

Subject:	A New Constitution for Brighton & Hove City Council
Date of Meeting:	26th April 2012 – Special Council 20 th March 2012– Governance Committee
Report of:	Monitoring Officer
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Ward(s) affected:	All

FOR GENERAL RELEASE**1. Summary and Policy context**

- 1.1 The Localism Act 2011, which received Royal Assent in November 2011, gives local authorities the option of adopting a committee-based system of governance. Prior to this change, the only permissible systems of governance available to Brighton & Hove City Council were an elected mayor and cabinet or a strong leader and cabinet model.
- 1.2 In December 2011 full council resolved, in principle, to move to a committee system at the earliest opportunity and instructed officers to develop proposals. Following the resolution, a New Constitution Member Working Group consisting of Councillors J Kitcat (Chair), Peltzer-Dunn and Morgan was set up to work with officers. The Working Group and the Leaders Group have now completed the work and the key documents from the proposed constitution are attached as Appendix 1 to this report.
- 1.3 This report seeks approval to adopt a committee based system of governance with effect from Annual Council on 17th May 2012.

2. Recommendations

- 2.1 The Governance Committee recommends to Council:-
 - i) That the Council resolves, in accordance with section 9KC of the Local Government Act 2000, to change its governance arrangements from leader and cabinet to a committee system;
 - ii) That the parts of the constitution set out in Appendix 1 (being the parts where there are substantive changes) be approved;

- iii) That the transitional arrangements in relation to the Audit and Standards Committees, as set out in paragraph 16.3, be approved and adopted until such time that the relevant Regulations relating to standards are made and come into force;
- iv) That the current scheme of delegations to officers be approved subject to the changes set out at Appendix 5 and any other consequential modifications;
- v) That the rest of the existing constitution be approved and adopted, subject to such amendments as are necessary to make them fit for a committee system;
- vi) That the Monitoring Officer be authorised to make the minor and consequential changes referred to in paragraphs 2.1(iv) and 2.1(v);
- vii) That the constitution set out in Appendix 1, with the addition of the parts referred to in 2.1 (v) above, be approved and adopted as the Council's constitution in accordance with the requirements of the Local Government Act 2000 and relevant Regulations, Orders and Directions made by the Secretary of State;
- viii) That the new system of governance and the new constitution come in force immediately after the conclusion of annual council on 17th May 2012;
- ix) That the Chief Executive is authorised to take all steps necessary or incidental to the implementation of the new governance arrangements, including the power to make such transitional arrangements as are necessary for the orderly implementation of the proposals;
- x) That officers are instructed to make copies of the Council's new constitution available at its principal offices and to publish a notice describing the new arrangements, in accordance with s9KC of the Local Government Act 2000;
- xi) To note that the issue of Member's Allowances is dealt with separately elsewhere on the agenda and that any proposed Code of Conduct will be referred to Council as part of recommendations from the Standards Committee.

3. Background

3.1 For most local authorities, governance is a dry subject and not of much interest. Not so in Brighton and Hove! Over the last ten years, the Council has been at the cutting edge of innovation when it comes to governance.

3.2 Executive Board in waiting (1998 – 2001).

3.2.1 Following the election of a new Government in 1997, proposals emerged to change local authority governance arrangements. Whilst most local authorities waited for legislation, Brighton and Hove introduced an "Executive Board in Waiting" and "Executive Decision Making" system of governance. The EBIW and EDMs were not legally decision-making meetings. They were advisory. Following the meeting, an officer had to make a decision using his/her delegated powers but in effect always followed the advisory resolutions of the EBIW/EDM. This required an innovative application of the law and careful implementation in practice.

3.3 Elected Mayor

3.3.1 The Council was on schedule to become the first local authority to adopt an elected Mayor in 2000/2001. Local authorities had to submit their governance proposals to the Secretary of State. If their proposal included an elected mayor, then the proposal had to be put to a referendum. Local authorities were also

required to state what the fall-back positions would be if the proposals for an elected mayor were rejected in a referendum. One of the options available as a fall-back proposal was “alternative arrangements” which was basically a committee system with scrutiny. However, this option was available only as a fall-back proposal not as a first choice.

- 3.3.3 On 18th October 2001, a referendum on the elected mayor proposal was held. The proposal was rejected and therefore the council proceeded to adopt the alternative arrangements as a fall-back option.

