



COUNCIL: 12 October 2022

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**Report of: Simon Goacher (Independent Legal Adviser, Weightmans LLP) on behalf of the Chief Operating Officer**

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**SUBJECT: CHANGE OF GOVERNANCE ARRANGEMENTS**

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Wards affected: Borough wide

## **1.0 PURPOSE OF THE REPORT**

1.1 To present Council with the recommendations of the Political Governance Arrangements Working Group to move to a Committee System following a review undertaken and to set out the legal framework and implications for change.

## **2.0 RECOMMENDATIONS**

2.1 That Council consider and note the following recommendations of the Working Group;

(a) That the council adopts the committee system form of governance with effect from the annual council meeting of the Council in 2024.

(b) That in respect of consultation arrangements:

(i) a referendum should not be held.

(ii) That a public consultation should not be held prior to a decision being made.

(iii) That consultation be undertaken with relevant stakeholders if a decision is taken to move to a Committee System

(c) That the following Committee structure be adopted:

### **Service/Policy Committees:**

- Policy & Resources
- Housing & Health
- Environment

### **Statutory Committees:**

- Audit and Governance Committee
- Licensing and Appeals Committee
- Licensing and Gambling Committee
- Planning Committee
- Standards Committee

Although other suggestions that come forward can be considered by the Working Group and Council.

2.2 That taking into account the recommendations of the Working Group above, the implications of change set out in paragraph 8 of the report, including the financial/resource implications, set out in paragraph 10, Council considers either:

- (i) To retain the current governance model
- (ii) Adapt current governance model to make it a hybrid/more inclusive model
- (iii) To move to a committee system with effect from the Annual Council meeting in 2024.

2.3 That should the Council resolve 2.2 (iii) above (To move to a committee system with effect from 2024):

- (a) Taking into account the 3 Committee model illustrations provided by the Centre for Governance & Scrutiny attached as Appendix 1 to this report and the examples of the committee structures of other authorities attached as Appendix 2, Council considers whether to endorse the recommendation of the Working Group to adopt the Committee structure set out at 2.1 (c) above.
  - (b) That the Terms of Reference of the Political Governance Arrangements Working Group be expanded, in order to bring further reports back to Council, in respect of the following:
    - (i) The Consultation arrangements
    - (ii) The Size and Terms of Reference of Committees and to consider if any other bodies, such as Sub-Committee, Working Groups or Task & Finish Groups will be required.
    - (iii) Changes to the Constitution, including, but not limited to, the Scheme of Delegation to Chief Officers.
    - (iv) a review of the staffing required in Democratic Services to support the change.
  - (c) That it be noted that the Independent Remuneration Panel will be called upon to undertake a review of the Members Allowance Scheme for 2024/25, following the all-out elections being held in May 2023.
  - (d) That it be noted that the Member Development Commission will be consulted on proposals in relation to the required training for Members.
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### **3.0 BACKGROUND**

3.1 The Full Council at its meeting on the 15 December 2021 debated a Notice of Motion on the authority's political governance arrangements and resolved:

"A. *That this Council recognises that the current constitutional arrangements may not be well-suited to a situation of 'No Overall Control' and resolves to consider possible changes to its Constitution and to its Governance arrangements.*

B. *That the Chief Operating Officer is instructed to bring a Report to a Full Council Meeting no later than February 2023 setting out the options and necessary actions that would need to be taken into account to discontinue the existing Leader and Cabinet system of decision making and to revert to a Committee system, or any alternative legal system, with effect from the start of the civic year beginning in May 2023. The Report of the Chief Operating Officer is to also set out the statutory framework, possible options for political governance structures, timescales and detailed implications of any change.*

C. *That this Council also authorises:*

(a) *The establishment of a cross party working group to thoroughly investigate the options for any change in the political system of governance. The working group is to comprise 3 Labour, 2 Conservative and 1 Our West Lancashire Members and is to be chaired by Councillor David Whittington. The cross party working group is expected to report its findings to the Full Council Meeting no later than February 2023.*

(b) *An all Member briefing on the options for change and their implications to be provided with the support of the Centre for Governance & Scrutiny and/or the Local Government Association.*

(c) *That the Chief Operating Officer in consultation with the Chairman of the Cross-party working group be authorised to commission the above independent review and that it be funded by allocating appropriate reserves."*

3.2 Since that resolution was passed the Political Governance Arrangements Working Group has met and considered the options and implications for any change in governance arrangements. The Working Group has also received support from the Centre for Governance and Scrutiny on the options. There has been a full member presentation. The Working Group has also met with representatives from Wirral Borough Council which recently changed to the committee system of governance. More details on the work of the Working Group are set out below.

