

## Overview and Scrutiny Committee Constitutional Review

Report of the Corporate Portfolio Holder

### Recommended:

**That Cabinet have regard to the options set out in this report and determine how they wish to proceed.**

#### SUMMARY:

- On 18 June 2014 Cabinet resolved that the Head of Legal and Democratic Services report to Cabinet on the implications of Overview and Scrutiny Committee’s recommendations.
- This report develops the recommendations of the Overview and Scrutiny Committee Task and Finish Constitution Panel regarding both the appointment of the Chairman of Overview and Scrutiny Committee and the term of office of the Leader.
- The report advises that the current Constitutional arrangements are consistent with legal requirements and with all but 3 of the Hampshire Borough and District Councils.

### 1 Introduction

- 1.1 Overview and Scrutiny Committee (“OSCOM”) established a Task and Finish panel to review the Constitution and particularly to have regard to how appointments are made to committees.
- 1.2 OSCOM recommended to Cabinet that:
  - 1.2.1 “Consideration should be given by Cabinet to the appointment of the Leader for one year rather than four years.”
  - 1.2.2 “That Cabinet consider the appointment of the Chairman of OSCOM, by Members by ballot or simple vote.”
- 1.3 On 18 June 2014 Cabinet considered the recommendations of OSCOM and resolved that the Head of Legal and Democratic Services report to Cabinet on the implications of OSCOM recommendations regarding the term of office of the Leader and the process for the appointment of the Chairman of OSCOM.
- 1.4 This reports sets out the legislative background and current Constitutional arrangements and in addition notes the constitutional practice of other councils within Hampshire.

## **2 Background**

### **2.1 “Consideration should be given by Cabinet to the appointment of the Leader and the Cabinet Members for one year rather than four years.”**

2.1.1 The Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) required Councils to adopt one of two new styles of executive arrangements: the Leader and Cabinet model or the Mayor and Cabinet model (otherwise known as the “Strong Leader” model).

2.1.2 The Council conducted the required statutory public consultation after which these matters were set before Council.

2.1.3 On 9 September 2010 Council resolved that the Leader and Cabinet model was its preferred option and Council duly adopted that model with attendant alteration of the Constitution as required by the 2007 Act at a meeting of Special Council on 11 November 2010.

2.1.4 One such required alteration to the Constitution related to the term of office of the Leader under the 2007 Act. The term of office of the Leader for a “whole-council election” authority such as Test Valley Borough Council, was the term of membership of the Council, in short 4 years save that the Leader could be removed by resolution of Council.

2.1.5 The Localism Act 2011 now permits local authorities to make provisions for setting the term of office. Until Council does adopt new arrangements, the current legal framework remains. Consequently, the term of office of the Leader and removal by resolution continue in force.

2.1.6 OSCOM did not propose any argument in favour of changing the current arrangements, observing only:

“Although the present system works well, the Panel suggests that Cabinet now considers whether the election of the Leader should be for a term of one year or four.”

2.1.7 Of the eleven Hampshire Borough and District Councils, eight (including Test Valley Borough Council) operate under the Strong Leader model. Of the remaining three, Gosport Borough Council did not fall within the required criteria of the legislation and so was not then required to adopt one or other of the strong leader models. The remainder adopt annual election of the Leader. Hart District Council elects its Members by thirds, and so annual election aligns closely with changes in political control. New Forest District Council elects its Members every four years, but elects its Leader annually.

### **2.2 “That Cabinet consider the appointment of the Chairman of OSCOM, by Members by ballot or simple vote.”**

2.2.1 Section 21 of the Local Government Act 2000 required every local authority to have an overview and scrutiny committee. The purpose of overview and scrutiny committees is to hold the Executive to account, but also to undertake policy development and review, and to monitor and improve performance.

2.2.2 Since 2000, the role and authority of overview and scrutiny committee has been augmented by later legislation including the 2007 Act that introduced the “Councillor Call for Action”, and more recently the Localism Act 2011.

2.2.3 Part 1A of the Local Government Act 2000 requires that each local authority operating executive arrangements must provide arrangements for the appointment of an overview and scrutiny committee. Such a committee is a body to which the provisions of the Local Government Act 1972 apply and so it is for Council to decide upon the appointment of members to that committee. Council may choose to appoint a chairman directly or delegate such appointment to the committee by election from amongst the committee members.

