

From: Dylan Jeffrey, Cabinet Member for Communications and Democratic Services  
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To: County Council, 14 December 2023

Subject: Governance Update

Previous pathway: Selection and Member Services Committee, 30 November 2023

Status: Unrestricted

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## 1. Introduction

- a) On 30 November 2023 a version of this paper was presented to and discussed by the Selection and Member Services Committee. As set out in Part 2, a few immediate amendments to the Constitution are being recommended by the Committee for your consideration.
- b) The Selection and Member Services Committee also agreed to a Members' Governance Working Party being established as set out in Part 3 to develop further proposals for presentation to the March County Council.
- c) Separately, at part 4, this paper considers a small change to the arrangements for the Council's Shareholder Board meetings to reflect best practice pursuant to the identified actions in the Council's Annual Governance Statement.
- d) The governance of the Council contains its system of internal controls aimed at facilitating the effective exercise of its functions. It covers financial and operational management and so whilst the Constitution is the cornerstone of our governance, it is not the whole of it.
- e) The fundamental status of the Constitution is one reason why people refer to making changes to the Constitution when they identify ways to improve our governance. However, it is not necessarily the Constitution where a change needs to be made. A Constitution cannot contain every rule for every occasion if it is to be a practical document.
- f) Reviewing the governance of the Council is therefore an iterative process between revising the written aspects of governance in the context of the prevailing culture/behaviours, and other approaches, like training and technology. Through this approach, several areas of our governance have been revised, including the Financial Regulations and Terms of Reference of the Governance and Audit Committee. Others are underway as set out in the actions from last year's Annual Governance Statement and the draft of the current year's Statement.

- g) In the past year, the Council has added an annual report from the Governance and Audit Committee and an annual report from the External Auditor to the Council's standing business for each municipal year. The Annual Governance Statement has at the same time identified activity that is necessary as part of the continuous improvement of the Council's governance and the next stage of this will be brought forward to Members at the March meeting.

## 2. Meeting Procedures

- a) A large proportion of the time spent by Members, particularly Non-Executive Members, on formal Council matters is in meetings. It is therefore appropriate to review how the standing orders which steer their operation could be revised to improve the effectiveness of the time given over to the meetings.
- b) Through informal discussions with Members, the following have been suggested as areas where changes could be promptly made:
- i. **Breaks in meetings** – It is recommended that County Council consider the inclusion of breaks as part of changes to the standing orders for meetings. Whilst the Chair of a meeting can currently adjourn a meeting and Committee Members are able to put forward a motion to adjourn, there is felt to be a need for greater clarity on this. It has been suggested that there should be a mandated break after a certain period.
    - i. The proposal to give effect to this suggestion is that a new section will be added to Section 15 of the Constitution, Meetings: Common Procedures. It will therefore apply to full Council, Council Committees, Cabinet and Cabinet Committees. The proposed wording is as follows:
      1. "15.8 The Chair will propose an adjournment of the meeting of ten minutes every two hours, or as soon as an item has ended once two hours has passed. The Chair may vary the time of proposing an adjournment to best facilitate the management of the Committee's business."<sup>1</sup>
  - ii. **Deadline for County Council Questions** - This is currently set at 5pm on the Friday before County Council. Although some are received prior to this time, this does mean that in many cases the questions are only effectively received by the relevant Officers and Cabinet Members on Monday morning, leaving a shorter preparation time. The reason for setting a deadline after the County Council agenda is published is to reduce the chances of a question being asked that is answered by an agenda paper (which may invalidate the question). This leaves a small window, especially where the County Council agenda is published later in the day on the Wednesday. It has been suggested that the deadline should be set at 5pm on the Thursday before County Council.
    - i. The proposal to give effect to this suggestion is that section 14.15 of the Constitution will be amended. The day of the week is no longer specified as County Council may not fall on a Thursday. The proposed wording is as follows:

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<sup>1</sup> Section 15.8 as proposed here will be a new section and sections that follow will be renumbered.

1. "14.15 All Members are entitled to submit one question per meeting, which must be delivered to the Democratic Services Manager by 5:00pm on the working day following the publication of the agenda by an email from that Member or by paper copy signed by that Member. The full list of questions submitted, with the names of the Member submitting them, will be circulated to Members by 5pm the working day before the meeting."<sup>2</sup>

**iii. Time available for County Council Questions** - Although sometimes extended, the time formally allowed is 30 minutes. Different options are available to endeavour to get through more questions at the meeting including extending the overall time and/or limiting the time available for the responses. A balance needs to be struck between providing a full response to those Members who submit their questions early and enabling more Members to ask their question at the meeting. Where a Member is unable to ask their question at the meeting, they receive a written response; it has been suggested that consideration be given to publishing these and/or circulating them to all Members.