### **4.0 THE LEGAL FRAMEWORK**

- 4.1 Chapter 4 of the Local Government Act 2000 (as amended by the Localism Act 2011) governs permissible forms of local authority governance and the rules to be followed in order to change form. Section 9KC of the Act states, a “resolution of a local authority” (i.e. a simple majority) is required in order for the council to make such a change in governance arrangements.
- 4.2 A local authority may not then pass another resolution that makes a change from one to another of the permissible forms of governance arrangements “before the end of the period of 5 years” beginning with the date the first resolution is passed, unless that change is supported in a referendum.
- 4.3 A resolution passed by the Authority to change from one of the permissible forms of governance arrangements to another will then be implemented only at:
- (a) the first annual meeting of the local authority to be held after the resolution to make the change in governance arrangements is passed, or
  - (b) a later annual meeting of the local authority specified in that resolution.
- 4.4 There is no requirement to hold a referendum when changing forms of governance (save where there has been a change within the previous five years or where a petition requesting a referendum signed by 5% of local electors is presented to the Council).
- 4.5 There is also no legal requirement to consult the local electorate when making a change to the form of governance.

## **5.0 WORKING GROUP PROGRESS**

- 5.1 The Working Group met on 29 July 2022 and received a presentation from Ed Hammond of the Centre for Governance & Scrutiny, on the Committee System Model of governance. The working group passed the following motion:

"A. *That a change to a Committee System be pursued, potentially looking at something similar to Model 2 (streamlined) on the presentation from Ed Hammond, Centre for Governance & Scrutiny, but not ruling out other models:*

*Model 2 (streamlined)*

- *Main “Strategy and Resources Committee” (meeting once every 2 months)*
- *Three sub-committees (meeting quarterly) –*
  - *Housing*
  - *Regeneration*
  - *Public Realm / Environment*
- *External scrutiny committee*

B. *That a report be brought back to the Working Group on potential examples of Committee type structures and the legal costs involved in moving to from the Leader and Cabinet Model.*

- C. *That a meeting with officers and Members from Wirral Council be arranged to learn from their experience in moving to a Committee System from a Leader and Cabinet Model to a Committee System."*

## **6.0 ADVANTAGES AND DISADVANTAGES OF A COMMITTEE SYSTEM**

- 6.1 The Working Group considered the advantages and disadvantages of a Committee System at its meeting on 29 June 2022.
- 6.2 In considering a change specifically from a Cabinet form of Governance to a Committee system there are a number of advantages and disadvantages of each system which would have to be considered and looked at in close detail. An all Member Briefing was also held on 25 July 2022, which outlined the various options available to the Council.
- 6.3 The following provided a very brief snapshot of what are often put forward as the pros and cons of each system:

### *(a) Committee System*

*Arguments often put in favour include:*

- *There is broader membership involvement in decision making meaning it is more inclusive*
- *debate takes place before decisions considering all alternatives*
- *all decisions are made in public*
- *politically balanced Committees.*

*Common criticisms include:*

- *There is voting on party political lines and application of the 'whip' (no 'whip' at overview & scrutiny under executive arrangements);*
- *Decision making is more bureaucratic and slower*
- *increased officer briefings and support*
- *less individual responsibility and accountability so a diminution of leadership; and*
- *higher cost of administration.*

### *(b) Cabinet (Executive):*

*Arguments often put in favour include:*

- *More efficient decision making*
- *clear lines of responsibility and transparency*
- *clear Leadership of the Council*
- *clear separation between decision makers and those holding to account; and*
- *easier partnership working.*

*Criticisms include:*

- *power is concentrated in a few hands*

- *party with control of the executive controls most decisions*
- *backbenchers are under-utilised; and*
- *decisions taken "behind closed doors".*

6.4 The Working Group also considered the advice received from Ed Hammond, Centre for Governance and Scrutiny at the meeting held on 25th March 2022:

- Don't focus on what other authorities have in place as each Council is different
- That no one form of governance is better than the other, everything depends on the behaviours and culture of the authority
- Dissatisfaction could be addressed, rather than a systematic change

## 7.0 OPTIONS

7.1 Although the Working Group has resolved that it wishes to continue to pursue a move to the committee system this is ultimately a decision which only full Council can make. In reaching such a decision full Council will need to evaluate each of the options which are:

- (i) Retain current governance model
- (ii) Adapt current governance model to make it a hybrid/mor inclusive model
- (iii) To move to a committee system

7.2 If Council resolves at this meeting to move to a committee system of governance from 2024, there are a number of options to consider. This includes what form the committee system should take, how many committees there should be and what level of decision-making responsibility they should have.