2.2.4 The Constitution confirms Council’s power of appointment at Article 4 paragraph 4.02. The appointment of a chairman by Council is made explicit at Part 4- Overview and Scrutiny Procedure Rules- paragraph 6:

“Council in appointing members to the Overview and Scrutiny Committee(s) will also appoint a chairman and deputy chairman.”

2.2.5 Ten of the eleven Hampshire borough and district Councils (including Test Valley Borough Council), appoint the chairman of OSCOM at Annual Council. Rushmoor Borough Council does not operate a single overview and scrutiny committee, but rather allocates that function to each of five separate panels that consider specific functions of the Council. Each panel chairman is elected for a single municipal year by the members of the panel.

2.2.6 OSCOM opined that:

“Committees which require appointment under statute should have their chairmen appointed by fellow members, in a public forum. This may provide more transparency and a greater degree of democracy.”

### **3 Corporate Objectives and Priorities**

3.1 This report does not relate to a single corporate objective save that it is in the interests of the Council to give due regard to good governance.

### **4 Consultations/Communications**

4.1 Members were initially asked for their comments on the Constitution as a whole. There was a limited response. There has been no further consultation with regard to these specific matters which followed that consultation and which have been developed by the Task and Finish Panel.

4.2 The Corporate Portfolio Holder has been consulted. The view of the Portfolio Holder is that although there is always value in a thoughtful exercise regarding the governance of the Council, the current arrangements provide for clear strategy and clear decisions.

- 4.3 The Corporate Portfolio Holder notes that although OSCOM have merely invited consideration of these matters, the exercise is clear evidence of effective and considered scrutiny and consequently, chairmanship of the committee.

## **5 Options**

### **5.1 Leader's Term of Office:**

- 5.1.1 Cabinet might consider it appropriate to reduce the Leaders term of office to allow for annual election or otherwise.
- 5.1.2 Alternatively, Cabinet might consider that there is no change to the current constitutional arrangements which would assist the administration of council business or benefit the public interest or democratic process.
- 5.1.3 In the event that Cabinet considers that the Leader's term of office should be reduced to allow for annual election or otherwise, such consideration would necessarily require Council's approval.
- 5.1.4 Should Cabinet decide that there is no requirement for any such change, Cabinet may refer the issue to Council with an appropriate recommendation or take no further action.

### **5.2 The Appointment of the Chairman of OSCOM:**

- 5.2.1 Cabinet might consider it appropriate for the chairman of OSCOM to be elected from the members of OSCOM as proposed by the Task and Finish Panel.
- 5.2.2 Alternatively, Cabinet might consider election from within the committee to be without material benefit to the administration of the overview and scrutiny function.
- 5.2.3 In the event that Cabinet recommends that the chairman of OSCOM is elected by the members of OSCOM, Council would be required to approve such a change in the Constitution.
- 5.2.4 Should Cabinet decide that the current arrangements are appropriate for the discharge of the overview and scrutiny functions, Cabinet may nonetheless refer the question to Council or alternatively take no further action.

## **6 Option Appraisal**

- 6.1 There is no legal requirement to make any change in current arrangements either in respect of the Leader's term or the appointment of the chairman of OSCOM.

## 6.2 The Leader's term.

### Considerations in favour of retaining a 4 year term:

- 6.2.1 The 2007 Act intended to ensure stability and consistency in decision-making as well as transparency and accountability by ensuring that Leaders remained in office for a significant term. To that end the legislation expressly limited the circumstances in which a Leader might be removed.
- 6.2.2 There is no clear benefit to the administration of the Council or its business by a reduction in the term of office of the Leader. Limiting a Leader to a term of 12 months would leave little time for the Leader to achieve any significant improvements and would have the potential to promote political expediency over good business practice.
- 6.2.3 The potential for change in the Executive could promote equivocation and delay in decision-making around periods in which the Leader was seeking re-election. The progress of the Council in securing improvements for the benefit of the community would be delayed, if not wholly compromised.
- 6.2.4 To reduce the term of office, which was expressly provided in the 2007 Act and which was the subject of public consultation would appear to undermine the Strong Leader model and the democratic process which led to the Council's adoption of the Strong Leader model.
- 6.2.5 Unlike the requirements specified in the 2007 Act (which amended the Local Government Act 2000) which were mandatory and which were underpinned by public consultation, the Localism Act merely permits councils to amend these provisions.
- 6.2.6 As matters stand, the Constitution provides for the removal of the Leader by resolution. That express statutory requirement, and so the limitation imposed upon the removal of a Leader is repeated in the Localism Act. The removal of the Leader requires firstly, a motion supported in writing by at least one quarter of members of the Council. Thereafter the decision to remove is by majority, just as election is by majority. In both scenarios the Leader is accountable to, and supported or otherwise, by a majority of members.
- 6.2.7 Whilst it cannot be claimed categorically that the fact that a majority of local authorities in Hampshire have similar arrangements would alone justify maintaining the current arrangements, the absence of any change in the arrangements of neighbouring authorities might suggest the absence of any good reason to make those changes permitted by the Localism Act.