- i. There are several aspects to this which will be discussed by the Governance Working Party (see part 3). As recommended by the Selection and Member Services Committee, two aspects are being taken forward here as proposals – extending the time allowed for County Council Questions and publishing the answers to all questions submitted:

1. Section 14.18 will be amended as follows: "14.18 Forty-five minutes shall be the maximum time allowed for this item of the agenda, with any questions not answered receiving a written answer."<sup>3</sup>
2. Section 14.21 will be amended to: "14.21 An online link to the submitted questions and the answers given shall be included in the Minutes of the meeting where these have been asked before the end of the 45-minutes allowed."<sup>4</sup>
3. Section 14.22 will be amended to: "14.22 Members whose submitted questions have not been asked before the end of the 45-minutes allowed shall receive an answer directly in writing. These answers will be published online as soon as they are all available."<sup>5</sup>

**iv. Procedural motions** - Questions are occasionally raised about when procedural motions are taken. Section 14.70 of the Constitution states that they may be proposed "at any time". This means that they do not need to be

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<sup>2</sup> Section 14.15 currently reads: "All Members are entitled to submit one question per meeting, which must be delivered to the Democratic Services Manager by 5:00pm on the Friday prior to the meeting by an email from that Member or by paper copy signed by that Member."

<sup>3</sup> Section 14.18 currently reads: "Thirty minutes shall be the maximum time allowed for this item of the agenda, with any questions not answered receiving a written answer."

<sup>4</sup> Section 14.21 currently reads: "An online link to the submitted questions and the answers given shall be included in the Minutes of the meeting where these have been asked before the end of the 30-minutes allowed."

<sup>5</sup> Section 14.22 currently reads: "Members whose submitted questions have not been asked before the end of the 30-minutes allowed shall receive an answer directly in writing."

taken at a specific point in time. It does not mean that procedural motions take precedence – i.e., when Members are waiting their turn to speak, it does not allow a Member to call out and prevent these Members speaking by posing a procedural motion. It is only when a Member wishes to raise a point of order or make a personal explanation that the Chairman may allow a Member to speak immediately (under 14.78). As a procedural motion under 14.70 could involve shutting down the debate, they could be used to prevent Members speaking. If 14.70 is felt to be ambiguous, it may need to be reworded to make this clear.

- i. To enable this suggestion to be put into effect it is proposed to amend the introductory text to section 14.70 to clarify the wording. There remains discretion on the part of the Chairman as there may be a need to move a specific motion ahead of Members who have indicated a wish to speak without removing their ability to do so – for example, a motion to exclude the public from the meeting where exempt information may be revealed. The proposed wording is as follows:

1. “14.70 Certain procedural motions may be proposed at any time during a Council meeting. A Member who wishes to propose one of the following must wait until called on by the Chairman which may not be until those who have indicated a wish to speak ahead of the proposer have been given the opportunity to speak. These procedural motions are: (a) that the question be put, (b) that consideration of the matter be referred to a later meeting, to the Leader, or to a Committee, (c) that the debate be adjourned for a stated time, (d) that the Council proceeds to the next item of business, (e) that debate continues beyond the times determined under 14.10, (f) that a Procedure Rule or Rules be suspended in whole or in part, (g) to exclude the public from the meeting. This motion may only be made on the grounds of exempt information being revealed in debate, following the categories set out in 15.14 and bearing in mind the requirements of 15.15.”<sup>6</sup>

### **3. Governance Working Party**

- a) The issues in section 2 of this report are the more straightforward of potential changes to the Constitution. In 2019, Members approved a rationalisation of the Constitution which considerably shortened and simplified the document with a view to further substantive changes taking place after discussion with a working party comprised of Members from across the Chamber. Ultimately, the pandemic intervened, and it is felt timely to revisit a working party approach to provide a deep dive into the issues rather than try to conduct this activity in main Committee.

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<sup>6</sup> Section 14.70 currently reads: “The following procedural motions may be proposed at any time during a Council meeting: (a) that the question be put, (b) that consideration of the matter be referred to a later meeting, to the Leader, or to a Committee, (c) that the debate be adjourned for a stated time, (d) that the Council proceeds to the next item of business, (e) that debate continues beyond the times determined under 14.10, (f) that a Procedure Rule or Rules be suspended in whole or in part, (g) to exclude the public from the meeting. This motion may only be made on the grounds of exempt information being revealed in debate, following the categories set out in 15.14 and bearing in mind the requirements of 15.15.”

