Policy Development and Review Committee	
Meeting Date	17 July 2019
Report Title	**Objectives of a constitution review**
Cabinet Member	Cllr Mike Baldock Deputy Leader and Cabinet Member for Planning
SMT Lead	David Clifford Head of Policy, Communications and Customer Services
Head of Service	
Lead Officer	Sarah Porter, Policy Officer
Recommendations	This report is for discussion purposes only

1   Purpose of Report and Executive Summary

1.1   Following the May elections a new coalition Cabinet formed and outlined their objectives for the next four year administration. One of these objectives was around constitutional review, diffusing power among members and improving public engagement in decision making.

1.2   This report sets out the legal context to governance in local authorities and the process that should be followed for any review of a council's constitution. The discussion should help to clarify Members' views and objectives before moving forward with subsequent discussions around area committees or models of governance.

2   Background

2.1   There have been some fundamental changes to local authority governance in the past seven years, particularly in respect of how a local authority is controlled and how decisions are taken. The Local Government Act 2000 required most councils to adopt a Leader and Cabinet system, the exception being small shire districts with populations of less than 85,000. The Localism Act 2011 made possible a return to the committee system, if a council chooses to.

2.2   A number of councils have either moved to the committee system or considered moving to the committee system since the 2011 legislation came into effect. Details on some research undertaken into some of these councils follows further in this report. There are some key factors that appear to support any successful review of governance.

- Having clear objectives
- Ensuring that Members across all parties are involved in the review
- Supporting the review with independent advice

2.3 Typically councils that have reviewed their system of governance have done so because of dissatisfaction among members with engagement in the decision making process. At Tunbridge Wells, for example, they had a high number of call-ins which clearly showed a lack of engagement and buy-in from backbench members with decisions that were being made. The changes they have subsequently made have significantly reduced the number of call-ins.

2.4 Wider research by other bodies (the Local Government Information Unit and the Centre for Public Scrutiny) have identified some of the challenges of implementing a committee system. These are broadly the same across the spectrum and reflected in the conversations Swale officers have had with other councils. These challenges are mostly around these key issues:

- The committee system needs excellent forward planning and timetabling of meetings in order to make sure that the length of time to make decisions does not become onerous
- Members working in the committee system need to dedicate more time so that they can effectively contribute to their committees
- There needs to be watertight clarity around delegations and where decisions are to be made, particularly with regard to decisions that might straddle two committees
- Consideration needs to be given to senior officers' capacity to liaise effectively with a higher number of senior members (both committee chairs and group leaders, individually and collectively).
- There is a danger of important cross-cutting issues (e.g. health or environmental sustainability) being overlooked by thematic service committees unless there is a clear steer from full council.
- Consideration needs to be made around how decision-makers will be held to account by council in the likely absence of a formal scrutiny system.

Early research into other councils' experiences

Canterbury

1.3 Canterbury City Council agreed in July 2014 to adopt the committee system for implementation at the Annual Council meeting in May 2015. They set four clear objectives around which the new framework should be designed. These were:

- Engagement – the committee structure should ensure that decision-making is connected to local people.
- Economy – that the overall resources under the new system, including the number of meetings and workload for councillors, should aim to be no greater than under the present Leader and Executive system and be capable of further refinement.
- Efficiency – the structure allows the council's operations with sufficient process both to run smoothly and to achieve timely decision making.

- Effectiveness – decisions taken address issues identified as needing to be addressed.

1.4   Canterbury set up a cross party governance commission which was chaired by a retired former chief executive of the council, in order to develop a proposed model based on the above objectives. The commission came up a structure which was agreed by Council in November 2014.

1.5   Canterbury carried out a review of the committee system in April 2019, part of which looked at whether the system had met the four objectives set out five years earlier. Largely it appears that they have. The number of meetings has reduced by 8%, so their objective around resourcing was clearly met – although they were unable to provide Swale with any financial information around the cost of meetings.

1.6   There has been a community governance review of the area member panels which made some changes in order to improve engagement with the wider community. The review only made four recommendations in total and only two were changes to the structure and governance. This would suggest that Canterbury's system does essentially work.

Maidstone

1.7   Maidstone Borough Council agreed in September 2014 to convene a working group to carry out a full review of governance arrangements. The cross-party working group came up with an objective and some principles under which to consider governance.

1.8   Their objective was to achieve greater involvement and participation of all Members in decision making whilst avoiding a cumbersome, bureaucratic structure that lacks direction and accountability.

1.9   Their principles were:
- To be cost neutral
- To increase member participation in decision making
- To lead to more effective and efficient decision making

1.10 This working group reported back to full council on 10 December 2014 with a clear recommendation to move to the committee system.