### Considerations in favour of annual elections of the Leader

- 6.2.8 In Council's where there is no overall control, it would be reasonable to consider the election of the Leader annually in order that the Council might exercise an effective check on Executive power which better reflected the division of political power within the Council.

- 6.2.9 Where political power is not clearly vested in one group, particularly in Councils which elect Members in thirds on an annual basis, and by which the political balance might easily change, it would be sensible to consider the appropriate Leader on an annual basis. By such consideration both political power in the Council and the Executive could then be aligned.
- 6.2.10 An annual election could be said to reinvigorate the democratic mandate of the Leader regardless of the uncertainties that may come with such an annual contest.
- 6.2.11 Moreover, it can be argued that annual election provides a check and balance on the Leader's activities by regularly re-emphasising his or her accountability to the Council as a whole.

### **6.3 The Appointment of the Chairman of OSCOM**

#### Considerations in favour of the appointment by Council

- 6.3.1 There is no legal requirement to make any change to the current arrangements.
- 6.3.2 OSCOM is a non-executive committee and as such a "Council" committee. It would follow that its appointment by Council is appropriate, and consistent with the appointment of other non-executive committees. It also follows that Council has the authority to revoke all such appointments.
- 6.3.3 The election of a chairman in committee guarantees no greater degree of transparency or independence.
- 6.3.4 There is no greater transparency in committee than in Annual Council at which all statutory committees are appointed before the public, and necessarily having regard to the non-executive nature of such committees. Annual Council is an event attended by all Members, notable individuals with an interest in the good governance of the Council and members of the public.
- 6.3.5 The custom and practice of many local authorities is to permit the political groups to reach agreement regarding particular membership of committees and their chairmanship. Consequently, even where chairmen are elected to office at the first meeting of the committee, the appointment has more often than not previously been discussed outside the committee room.

#### Considerations in favour of the appointment of a chairman by the committee

- 6.3.6 The election of a chairman by the committee would more closely reflect the views and opinions of the members of the committee, rather than of Council. Such a chairman might best represent the views of the committee when advocating the agenda of the committee and its findings.
- 6.3.7 The nature of the committee is to scrutinise particularly the leadership of the Council. To elect a member from within the committee would suggest a greater degree of independence from Cabinet members or those others outside the committee itself but who are nonetheless influential.

## 7 Risk Management

- 7.1 A risk assessment has been completed in accordance with the Council's risk management methodology. There is no identified risk to the Council as a consequence of maintaining the current arrangements because the current Constitutional arrangements are consistent with the law and as illustrated by consideration of this report, ensure an effective overview and scrutiny function. In the event that the current term of office of the Leader was to change, and whilst it is arguable that there may then be some risk to the continuity of Council business as noted above, such a risk would not alone compel Council to necessarily reject such change.

## 8 Resource Implications

- 8.1 There are none save the requirement to amend the Constitution should Council eventually resolve to make those amendments to the Constitution as discussed in this report.

## 9 Legal Implications

- 9.1 The current constitutional arrangements are consistent with the law, as would be any of the changes proposed in the report. However, any changes to the Constitution will require the resolution of Council.

## 10 Conclusion and reasons for recommendation

- 10.1 Whilst there is no legal requirement for any change to either the term of office of the Leader, or the appointment of the chairman of OSCOM, Cabinet is required to give due consideration to the recommendations of OSCOM and by the consideration of this report discharges that duty.
- 10.2 The nature of the report is to inform the debate regarding those discrete matters referred by OSCOM to Cabinet. It is for Cabinet to consider how it wishes to respond to OSCOM.

### Background Papers (Local Government Act 1972 Section 100D)

#### Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:

0

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Report to:

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Date:

26 November 2014