- b) In recent months since appointment, the Cabinet Member for Communications and Democratic Services has been speaking with Members with a view to understanding the changes that Members would like to see considered.
- c) Over the past year, the Annual Governance Statement and the Governance Review by the External Auditor have brought forward actions and opportunities for change that need to be discussed and considered by Members.
- d) Many of the changes do not have simple or single answers and require careful and considered discussion before recommendations are brought forward in early 2024 for Selection and Member Services to further consider.
- e) It is therefore proposed to establish a Governance Working Party of Members to provide representation from all Members to inform the Cabinet Member and Monitoring Officer of the view of non-executive Members in relation to the operation of the Council's governance.
- f) The working party would be chaired by the Cabinet Member and supported and advised by staff from Governance Law and Democracy (GLD). All and any suggestions would then be worked up into proposals by Officers in GLD that ensure we meet the legal requirements and are consistent with the wider framework and presented as options to Selection and Member Services Committee and/or the Council as appropriate.
- g) Some of the initial areas for discussion identified for discussion by the Working Party include:
- i. **Review of the best ways to effectively scrutinise the Council's role in relation to Education and Skills** – The role of the local authority has changed significantly since the current arrangements were put in place and it is timely to reflect on whether changes could assist. Some local authorities operate a dedicated Education Scrutiny Committee and KCC currently have a SEND Sub-Committee of Scrutiny.
  - ii. **Changes recommended by Governance Review** – A range of suggestions were made by the external auditor which require discussion and contemplation by Members including:
    - The role and effectiveness of Cabinet Committees.
    - The Chairmanship of Scrutiny Committee.
    - Cross-cutting post-decision scrutiny.
    - The role of Member training within formal governance (including the place of mandatory training).
    - Member responsibilities and culture.
  - iii. **Further review of meeting standing orders for all meetings generally and County Council specifically.**
  - iv. **Review of the Scrutiny Call-In criteria.**

- v. **Areas of activity where the Monitoring Officer would like to discuss changes ahead of bringing recommendations to the Committee** – The Monitoring Officer has a defined role and accountability in relation to Governance and he and his officers advise impartially based on their professional expertise. There are activities both within the Annual Governance Statement and in relation to planned transformation where it would be helpful to discuss informally before recommendations are brought forward.
- vi. **Discussion of Role Profiles for Members to provide clarity.**

#### **4. Shareholder Board**

- a. The Governance and Audit Committee has been considering the lessons learned from other authorities who have found themselves the subject of government or other intervention. A proportion of those Councils have faced difficulties linked to their wholly owned trading vehicles. Kent County Council has long since implemented and in many cases pioneered some of the governance arrangements that are now being recommended by such reports. Similarly, at a group level the companies provide dividends and financial contribution that support the Council's budget. Many of the investment activities undertaken by other Councils which have failed and then brought revenue budget challenges have also not been part of the Kent County Council commercial strategy.
- b. The above notwithstanding, the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, the Governance and Audit Committee and the General Counsel are recommending the adoption of a change to governance around the companies to reflect best practice. That change is to make the Shareholder Board a formal sub-Committee of Cabinet rather than its current status as an informal group.

#### **5. Next Steps**

- a) The above is not an exhaustive list but are those which have been directed to the General Counsel through the Cabinet Member for Communications and Democratic Services and reviewed in the context of the wider governance framework. Members are asked to comment on the above and suggest additional areas for consideration.
- b) At the same time, the Cabinet Member for Communications and Democratic Services has observed that some of the most effective Member groups, whether they be sub-committees, informal working groups or task and finish groups, have been smaller in terms of membership.
- c) The membership, terms of reference and number of Cabinet Committees are determined by the Leader under the Constitution. A reduction in the number of seats (without reducing the number of opposition seats currently allocated) is being considered ahead of some of the further changes identified above for discussion in due course.

## **6. Recommendation**

County Council is asked to:

- a) NOTE and COMMENT on the report.
- b) AGREE to adopt the amendments to the Constitution set out in paragraphs 2.b.i.i.1, 2.b.ii.i.1, 2.b.iii.i.1-3, and 2.b.iv.i.1 as recommended by the Selection and Member Services Committee.
- c) NOTE the establishment of a Member Working Party chaired by the Cabinet Member for Communications and Democratic Services to work on a cross party basis.
- d) AGREE the establishment of the Shareholder Board as a formal sub-Committee of the Cabinet from 1 April 2024.
- e) DELEGATE the responsibility for drafting terms of reference for the Shareholder Board to the General Counsel in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services.

## **7. Relevant Director and Report Author**

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