3.4 Alternative Arrangements (2002-2008)

- 3.4.1. The Council was the only authority of its size to adopt alternative arrangements. Despite initial concerns about a potential gridlock, the system operated effectively, including implementing major infrastructure projects. The arrangements did cause some technical issues of interpretation in some areas. For example, when the government introduced the Children Act 2004 and the legislation relating to Health Scrutiny, they assumed that all County Councils and Unitary Authorities had executive systems. We therefore had to apply innovative ways of giving effect to the legislation so that it did not make a difference in practice.

3.5 Leader and Cabinet System (2008-2012)

- 3.5.1 The Government was anxious to ensure that all large councils adopted an executive system of governance. The Local Government and Public Involvement in Health Act 2007 compelled the Council to move to a leader and cabinet model, with three sections in the Act specifically dealing with Brighton & Hove, without mentioning the Council by name. The Council thus moved to a new style leader and cabinet model at its annual council meeting in May 2008.
- 3.5.2 The new leader and cabinet system implemented in Brighton and Hove was developed by cross-party consensus and, as far as we are aware, is one of the most open and inclusive executive systems in the country. For example, the decision was taken to hold all Cabinet and Cabinet Member Meetings in public, with full access to elected Members and the public to those meetings in terms of presenting petitions, deputations and letters. The Council also adopted a petitions scheme with a relatively low threshold to enable petitions to trigger full council debates.

3.6 Moving Forward to a New System of Governance

- 3.6.1 The Localism Act 2011 makes it possible for local authorities to choose one of three options: (a) an elected mayor and a cabinet, (b) a leader and a cabinet, and (c) a committee system. The largest 12 local authorities are required to hold a referendum for an elected mayor. Brighton & Hove is the 13th or 14 largest local authority by population depending on which version of the population size one takes and was therefore not required to hold a referendum.
- 3.6.2 Given the opportunity presented by the Act, full council resolved in principle in December 2011 to move to a committee system with effect from annual council

in May 2012. The legislation states that the earliest that a local authority can change its governance arrangements is at the annual council following the passing of a resolution by full council.

4. The Design Principles

4.1 In order to ensure that the Council's new constitution is as effective as possible, the Member Working Group and the Leaders Group agreed a set of design principles. These are set out in Appendix 2 to this report and include:

- (1) Openness and Transparency
- (2) Accountability
- (3) Efficiency
- (4) Soundness
- (5) Affordability
- (6) The third way, and
- (7) Forward Looking

4.2 It is important to emphasise the need for the constitution and ways of working to reflect modern best practice. It is therefore proposed to maximise the use of information technology and to have streamlined, efficient and quick decision-making practices and procedures. It is also proposed to keep the best bits of the executive system including overview and scrutiny, the petitions scheme, a revised forward plan, public questions at all meetings and public speaking at planning committees.

4.3 The proposed committee structure is designed to be streamlined and cost effective. The table below shows the number of decision-making bodies/committees under the different arrangements over the years.

Structure	Number of decision making bodies
Alternative Arrangements (2002)	21
Leader and Cabinet (2008 - Present)	24
Committee System (Proposed) From May 2012 onwards	19

4.4 With possible further reduction in the number of committees (for example the JCB) this will be the most streamlined Member structure the Council has had since it came into existence in 1997.

5. Working Assumptions

5.1 In order to develop a constitution that reflects the political and organisational culture of the council as well as the city, certain assumptions were made. These are set out in Appendix 3 of this report. They in turn informed the development of the constitution.

5.2 The following paragraphs of this report explain key aspects of the constitution, flagging up any issues of significance. A structure chart showing the different committees and sub-committees is attached as Appendix 4.

6. Full Council

6.1 In an executive system “sovereignty” is divided between council and the executive as most powers are given by parliament directly to the Leader rather than through Council. Under the committee system, full council is the sovereign body. Committees and officers have authority only to the extent that full council permits it through the scheme of delegations under the constitution or through specific authorisations.