1.11 A recent review of the committee structure was carried out and the report was presented to full council in April 2019. The review generally concluded that the principles had been met. Costs to the council had decreased over the four years the committee system had been in place by approximately 6%, although the review report was clear that some, and possibly all, of these savings would have been made under the old system as they had significantly reduced printing and had some changes in staffing.

1.12   There was also a view that more Members were involved in the decision-making process, although it was clear from interviews with Members that there was a preference for even larger committees given that "there are not enough spaces for all Councillors who wish to be involved". However, there was also a view expressed that the increase in Member participation did not necessarily lead to more effective or efficient decision making: "The more Members that are on a committee, the longer decisions take, and the quality of debate is not improved".

1.13   The review recommended no change to committee size. There was also a view that scrutiny style work is not undertaken by Members in the current system (although it is available) but that making more use of this function could improve Member participation. There was a recommendation in the report to promote this to Members as a way of improving Member engagement.

Tunbridge Wells

1.14   In 2011 Tunbridge Wells reviewed their way of working as a result of an increased number of call-ins (i.e. scrutiny committee exercising its legal right to review cabinet decisions before they are implemented, a power which is generally intended to be used sparingly).

1.15   They wanted to improve involvement from backbench members before decisions got to Cabinet. Their review concluded that they would set up three Cabinet Advisory Boards to feed into the Cabinet. These groups do not have any decision making power but meet approximately three weeks before each Cabinet meeting in order to feed into the decision making process.

1.16   The Boards are themed around key focus areas: Planning and transportation, Communities and Economic Development, and Finance and Governance. Consultation with these advisory boards is included in the forward plan so that officers are clear about where decisions need to go and Members of Cabinet Advisory Boards can see what work is coming up.

1.17   Anecdotally, Members are much happier with this way of working, with a significant decrease in the number of call-ins and more Member involvement in decision making.

1.18   No details on cost were available to be released to us however it could be presumed that the increase in meetings has led to an increase in cost of administering the committees.

Others

1.19   From research to date, only one local authority has moved in the opposite direction, from the Committee System to the Leader and Cabinet Model. A 'peer challenge' review by the Local Government Association recommended in 2017 that Melton Borough Council review its decision-making structures in order to make more timely decisions. It appears that, as a small district, they had not

moved from the Committee System following the Local Government Act 2000, but they have now moved over to the Leader and Cabinet Model from May this year.

1.20 Any changes to governance arrangements should be made at the council's annual general meeting, which meets in May. Before the AGM, the council needs to have resolved formally to make a governance change. There is no minimum period of time between the resolution and the AGM, but there does need to have been enough time for the council to publish the proposal and consult on it. Typically there has been approximately eight months between resolution and the AGM.

1.21 Councils cannot reverse the decision to change their governance system for five years following adoption.

3   Discussion

3.1 While this paper is for discussion only, it would be useful to consider some of the suggestions below as a springboard for discussion and give feedback on them.

3.2 Any review of the constitution would be best started by articulating some of the principles or objectives to be achieved as part of the review. Examples of these could be:
- Diffusing power to Members
- Improving public engagement in decision making
- Ensuring any changes are cost neutral, and understanding in detail what this really means
- Improving the quality of decision making
- Improving or sustaining the timeliness of decision-making

3.3 There are essentially three potential scenarios that the review could consider:
- Changes to the way people behave in the current structure, which may already be happening given the very recent change in Cabinet, for example through changes to the delegations.
- Changes to the committee structure and delegations in force currently and how these could enhance decision-making, for example through cabinet advisory boards, area committees or enhanced scrutiny arrangements.
- Changes to the fundamental governance model, i.e. a move to the committee system

3.4 In any of the above scenarios we would need to consider how any changes in the constitution would involve parish and town councils, the public and other key partners, such as Kent County Council and other public sector organisations in the borough. If one of the objectives of the review is about improving public engagement then we need to make sure that this is done openly and by involving as many interested parties as possible.

3.5   Any review would need to set out how these different groups would be involved and the different engagement mechanisms for involving them. This may be a discussion for a later PDRC meeting, which could include wider consideration of improving public engagement.

4   Alternative Options

4.1   This report makes no recommendation to agree a specific proposal, so there are no alternative options at this stage.

5   Consultation Undertaken or Proposed

5.1   None undertaken to date.

6   Implications

6.1   Cross-cutting implications have not been fully analysed at this stage because the report is for discussion only and does not contain any recommendations for decision.

6.2   However, the most significant implication to note at this stage is the financial one. The Council has a constrained revenue budget position and is highly dependent upon funding streams whose future is unclear. Any constitutional changes which resulted in higher direct staff costs and/or increased demands on senior management resources would need to be offset by ceasing other activities.

7   Appendices

7.1   None

8   Background Papers

8.1   None