Joint Scrutiny Committee Report
Report of Executive Head of Governance
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Review of the Council’s Governance Arrangements –
a task and finish group approach

Executive Summary

This report suggests the Joint Scrutiny Committee establish a task and finish group to
deliver the review of governance arrangements that Council has requested it undertake.

The report discusses key issues relating to legislation, timeframes, and the task and
finish group process.

Rather than launch an evaluation of the respective merits of differing models of
governance arrangements, the report argues for a thorough assessment of:

- the key attributes of an effective governance structure (which will inform the task
  and finish group’s final recommendations as to which governance model would
  best meet such key attributes); and

- the factors driving the calls for change.

Only after understanding these matters can a governance system be designed and
evaluated by overview and scrutiny. In addition, the report suggests such an approach
will identify issues that would not be addressed by a change of governance system and
enable other action to be taken by the Council.

Recommendation to the Joint Scrutiny Committee:

1. To approve the establishment of an overview and scrutiny task and finish group
to review the Council’s governance arrangements in accordance with the
decision taken by the Council on 7 October 2014.

2. To appoint a maximum of seven councillors to the task and finish group, together
with such other members external to the Council as the group may wish to co-
opt.
3. To adopt the formal terms of reference for the task and finish group, as set out in Appendix 2 to this report.

4. To endorse the use of expert advisors and witness evidence to support the review as necessary.

5. To endorse facilitated member discussion(s) and stakeholder engagement to identify the issues driving the change to governance arrangements.

6. To require the task and finish group report its findings and recommendations within the 2014-15 municipal year.

Reasons for Recommendation:
To ensure overview and scrutiny complies with Council’s request to review governance arrangements and report its recommendations for improvement.

1. Purpose of Report

1.1 At its meeting on 7 October 2014 the Council tasked the Joint Scrutiny Committee with undertaking a review of the Council’s governance arrangements. Specifically, the Council resolved:

“It was a Conservative and Liberal Democrat manifesto commitment in 2010 that led to the Localism Act 2011 giving local authorities the freedom to determine for themselves whether to operate an executive system, a committee system, or other agreed governance arrangements.

This Council requests the Joint Scrutiny Committee to review all available decision making models and to make recommendations to scrutiny, Executive, and full Council on improvements to the governance arrangements.”

1.2 This report provides information to assist the Committee to consider, agree and implement a process to develop recommendations during the current municipal year.

2. Strategic Priorities

2.1 The Council’s capacity to work effectively and to deliver all aspects of its Strategic Framework is conditioned by its ability to take informed and transparent decisions with openness and inclusivity. The Council’s choice of governance arrangements is fundamental to this. The decision-making structure of the Council should provide a framework of transparent accountability to users, stakeholders, and the wider community.
3. **Introduction**

   **Legislative background**

3.1 The Local Government Act 2000 introduced a separation of powers into local government for all but the smallest local authorities with the aim of making council decision-making more efficient, transparent, and accountable. The Act required most local authorities to change governance arrangements from the committee system to an executive-scrutiny model. The Council adopted the leader and cabinet model in May 2001, following a trial period and extensive public consultation.¹

3.2 The Local Government and Public Involvement in Health Act 2007 restricted the governance options available to local authorities. The 2007 Act required the Council to introduce a choice of two models: a directly elected mayor or a new style “strong” council leader. Both models place executive powers in the hands of an individual, who, in the normal course of events, will serve an uninterrupted four year term. A directly elected mayor and the new style council leader have the power to appoint and dismiss cabinet members and decide what executive powers they will exercise (if any). The Council resolved to introduce the indirectly elected strong leader and cabinet model following the local elections in May 2011 – the last date permissible under the legislation.²

3.3 The Localism Act 2011 increased the governance options for local authorities as follows:

- executive arrangements (leader & cabinet or directly elected mayor & cabinet);
- a committee system; or
- prescribed arrangements.

3.4 If councils propose their own system of prescribed arrangements this will require the approval of the Secretary of State. Regulations or detailed criteria for such an alternative governance structure have not been issued although it would at least need to be an improvement on the current arrangements, demonstrate "efficient, transparent and accountable" decision-making, and be appropriate for all other councils to consider adopting. To date, no councils have proposed such arrangements.

3.5 Outlined below are the three main models of governance available for councils to choose from:

- **Leader and cabinet system.** The decision-making structure operated by most councils, and the model currently run by Guildford Borough Council. The leader is elected by full council for a term determined by council and leads the cabinet. Councillors in the cabinet are appointed by the leader. At least two and up to nine councillors can be appointed to the cabinet.

² Minute CO82, Council meeting, Guildford Borough Council, 8 April 2010.
Some local authorities require decisions to be made by the whole cabinet, other councils delegate such powers to individual cabinet members. Some non-executive functions are reserved for committees (such as Planning or Licensing). The appointment of at least one overview and scrutiny committee is required under this system.