6.2 Under both alternative arrangements and the executive system, certain functions were reserved to full council by law. These were supplemented by a number of plans and strategies which the Council chose to designate as full Council function. These, taken together, constitute the policy framework. It is proposed that all these plans and strategies continue to be reserved to full council. It means only full council may approve or amend them. Section 3.1 of the constitution (Appendix 1) lists these plans and strategies. In addition to the policy framework, the following functions are proposed to be reserved to full council:

- Appointment of the Chief Executive
- Budget Setting
- Terms of Reference of Committees
- Appointment to outside bodies
- Members’ Allowances
- Adoption of and amendments to the Code of Conduct for Members
- Conferring honorary titles and changing name of the area
- Approving byelaws and promoting local legislation

6.3 Although full council, as sovereign body, can exercise all council functions, including reversing decisions taken by committees or officers, there are some exceptions:

- (a) the Health & Wellbeing Board and the Audit and Standards Committee will have certain functions vested in them directly by parliament which are not subject to council approval;
- (b) certain functions are vested in statutory officers such as the Chief Executive, the Director of Children’s Services, the Monitoring Officer, the Chief Finance Officer and the Director of Adult Social Services. These are exercisable by the relevant officer and full council cannot interfere in such decisions;
- (c) the powers of council have to be exercised in accordance with administrative law principles. This means that normally decisions taken by a committee under delegated powers stand and cannot be reversed by council unless the original decision is unlawful or there is significant relevant evidence that was not taken into account when the original decision was made which justifies a reversal of the decision. The need for consistency, certainty and finality means that full council should not be used as an appellate body against decisions taken by committees. Save in very exceptional circumstances, decisions taken lawfully by a committee or an officer under delegated powers are final and binding.

7. The Health & Wellbeing Board

7.1 This is a committee set up under the Health and Social Care Bill. Until the legislation receives Royal Assent and comes into force (expected April 2013) this will operate as a shadow board.

7.2 The main *statutory* functions of the committee are:

- Preparing the Joint Strategic Needs Assessment (JSNA)
- Preparing a Health & Wellbeing Strategy
- Encouraging co-operation and joint working in the provision of health & social care services.

In addition, local authorities are authorised to give the committee other functions they consider appropriate.

7.3 During the shadow period, the Health and Wellbeing Board will operate as an advisory body. Unusually for a committee of a local authority, it requires specific officers (including the Directors of Children's Services and Adult Social Services and some health officials) to be voting co-optees. The Council is not able to exercise any of the Health and Wellbeing Board's functions listed above and it is expected that the Secretary of State will make regulations exempting the committee from many of the procedural requirements that apply to committees.

8. Adult Care & Health & JCB

8.1 The Adult Care & Health Committee will replace the existing Adult Social Care & Health CMM. It is proposed to review the need for the Joint Commissioning Board (JCB) in the light of the change to a committee system and also the creation of the Health and Wellbeing Board. The JCB is a joint meeting of the Council and the PCT currently required under our joint working (Section 75) arrangements for adult social care and health services. The existing Section 75 arrangements need to be reviewed and appropriate arrangements made with the successor bodies to the PCT.

8.2 The JCB operates as a separate but concurrent meeting of the PCT and the Council. This means that, under the new committee system, all members of the council's Adult Care and Health Committee would be entitled to attend. However, this has the risk of disproportionately high representation from the Council. It is therefore proposed that, in line with previous custom and practice, only a limited number of Members, agreed between the political groups, will attend.

9. Children & Young People & CYPTB

9.1 The new Children & Young People Committee will replace the existing Children & Young People's CMM. It will also incorporate the Children & Young People's Trust Board (CYPTB). The CYPTB was required to approve the Children and Young People's Plan. This is no longer a requirement and therefore the Board no longer has any statutory functions. The legislative requirement for a CYPTB has not yet been removed despite its functions having been removed and therefore

the Children & Young People's Committee will be the CYPTB for the purposes of the Children Act 2004 until that anomaly is addressed. Following a review of the current co-optees to the CYPTB, it is proposed that a number of these are co-opted into the Children & Young People's Committee.

10. Economic Development & Culture

10.1 This committee will cover all functions currently comprised in the delegations to the Cabinet Member for Planning, Economy, Employment and Regeneration and those comprised in the delegations to the Cabinet Member for Culture. It will be responsible, among other things for planning policy that does not require full council approval.

11. Housing and Housing Management Consultative Sub Committee

11.1 The Housing Committee will take over responsibility from Housing CMM. The Housing Management Consultative Committee will retain its existing role, but will be advising the Housing Committee rather than the Cabinet Member.