### Current governance model

7.3 Members are aware of the strengths and weaknesses of the current model and some of the recognised pros and cons are set out in paragraph 6.3 above.

### Adapting current governance model

7.4 There are ways in which the current form of governance could be adapted to retain the leader and executive model to try and address some of the perceived weaknesses of the model. These could include:

- strengthening of the overview and scrutiny system
- increasing pre-decision scrutiny/policy development
- creating politically balanced executive advisory committees effectively developing and strengthening the roles of the current Cabinet Working Groups; and/or
- strengthening area committee-based decision making.

This could lead to a more hybrid model without formally changing the form of governance.

### Consultation/Referendum

- 7.5 To date there has been no consultation with the residents of the borough about whether the form of governance should be changed. This is a significant change which will have a major impact on the way the Council operates, in all likelihood for a period of at least 5 years. Despite the fact that there is no legal obligation to consult, the Council may feel it should seek the views of local residents in such a major change to the governance of the Council.
- 7.6 The Working Group has indicated that it does not believe that it is necessary to consult prior to the Council resolving to change the governance arrangements of the Council. However, it is proposed to consult with key stakeholders on the implementation of the new arrangements. In order for any consultation to be lawful and effective it must:
- be carried out when proposals are still at a formative stage
  - contain sufficient information to give 'intelligent consideration'
  - give adequate time for consideration and response
  - be properly considered and taken into account by decision makers
- 7.7 There is no requirement for the Council to hold a referendum on any proposed change of governance. However, it could choose to do so. This would involve putting any proposal to all local electors and would involve significant costs though these would be reduced if the referendum was held alongside the local elections.
- 7.8 Any change in the governance system would amount to a significant change in the way the Council makes decisions about its services and policies. There is no clear or consistent approach from other authorities which have changed forms of governance. However, clearly the Council needs to consider very carefully how and when it engages with residents on this important proposal.

#### Moving to a Committee System

- 7.9 There are two issues to consider in respect of this. Firstly, the date when any change should be implemented and secondly the committee structure which should be adopted.
- 7.10 The Working Group has recommended a change from 2024, given that there is likely to be a significant amount of work needed to implement any change of governance. The main work will require the constitution of the Council to be completely rewritten to reflect the new governance arrangements, the officer structure to support the new arrangements will need to be reviewed, the members' allowance scheme will need to be reviewed to reflect the new structure and there will need to be training for officers and members on the new arrangements. The Working Group agreed that undertaking this work to implement the new arrangements by May 2023 would be challenging and a resolution providing for implementation at the annual council meeting in 2024 would allow more time for these elements to be put in place and create less pressure on the delivery of other council priorities.

7.11 In terms of the Committee structure adopted the Council already has a number of non-executive decision making committees which deal with decisions on non-executive functions. These are:

- Audit and Governance Committee
- Licensing and Appeals Committee
- Licensing and Gambling Committee
- Planning Committee
- Standards Committee

These would be retained if the Council changed to a committee system of governance.

7.12 The 3 Committee model illustrations provided by the Centre for Governance & Scrutiny are attached as Appendix 1 to this report. Some examples of the committee structures of other authorities which have adopted the committee system are also attached as Appendix 2.

#### Recommendations of the Working Group

7.13 The Working Group's recommendation to the Council is that it resolves to change to a committee system form of governance to take effect from annual council in 2024.

7.14 The Working Group recommends that the committee system should include the following committees:

##### Service/Policy Committees:

- Policy & Resources
- Housing & Health
- Environment

##### Statutory Committees:

- Audit and Governance Committee
- Licensing and Appeals Committee
- Licensing and Gambling Committee
- Planning Committee
- Standards Committee

7.15 If Council approves the recommendation of the working group a further report will be brought to the next meeting of Council with more detail on the proposed membership and terms of reference of these committees. It is not anticipated that the terms of reference of the existing statutory committees will change. The Council are therefore asked to extend the terms of reference of the Working Group to consider this detail.