- **Directly elected Mayor and cabinet system.** A directly-elected mayor is elected by local residents and holds office for four years. The mayor is additional to the elected councillors. A cabinet, of at least two and up to nine councillors, is appointed by the mayor who may (or may not) delegate decision-making powers. Some non-executive functions are reserved for committees (such as Planning or Licensing). The appointment of at least one overview and scrutiny committee is required under this system.

- **Committee System.** Decisions are made by committees, which comprise members from all political groups. Committees receive briefings and commission reviews to develop policy. The Council appoints the committees and sets their terms of reference. Overview and scrutiny is optional under this model, with certain powers reserved to overview and scrutiny (such as crime and disorder scrutiny) exercised by another committee.

3.6 In practice, the governance options available to councils are more nuanced than the above classification suggests because councils can adopt a so-called “hybrid” arrangement. While not a formal change of governance, such a hybrid approach typically retains the leader and cabinet system but builds in a layer of committees advising and making recommendations to cabinet.

3.7 The perceived merits and shortcomings of various governance models for Guildford Borough Council are not discussed in this report, not least because the objectives against which to judge the models in the Guildford context are not identified adequately (notwithstanding comments made during last month’s Council debate on the subject). Such an evaluation will form a key part of the review by the task and finish group.

**Trends in other local authorities**

3.8 A guide on governance change, published jointly by the Local Government Association (LGA) and the Centre for Public Scrutiny (CIPS) in January 2014, identifies nine local authorities that changed governance arrangements to move to a committee system in May 2012 or May 2013. An additional seven local authorities adopted hybrid arrangements in the same period. In May 2014, at least four other local authorities moved to the committee system.

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3 “Rethinking governance: practical steps for councils considering changes to their governance arrangements”, Local Government Association/CIPS, 2014.

4 London Borough of Barnet, Cambridgeshire County Council, Norfolk County Council, and Fylde Borough Council.
3.9 Gathering evidence from local authorities with experience of governance change is likely to be of interest to a review of governance arrangements; hence they are listed in Appendix 1. Other councils are investigating different arrangements in public, while others may be discussing proposals internally.

Process for changing governance arrangements

3.10 The Localism Act 2011 specifies that governance arrangements can be changed either by a Council resolution alone or by a Council resolution mandated by a referendum. If the change is made by a Council resolution alone then the change will be locked in for five years. However, if the change in governance form is implemented as a result of a referendum then the change is for a ten year period.

4. Issues

Review timetable

4.1 Further to section 3.10 above, in instances where a referendum is held to decide a change in governance arrangements, such as when a local authority is petitioned to adopt a committee system instead of executive arrangements with a leader and cabinet, the council would be required to draw up proposals for the operation of a committee system in the event of a vote for change.

4.2 In order to conduct a referendum on 7 May 2015 on a proposed change of governance, as described above, thus combining it with the Parliamentary and local elections taking place on that date, a valid petition containing signatures of 5% of the borough’s electorate requesting such a referendum would need to be received by the Council by no later than 7 January 2015. The Council would then have a period of one month from the date of receipt of the petition to confirm its validity.

4.3 Where a valid petition is received, the Council would be required to publish, 56 days before the referendum is held\(^5\), a description of the main features of the proposals i.e. by no later than 12 March 2015. These time requirements may influence the work plan of the Council’s governance review.

4.4 The task and finish group should submit its findings and recommendations within the 2014-15 municipal year. It is anticipated that the Council elected in May 2015 will use the task and finish group’s conclusions and recommendations to inform its decisions for future governance arrangements with effect from May 2016.

Task and finish group membership and chairman

4.5 The Council’s Constitution stipulates that an overview and scrutiny committee may appoint any non-Executive councillor to serve on a task and finish group. The Chairs and Vice-Chairs of the Council’s two overview and scrutiny committees have indicated a willingness to participate in a task and finish group review of the Council’s governance arrangements (while also acknowledging the

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\(^5\) Local Authorities (Conduct of Referendums) Regulations 2012, regulation 4(1).
membership of such a group is to be decided by the Joint Scrutiny Committee. Given the depth and potential impact of findings from a review of governance arrangements, the Joint Committee may consider value in appointing more than four councillors to the group. Though political balance requirements do not apply to task and finish groups, and overview and scrutiny is non-party political, the Committee may consider it beneficial to ensure all political parties are directly represented on the group.

4.6 The Council’s Constitution states that each overview and scrutiny committee or task and finish group is entitled to appoint non-voting co-optees. Overview and scrutiny could consider the involvement of an expert to support the review (for example from the LGA, the Institute of Local Government Studies, or the CfPS) either as a non-voting co-optee or an advisor. Co-option of non-councillors, possibly independent members from the Council’s Corporate Governance and Standards Committee, would help to ensure objectivity and that the wider impacts and implications of the review are considered.