11.2 The Tenant Innovation Group is currently looking at ways of engaging with tenants more effectively, including the development of tenant scrutiny in line with the requirements of the Localism Act. As part of its work programme, the group will be asked to consider the future role of the Housing Management Consultative Committee, how that sits with the Tenant Scrutiny model, and whether the emerging structures provide for a better model for involving tenants in decision making. The council will be informed and guided by the proposals of the Tenant Innovation Group.

12. Policy & Resources Committee

12.1 This will be the main committee of the Council and will be responsible for any decisions that have corporate budgetary or policy implications. It is expected to be chaired by the Leader of the Council with group leaders and chairs of key policy committees as members. Any decisions at member level that involve the acquisition or disposal of land will be reserved to the Policy & Resources Committee. It will also act as the committee responsible for equalities, communities, strategy, partnerships, human resources and as the general purposes committee.

12.2 The Policy & Resources Committee will have two sub-committees. The Personnel Appeals Sub-Committee deals with appeals against dismissals and grievances. The Corporate Parenting Sub-Committee will operate as an advisory sub-committee in connection with the discharge of council functions regarding children in care and care leavers. It is being set up to highlight the importance of the Council's role as a corporate parent and one of its functions will be to ensure appropriate training for members on the Council's responsibilities.

13. Environment and Sustainability Committee

13.1 This committee will replace the functions of the Cabinet Member for Environment & Sustainability. Its remit covers parks and green spaces, environmental health,

trading standards, Romany, Travellers and Gypsies, waste, coastal protection and flood defence, seafront issues, bereavement and coroners services and sustainability.

14. Transport Committee

14.1 This committee replaces the functions of the Cabinet Member for Transport. It will be responsible for highways management, traffic management and transport, parking and public space (including the Council's functions regarding spaces to which the public have rights of access, such as the highway and street furniture on the highway).

15. Planning and Licensing Committee

15.1 The proposals involve no changes to current arrangements regarding Planning & Licensing Committee and Licensing Panels.

16. Audit and Standards Committee

16.1 The Localism Act introduces measures that change the current standards regime. This means a Standards Committee does not have to have Parish Council co-optees and is required to have only one, non-voting, independent member. The Standards Committee will no longer have power to impose sanctions. Most of the work of standards has also, up to now, been conducted by the Standards Panel that considers complaints against members. It is therefore proposed to merge the two committees and adopt agenda planning that keeps the overall business of the committees to manageable levels. This may also involve a two part agenda so that members or independent members who do not wish to stay for the whole session would not have to do so.

16.2 The Commencement Order bringing the changes to the standards regime into force has not been made yet. There is also a need for secondary legislation to make provision for the registration and declaration of members' interests.

16.3 Until the relevant standards provisions come into force, it will be necessary to continue to operate under the existing system. This means voting independent members and Parish Council representatives will continue to be members of the committee until the new regime commences. It is therefore proposed that:

- a) the merger of the two committee takes place on the date that the constitution comes into force;
- b) the committee, as an interim measure, adopts a two part agenda starting with standards followed by audit;
- c) the independent member chairs the committee when sitting as a Standards Committee and a Councillor chairs the meeting when the committee acts as an Audit Committee;
- d) the existing independent members (3) and Parish Council representatives (2) continue as members of the committee with voting rights on standards matters;
- e) the above arrangements cease to operate once the provisions of the Localism Act relating to standards come into force;

- f) Once the new regime is in force, the Audit and Standards Committee is authorised to adopt such arrangements (including chairing) as are consistent with the requirements of the law and having regard to the advice of the Monitoring Officer and the Director of Finance.

