrid system would not necessarily be automatically more transparent. It would be necessary to take additional steps – including those set out in the section above on "The current pace of evolution" – to achieve these measures.
- 6.3.12 We think that members should not take forward further discussion on the adoption of "hybrid" models, which involve significant structural changes. While these work for many councils, we do not consider that these align with members expectations as set out and agreed in the "goals for change".
- 6.4 **Option 3: A formal change of governance**
- 6.4.1 Councillors may alternatively consider that the best way to meet the goals for change would be to make a formal change to the council's governance system. Currently the council operates under the leader-cabinet system. Two alternative governance options are available – the committee system and the Mayoral system.

6.4.2 The three most common structural approaches for councils operating the committee system are:

- **A full-service committee system:** in which individual service committees have the freedom to make decisions in their remit, and cross-cutting decisions go to multiple committees for signoff. All the committees would be responsible for implementation in their relevant service area, working within the overall policy and budget framework as determined by full Council. Committees will also consider and develop policy for recommendation to Council for approval. The Working Group has established that this is not a model that would work for Folkestone and Hythe, not least because it would not meet the goal on “Efficiency”.
- **Strong main service committee with service committees:** in which a co-ordinating committee (which in most models usually has a name like “Policy and Resources” or “Strategy and Resources”) has an overarching role in setting corporate policy. This committee usually deals with major cross-cutting issues itself and may have the chairs of other committees sitting on it, and it may also set the agendas for those other committees.
- **Streamlined approach:** in which councils operate what was termed a “streamlined” model – with only a couple of service committees, a strategy and resources committee and (usually but not always) a separate scrutiny committee. The Working Group felt that, if it was concluded that a change in formal governance option was justified, this would be the preferred model.

6.4.3 Any new approach, which meets the “goals for change”, would need to take account of:

- Committees’ work programmes. Service committees can focus on policy development, but in order to influence forthcoming decisions members could reasonably expect to consider issues before a formal decision is developed. This satisfies members’ need for inclusivity but raises challenges on the weight of agendas – and the number of times that members might expect the same matter to be brought to a member forum before a decision is made. For more complex decisions, it might be better to run workshops for members or even to establish working groups – but this also raises serious challenges for workload. Councils operating the committee system take different approaches – in some, members’ involvement in decision-making is limited to discussing the matter in committee and then taking a vote, but this is not in line with the agreed goals for change;
- The frequency of committees. Not all committees have to meet with the same frequency, but meetings will need to be regular in order to ensure that decisions can be made promptly and effectively;
- The role of chairs. In some committee system councils, chairs are effectively “lead members”, taking responsibility for liaison with service departments and informal conversations with senior officers in the same manner as a cabinet member. The main difference is that the chair has to consider the interests of the wider committee, and presumably needs to act subject to the committee’s wishes. The constitution would need to be clear as to the roles and responsibilities of chairs – and the assignment of additional lead members for particular subjects if this is thought necessary to satisfy the “accountability” goal for change;
- The role of officers. Arrangements for the delegation of decisions may need to be different under the committee system. Councils operating the committee system often take the opportunity to consider powers of delegation in favour of members, sometimes by slightly reducing financial thresholds. Sometimes changes are

made, but more informally – for example by introducing an expectation that a committee will be consulted on the development of certain decisions.

6.4.4 Assessing against the goals for change

6.4.5 **Inclusiveness:** a wider range of members are directly involved in the legal act of decision-making. However, members will need to consider how, within the committee system, they expect also to be involved in policy development, and the conversations leading up to formal decision-making.

6.4.6 **Representation.** All parties have a stake in decision-making under the committee system, through taking votes in committee and at Council.

6.4.7 **Accountability.** Accountability for decision-making is held by all councillors in the committee system – however many councils have found it useful to identify “lead members” for specific issues to ensure that policies can be discussed and taken forward between meetings. These people would have no legal powers to make decisions but could be appointed by service committees to ensure that committee business is taken forward promptly and effectively by officers.

6.4.8 **Effective Scrutiny.** It is not a requirement of the committee system that councils appoint a scrutiny committee, and many have chosen not to. Councils who have chosen to appoint a scrutiny committee have tended to focus the work of that committee on matters external to the council (and in particular the role of partners). Scrutiny committees under the committee system can also provide assistance to service committees on monitoring performance, which is something that service committees can find themselves with limited time to do effectively.

6.4.9 **Efficiency.** While the committee system has in the past been criticised as “inefficient”, councils have managed to successfully design ways of working to ensure that decisions can be made quickly, flexibly and effectively. This requires terms of references of committees to be clear and, in particular, for there to be clear rules for managing decision-making where more than one committee’s interests are effective. It also requires that decisions not be subject to further review or onward reference to bodies such as Council.

6.4.10 **Transparency.** Councils operating the committee system usually find it necessary to overhaul systems to share information with councillors, as more councillors are involved in the decision-making process. The early sharing of reports in draft and the systematising of the way that management information is addressed seems to be an essential part of committee system operations. As noted above, there are resource implications on this for officers.