4.7 The chair of the task and finish group must be drawn from the councillors serving on the group. An independent person is not permitted to chair a task and finish group.

**Task and finish group’s scope**

4.8 In a sense, the terms of reference or scope of the review is straightforward – as Council resolved, “to review all available decision making models and to make recommendations to scrutiny, Executive, and full Council on improvements to the governance arrangements.” And yet the importance of ensuring a thorough assessment before any governance change is clear. A broad scope that will not unduly constrain the remit and flexibility of the task and finish group is recommended. Such a scope is not intended to impose a broad change, rather to avoid further reviews of the scope as the review progresses (see Appendix 2).

4.9 If such an approach is endorsed, it is suggested the task and finish group consider beginning its investigation by identifying:

- the key attributes of an effective governance structure (this will inform the task and finish group’s final recommendations as to which governance model (or hybrid) would best meet these key attributes);

- the issues pushing for change to the governance arrangements,

rather than proceeding to an evaluation of the decision-making structures. Members’ issues with the existing governance system and in support of governance change could be gathered from sessions or workshops. Similarly, the views of public sector partners, the private sector, voluntary and community sector organisations, should be sought. The views of residents should be gathered, and the Council’s Citizens Panel drawn on. It might be expected that such an approach will identify issues that would not be alleviated by a change of governance system, but an understanding will enable other action to be taken by the Council.
4.10 People and organisations external to the Council will be affected by changes in the Council’s decision-making structure and can be expected to have a viewpoint. In keeping with consultation not happening at the end of a process, the review should seek to involve the public. A detailed communication and consultation plan would require preparation at an early stage of the review.

**Task and finish group’s evidence gathering**

4.11 In addition to seeking wide public involvement in the decision to change governance arrangements, and hosting member workshops, the group will gather evidence from other sources. For example, desk-based research, visits and discussions with other councils, and calls for evidence from interested parties will feature. The views of members of the public currently petitioning to change from an executive system to a committee system of decision-making should be sought.

4.12 If the Committee agrees to the establishment of a Task and Finish Group, it is suggested that the scoping document, attached at Appendix 2 should form the basis of the Group’s activities. It is envisaged that it will consider the scoping document at its first meeting to ensure the process and timescale for reporting back to this Committee is established at the outset.

4.13 Clearly, the task and finish group has a considerable amount of work to do in order to conduct this review. It is envisaged that the task and finish group will need to meet frequently during the daytime as often as fortnightly – possibly more frequently than that. Councillors will need to bear this time commitment in mind in putting their names forward for membership of the task and finish group.

5. **Financial Implications**

5.1 Given its scale, scope, and timeframe, there are resource implications to the review. For instance, the possible use of an external facilitator for a member issues workshop. If task and finish group members use an expert advisor then costs could be expected. Obtaining verbal or written evidence from stakeholders, together with delivery of a suitable communication plan, will require identification of a budget. The task and finish group may recommend actions that have a financial implication, including an impact on the Members’ Allowances Scheme, and these will be contained within the review’s report.

6. **Legal Implications**

6.1 A review of governance arrangements will need to ensure that the recommendations are legal and adhere to processes within the Localism Act 2011 and other relevant legislation. When implementing a change in governance it is necessary to ensure compliance with the Local Government Acts. Any changes will require an update of the Council’s Constitution.
7. **Human Resource Implications**

7.1 Officer time from Governance will be required to assist the group in gathering evidence and compiling its final report. The task and finish group will report separately on any implications from its recommendations.

8. **Conclusion**

8.1 The timescale and scale of the review is challenging but, especially given that any governance change is locked in for a considerable period of time, it is crucial the task and finish group engages all stakeholders. Equally important, the review demands resources commensurate to the aims and responsibility assigned it.

8.2 A scope broad enough to identify and explore (if necessary) both issues with the existing governance system and in support of governance change is argued to be sensible. Otherwise, overview and scrutiny risks appearing to endorse governance change as a panacea for all the Council's governance and decision-making ills. Only when the reasons behind the push for change are understood can a governance system be designed and evaluated.

8.3 There is an opportunity for overview and scrutiny to inform any decision on governance arrangements by the new Council in the next municipal year by producing evidence based recommendations and findings.