17. Overview and Scrutiny Committee

- 17.1 Looking at the operation of scrutiny functions over the last few years, the biggest success, in terms of outcomes, has been the work done by scrutiny panels (ad-hoc or select committees) which has informed council decisions and policy formulation. The positive impact of external expert witnesses and co-optees has also been exceptional.
- 17.2 The change to a committee system means the number of Members serving on policy committees will reduce the pool of Members available to do scrutiny work. In addition, given the cross-party nature of the committees, there will be an “in-committee” challenge to decision making.
- 17.3 Taking the above into account, it is proposed to reduce the number of scrutiny committees to two. The Health and Wellbeing Overview & Scrutiny Committee will deal with scrutiny of health, children’s services and adult social care. All other scrutiny functions, including overall responsibility for co-ordinating work programmes and reviewing procedures, will be done by the Overview & Scrutiny Committee. The Overview and Scrutiny Committee will be the designated Crime and Disorder Committee as required by the Police and Justice Act 2006 and will undertake scrutiny of flood and coastal erosion plans as required by the Localism Act 2011.
- 17.4 Under the Localism Act 2011, scrutiny is not a mandatory requirement for councils adopting committee arrangements. However, given the significant positive impact of scrutiny in identifying evidence-led, cross-party solutions to problems and in formulating policy in controversial areas (such as travellers), it is proposed that overview and scrutiny is retained in a reformed and refocused way to fit a committee system.
- 17.5 There are no regulations in force requiring a scrutiny function to have a facility for calling in decisions taken but not implemented. However, given the existing regulations that apply to alternative arrangements have this, and given the indications from Government that the new regulations are likely to contain similar provisions, it is considered appropriate to include a provision for call-in. However, as the committee taking decisions will have voting members from the largest group and the opposition, it is not considered that this facility should be used frequently. It is therefore proposed to limit call-in to cases where five or more members from two or more political groups request it.
- 17.6 Two types of Overview and Scrutiny Review Panels are identified in the procedures. These are Policy Review Panels and Scrutiny Review Panels (Part 3.2 of the constitution). These cover the different types of in-depth work the Panels may consider – namely investigating areas of concern regarding decisions or actions taken by the Council (Scrutiny Review Panels) or policy review and development (Policy Review Panels).

17.7 Also included in the new proposals are arrangements for “Councillor Call for Action”. This is a procedure which enables any member of the council to refer to an overview and scrutiny committee any local issue which directly affects their ward. The Localism Act 2011 broadened the scope of Councillor Call for Action by extending it beyond matters that relate to council functions to any local matter, whether it relates to a council function or not.

18 Police and Crime Panel

18.1 This is a panel to be set up under the Police Reform of Social Responsibility Act 2011 and is responsible for scrutinising the work of the elected Police and Crime Commissioner (PCC) for Sussex. Although it technically has the status of a joint committee of all local authorities in Sussex, including District Councils, the Council’s role is largely limited to appointing a representative to the panel. The terms of reference included in the constitution are for illustrative purposes and drafted based on the legislation as it stands. They will need to be replaced by the final terms of reference to reflect further secondary legislation and in time for the election of the PCC in November 2012.

19. Advisory Bodies

19.1 There are no proposed changes to the advisory commissions, panels and fora contained in the constitution except to change reporting lines and other references from Cabinet or Cabinet Members to the relevant committees. The only exception is the Arts Commission which it is proposed be re-named as the Arts and Creative Industries Commission with slightly amended terms of reference. These changes are proposed to update the terms of reference to more accurately reflect the work the Commission does and its city-wide focus.

20. Officer Delegations

20.1 There are no substantive changes to officer delegations and anything that requires Member approval under the current arrangements will continue to do so under the new arrangements. The amendments to officer delegations will simply make the scheme committee fit by replacing references to Cabinet or Cabinet Members to references to the relevant Committee or Chair. The only exception to this relates to property acquisition and disposal and hackney carriage fares, addressed below.

20.2 All powers currently delegated to officers regarding the acquisition and disposal of properties (other than housing and where there is a legal right to acquire the land) will be transferred to the Strategic Director: Resources. There will also be changes to transfer the function of setting hackney carriage and private hire fares from Officers back to the Licensing Committee.

20.3 It is likely that the scheme of delegations to officers will need amending to reflect any changes to the senior officer arrangements to reflect the resourcing decisions taken at budget Council. Any proposed changes will be bought to Governance Committee and Council.

20.4 A note summarising the position as it will be when the new constitution is adopted is included at Appendix 5.

21. Size and Composition of Committees

21.1 The proposed size and membership of committees is set out in Article 6 of the constitution. A table showing the proposed size and likely allocation is included in Appendix 6. This also shows the numbers of non Councillor Co-optees.

