

# Item 2

## BOROUGH AND AREA GOVERNANCE REVIEW PANEL

11 DECEMBER 2018 MEETING

### REPORT OF ED HAMMOND, DIRECTOR AT THE CENTRE FOR PUBLIC SCRUTINY

#### BOROUGH-WIDE GOVERNANCE ARRANGEMENTS - KEY FEATURES OF THE OPTIONS AVAILABLE

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1. For more information on these issues, and on the detailed arrangements involved in governance change, please refer to “Rethinking governance” (LGA / CfPS, 2014) provided separately as an appendix.

#### **The three legal options**

2. There are four legal options to choose from, set out in the Localism Act 2011. The first two are what are referred to as “executive arrangements” in the legislation. Under these arrangements councils must also have at least one overview and scrutiny committee.
  - Mayor and cabinet. A directly-elected executive Mayor holds power. They appoint a cabinet from the councillors elected to sit on the council. The Mayor will usually have fairly substantial power to make decisions themselves although will usually consult with the Cabinet in doing so;
  - Leader and cabinet. At a full Council meeting, councillors elect a Leader from amongst their number. The Leader and Cabinet can make decisions collectively, and power may be delegated from Cabinet to individual portfolio holders to make decisions;
  - Committee system. Full Council appoints a set of committees which hold responsibility for decision-making;
  - “Prescribed arrangements”. A council may design its own governance arrangements and submit plans for implementing them to the Secretary of State for Housing, Communities and Local Government, if they do not fit within the terms of the three options set out above.
3. Most councils operate under executive arrangements. Around 35-40 councils operate under the committee system (neither CfPS nor the LGA has done a recent national audit of the exact numbers).
4. It is worth pointing out that these four options do not represent accurately the full spectrum of governance choices available to a council. Councils can, for example, adopt what we term “hybrid” arrangements, whereby their model for practical purposes blends elements of some of the above legal systems. A popular form of this is a Leader-Cabinet system which has significant features

of a committee system – for example, by putting decisions through committee before they are ratified in Cabinet. A visual representation of this spectrum can be found in the CfPS publication “Musical chairs” and is provided separately as an appendix.

5. For this reason thinking of governance as a choice between one of a handful of cookie-cutter options is probably not accurate.

#### **‘Pros and cons’**

6. It is not as simple as setting out the “pros and cons” of each individual governance option.
7. Some say that the committee system is inherently more democratic because it means that decision-making is by definition more consensual. This is not the case. It is quite possible that decisions made in committee can be developed in secret beforehand and pushed through using the whip.
8. Some say that the Leader-cabinet system is inherently quicker and more focused, but full Cabinet decision-making and poor arrangements around delegation can make it inefficient and cumbersome.
9. How governance works depends on the unique circumstances prevailing in the area concerned. For this reason, looking in detail at how other councils have tried to do things, and transposing those efforts wholesale on the assumption that things will work much the same elsewhere, is a mistake. Governance change is something that has to be worked through, council by council, in a way that reflects each council’s uniqueness. The reasons to change must arise from local circumstances and local need, not an arbitrary sense that one system is better than another.
10. What councils have learned from the experience:
  - (i) Changes to structures won’t make changes to behaviours. If critics think a council is unaccountable and secretive, changing its governance arrangements won’t change that culture. Changing the structures has to go hand in hand with a plan for how to change how people think and operate within those structures;
  - (ii) Having a clear sense of *why* governance change is necessary, and how governance needs to work differently, is critical in being able to make the right choice. So, connecting governance change into wider issues around local democracy is particularly necessary;
  - (iii) It’s important to involve a wide range of people in conversations about these changes;
  - (iv) Changes will (and should) have an impact beyond the four walls of the council – governance change will practically affect the council’s relationship with contractors, commissioned providers, local charities operating under grant or SLA arrangements, statutory partners and others.

#### **The process of change**

11. There is a legal process for change. The change itself can only occur on a date three days after the council’s annual general meeting. In practice this means

that councils may only change their governance arrangements in May. There are two ways to trigger governance change formally.

12. The first is by a resolution of full Council (ie, a vote of all councillors at a formal meeting). CfPS and LGA research suggests that, to allow officers the time to put in place everything needed for a new governance system, this resolution should be passed no less than six months before the “change date” itself. If a council changes governance in this way, it cannot change its governance arrangements again for another five years.
13. The second is by way of a local referendum. This can be planned by the council or it can be triggered by a local petition. The referendum question is specified in the legislation. If a council changes governance in this way, it cannot change its governance arrangements again for another ten years, and if it proposes to do so, it has to run another referendum.
14. Councils have a lot to think about when change is in prospect. Financial procedures, schemes around the delegation of decisions to individual councillors and officers, rules of procedure for committees and so on all have to be reviewed and revised. It is a complex bureaucratic process. This is not to dissuade from this course of action – the review and revision of these documents can be a valuable and necessary exercise.
15. Governance change can also happen less formally. When a council wants to change how it works, but these changes fall short of a formal change under the Localism Act, this can happen without going through the process above. For example, a council might choose to change the way it delegates decisions, aspects of how Cabinet operates, the way that decisions are developed and consulted upon – this can all happen without having to go through the formal process.