9. **Background Papers**


10. **Appendices**

Appendix 1 – Councils that moved to a committee system or a hybrid system
Appendix 2 – Task and finish group – scoping document
Councils that moved to a Committee system 2012-14

<table>
<thead>
<tr>
<th>Local authority</th>
<th>Type of authority</th>
<th>Year change adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brighton</td>
<td>Unitary</td>
<td>2012</td>
</tr>
<tr>
<td>Kingston upon Thames</td>
<td>London Borough</td>
<td></td>
</tr>
<tr>
<td>Nottinghamshire</td>
<td>County</td>
<td></td>
</tr>
<tr>
<td>South Gloucestershire</td>
<td>Unitary</td>
<td></td>
</tr>
<tr>
<td>Sutton</td>
<td>London Borough</td>
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</tr>
<tr>
<td>Hartlepool</td>
<td>Unitary</td>
<td>2013</td>
</tr>
<tr>
<td>Newark</td>
<td>District</td>
<td></td>
</tr>
<tr>
<td>Reading</td>
<td>Unitary</td>
<td></td>
</tr>
<tr>
<td>Stroud</td>
<td>District</td>
<td></td>
</tr>
<tr>
<td>Barnet</td>
<td>London Borough</td>
<td>2014</td>
</tr>
<tr>
<td>Cambridgeshire</td>
<td>County</td>
<td></td>
</tr>
<tr>
<td>Fylde</td>
<td>District</td>
<td></td>
</tr>
<tr>
<td>Norfolk</td>
<td>County</td>
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Councils that moved to a Hybrid System in 2012-13

<table>
<thead>
<tr>
<th>Local authority</th>
<th>Type of authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheshire East</td>
<td>Unitary</td>
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<tr>
<td>Cornwall</td>
<td>Unitary</td>
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<tr>
<td>Kent</td>
<td>County</td>
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<tr>
<td>Sevenoaks</td>
<td>District</td>
</tr>
<tr>
<td>Tunbridge Wells</td>
<td>District</td>
</tr>
<tr>
<td>Wandsworth</td>
<td>London Borough</td>
</tr>
<tr>
<td>Wirral</td>
<td>Metropolitan District</td>
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Councils adopting hybrid changes can do so at any time; councils changing from one form of governance to another must do so at a specified “relevant change time” (at an AGM or shortly after an election).
## Appendix 2: Governance Review – Scoping Document

<table>
<thead>
<tr>
<th>Review Topic</th>
<th>Review of Governance Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Study Group Members</strong></td>
<td>To appoint a maximum of 7 councillors at the Joint Scrutiny Committee on 13 November 2014.</td>
</tr>
<tr>
<td><strong>Officer Support</strong></td>
<td>Committee Services (including the new intern)</td>
</tr>
<tr>
<td><strong>Terms of reference</strong></td>
<td>To review the existing governance arrangements and all available decision making models and to make recommendations to scrutiny, Executive, and full Council on improvements to the governance arrangements.</td>
</tr>
<tr>
<td><strong>Purpose of Review/Objective (Key Tasks)</strong></td>
<td>(1) To identify the most appropriate governance structure for Guildford Borough Council.</td>
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<td></td>
<td>(2) Notwithstanding (1) above, to identify in light of a possible referendum on changing governance arrangements to a committee system, the most appropriate features of such a system should the Council be compelled to move to a committee system following a referendum.</td>
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<tr>
<td><strong>Indicators of Success/Desired Outcomes</strong></td>
<td>To have investigated fully all possible governance options in order to inform the Council’s decision on its future governance arrangements</td>
</tr>
<tr>
<td><strong>Methodology/Approach</strong></td>
<td>Including, but not limited to the following: Call for written evidence. Member workshops. Interviews with stakeholders. Visits and discussions with relevant councils.</td>
</tr>
<tr>
<td><strong>Specify Witnesses/Experts</strong></td>
<td>To be determined by the Task and Finish Group</td>
</tr>
<tr>
<td><strong>Specify Evidence Sources for Documents</strong></td>
<td>Including, but not limited to the following:</td>
</tr>
<tr>
<td></td>
<td>- “Musical chairs: Practical issues for local authorities in moving to a committee system” (CfPS)</td>
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<td></td>
<td>- “Rethinking governance: practical steps for councils considering changes to their governance arrangements”, Local Government Association/CfPS, 2014.</td>
</tr>
<tr>
<td><strong>Specify Site Visits</strong></td>
<td>Potential visits to other local authorities.</td>
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</tbody>
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| **Resource requirements** | • Minimum of 10 daytime meetings (plus site visits)  
  • Modest expenses for expert witnesses/advisors |
| **Barriers/dangers/risks** | • The tight timescale within which the review will need to take place  
  • The results of any referendum on changing governance will dictate the outcome of this review |

<table>
<thead>
<tr>
<th><strong>Projected start date</strong></th>
<th>November 2014</th>
<th><strong>Draft Report Deadline</strong></th>
<th>March 2015</th>
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<tr>
<td><strong>Meeting Frequency</strong></td>
<td>Fortnightly</td>
<td><strong>Projected completion date</strong></td>
<td>April 2015</td>
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