22. Co-optees

22.1 The Council's constitution is based on representative democracy so that, unless the circumstances require otherwise, all decisions will be taken by a decision making body made up of elected members. A protocol for how co-option would apply is attached as Appendix 7 for guidance.

23. Council Procedure Rules

23.1 The proposed Council Procedure Rules are based on the existing rules. Other than removing anything that refers to the executive and making it committee-fit, the only change is to permit (not require) electronic voting. This leaves open the options as and when members wish to use the facility.

24. Officer Employment Procedure Rules

24.1 The recruitment procedure expands the remit of the Member appointments panel to include looking at remuneration for senior officers and the statement of pay policy. It will not have decision-making powers, but the recommendations of the panel tend to be accepted and implemented.

25. Petitions Scheme

25.1 As the petitions scheme is an important factor in the Council's public participation arrangements, it has been decided to include it in the Constitution for completeness. No changes are proposed to the rules except to make them committee-fit.

26. Other parts of the Constitution

26.1 The full contents of the Constitution are set out on the first page of Appendix 1. The documents in bold are included in the draft before Governance Committee and Council. The other documents are those where no substantive changes have been made and any amendments involve simply making them committee fit. These parts of the constitution have therefore not been included with these papers to avoid unnecessary and avoidable printing of paper.

26.2 A full copy of the draft Constitution is available on the Wave and a copy will be left in each of the members' rooms.

27. COMMUNITY ENGAGEMENT AND CONSULTATION

- 27.1 The decision to move to a committee system of governance was made by a meeting of full council in December 2011. The design principles, working assumptions, draft structure and draft constitution documents have all been considered by the New Constitution Working Group and the Leaders Group.
- 27.2 The constitution and a summary document will be available to the public both at Council offices and on the Council's website.

28. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 28.1 The legal resources to support the change to the committee system can be contained within existing budgets. The ongoing costs of support to the new committee system has been included within the 2012/13 budget. There will be additional costs from printing and officer time, estimated at £45k, but the service will work to reduce these, for example, by exploring more effective use of technology and realignment of officer resources.

Finance Officer Consulted: Anne Silley

Date: 08/03/12

Legal Implications:

- 28.2 These are addressed in the body of the report.

Lawyer Consulted: Elizabeth Culbert

Date: 06/03/12

Equalities Implications:

- 28.3 There is no adverse impact of the move to the new system that has been identified in relation to individuals with protected characteristics. An Equality Impact Assessment has been undertaken to consider any potential adverse impact and mitigating steps.

Sustainability Implications:

- 28.4 There will be a need to increase the number of agendas and documents that are printed under the new system, in order to ensure that all Members of Committees receive the papers on which they will be making decisions. IT solutions which may be able to alleviate this impact are being actively pursued.

Crime & Disorder Implications:

- 28.5 The new Police and Crime Panel will be the new body responsible for holding the Police Commissioner to account. The Overview and Scrutiny Committee will be the body that is designated as the Council's Crime and Disorder Committee for the purpose of the Crime and Disorder Act 2006. There are no adverse implications arising from the proposals in this report.

Risk and Opportunity Management Implications:

- 28.6 The change to a committee system will introduce a system of decision making that will be new to many Members and officers in the Council. Training and information giving sessions are planned for the range of affected groups to ensure that the transition is smooth.
- 28.7 The change to a committee system will also need to be carefully communicated to the public and the Council's partners to ensure that there is an awareness of the meetings that will take place and their functions. Also it will be important to reiterate that all the existing mechanisms for accessing council decision making will be in place.

Public Health Implications:

- 28.8 The new constitution reflects the establishment of the shadow Health and Wellbeing Board which will consider the priorities and key strategies for public health in the City.

Corporate / Citywide Implications:

- 28.9 Whilst adopting a new system of governance is a significant change, the proposals will continue to enshrine open and accountable decision making, with a broad range of opportunities for the public and partners to participate.

SUPPORTING DOCUMENTATION

Appendices:

1. Key documents from the proposed new constitution
2. Design Principles document
3. Working Assumptions document
4. Proposed committee structure chart
5. Note regarding officer delegations
6. Table showing proposed size and allocation of Committees
7. Protocol in relation to co-optees.

Documents in Members' Rooms

1. Brighton & Hove City Council Constitution – May 2012

Background Documents

1. None