## **8.0 IMPLICATIONS OF CHANGE**

8.1 There are significant implications for the Council in changing its decision-making structure to any new governance arrangements:

- A comprehensive rewrite of the Council's constitution, governance and decision-making processes would be required.
- A Comprehensive review of the Scheme of Delegation to Chief Officers.
- A new approach would be required to engagement with partners and partnerships, in the significantly changed partnership environment.
- Consideration of the impact on the decision flow and relationship with Directorate officer structure.
- Significant resource implications for those officers involved in formal and informal engagement with Councillors.
- A review would need to be carried out of the Members' Allowances Scheme

8.2 There are also specific significant implications for Democratic Services. There will be a need for:

- A complete overhaul of the members' remuneration arrangements in consultation with the Independent Remuneration Panel
- Additional extensive training for members and officers
- The servicing of the new committee structure
- A review of scrutiny arrangements - there would be no requirement for a formal scrutiny committee, however the crime and disorder scrutiny functions may still need to be retained.

## **9.0 SUSTAINABILITY IMPLICATIONS**

9.1 A clear fundamental principal of any governance review must be that any system of governance must reflect and be designed to meet the requirements of the Council so that it can function effectively and efficiently support its service delivery framework to the community.

## **10.0 FINANCIAL AND RESOURCE IMPLICATIONS**

10.1 There are major implications for any change in governance arrangements, in terms of resources, effective engagement with the public and Member and officer time and amendments to the Services Action Plans of relevant service areas. There are direct costs associated with making the change from one system to another, redrafting the constitution, making changes to rules of procedure and financial systems, project delivery and impact on forward work programmes, training and briefing costs for officers and Members and a full review of Members' Allowances will also be required.

10.2 It is difficult to identify the full costs of the implementation of the change to the governance system and there will be direct and indirect costs. However, based on the experience of other authorities it is likely that they will be in the region of £50,000-£100,000 in one off costs on internal and external resources to implement the changes. In addition, there may be a need for additional staffing costs to support the new structure.

10.3 The Council has been receiving external support from the Centre for Governance and Scrutiny (subsidised by the LGA) and Weightmans LLP which has supported officers. It is likely that additional external capacity will continue to be required should Council resolve to change the governance arrangements. The external

support is likely to be required in respect of legal advice and support on the changes and revised drafting of the constitution.

- 10.4 There will be a need for a comprehensive programme of training for members and officers on any new governance arrangements and the new constitution. The cost will depend on the detailed design of the training programme and procurement processes.
- 10.5 A change of governance arrangements will also require additional work from officers, in particular the Legal and Democratic Services Teams and this will be subject to a further report.
- 10.6 The Council is also looking into whether additional financial support would be available from the LGA to facilitate a change.
- 10.7 Any additional financial resources will need to be identified within the budget. Council will be aware of the savings requirements faced by the Council in setting its budget for 2023/4 and this will add additional strain.

## **11.0 RISK ASSESSMENT**

### Actions Required Following Approval in a change to the governance arrangements

- 11.1 A number of actions will follow if Council approves the recommendation of the Working Group. This will include:
  - Design and approval of the committee structure, including membership and terms of reference
  - Review and amend of the Members Allowances Scheme, including consideration by the Independent Remuneration Panel and Council
  - Amend the Council's constitution. This will need to include:
    - amendment of the responsibility for functions to remove references to executive decision making and allocate such decisions to the relevant committees
    - remove the executive/cabinet procedure rules
    - review the committee procedure rules
    - make consequential amendments to all parts where references are made to executive members.
  - Reviewing the supporting structures to ensure they align to and meet the needs of the new form of governance
  - A training programme for members and officers on the new arrangements and decision-making processes.
- 11.2 All of these actions will need officers to prepare reports for the consideration of the Working Group and all changes to the constitution will require full council approval. The risks involved in implementing a change from 2023 would be significant, the Working Group are therefore recommending a change from May 2024.
- 11.3 There are risks to the Council in any change of political governance structure in terms of cost; impact on resources; effective governance of the authority;

effective operation of the Council's decision-making structure in accordance with statutory requirements and the impact on the Council's member and officer structures.

## **12.0 HEALTH AND WELLBEING IMPLICATIONS**

12.1 There are no direct health and wellbeing implications arising from this report.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

- 1 – Centre for Governance and Scrutiny on potential committee structures*
- 2 – Analysis of committee structure used by other authorities*