

Procedures Committee 25 April 2023

Governance Review

Report of the Director of Legal and Democratic Services and the Director of Finance and Public Value

Please note that the following recommendations are subject to consideration and determination by the Council (and confirmation under the provisions of the Council's Constitution) before taking effect.

1) Recommendation

- 1.1 that the Procedures Committee:
- 1.2 Establish a cross-party working group comprising five Members of this Committee to progress a root and branch governance review and confirm the appointment of Members to the working group.
- 1.3 That the Director of Legal and Democratic Services, in consultation with the Chair of Procedures Committee be authorised to appoint additional members to the working group, in line with the review themes.
- 1.4 That the proposed approach, programme and timeline for the Governance Review, as set out in Appendix 1, be approved.
- 1.5 That the Director of Legal and Democratic Service, in consultation with the Chair of Procedures Committee be authorised to implement any changes to the Governance review programme which are required.

2) Background / Introduction

The Council is fortunate to have very positive and constructive professional relationships between officers and elected members.

The Council has faced significant challenges both externally and internally since the pandemic. The Economic situation linked to the war in Ukraine and the Cost-of-Living Crisis have impacted upon all stakeholders in Devon and the staff survey highlighted that many staff are also being impacted e.g., food poverty issues. The services the Council provide, and the context of delivery have significantly changed; equally so our staff are impacted by these contexts too. In summary the Council finds itself in a very different operating context and the need for a review of priorities is required.

In additionality the Council finds itself in a very challenging internal position in that Children's Services, SEND provision and budget sustainability face serious challenge along with concern from stakeholders regarding confidence in the Council to address these challenges. The continuous failure of the Council to improve the Inadequate judgement by Ofsted of Children's Services over a 12-year period has resulted in the children's minister issuing a Revised Statutory Direction for social care specifically citing failures of corporate governance and escalating to the appointment of a Commissioner to oversee Improvement and hold the Council to account. There is also government intervention for SEND and a material threat of a s114 notice because of the High Needs Block deficit now approaching £130 M.

Linked to these formal situations and serious concerns external assessment bodies such as Ofsted have reported in their monitoring issues relating to corporate governance and declared that there as been little or no improvement in services for 3 years since the last inspection. These are serious, material, well evidenced failures of the County Council's governance-

In response the Leader and Chief Executive in meetings with the children's minister have agreed the urgent need for a Review of Corporate Governance as a priority in conjunction with the formal work of the Improvement Boards in Children's Services where oversight of progress is led by the Commissioner appointed by the Minister and the SEND Improvement Board.

The Chief Executive appointed in November 2022 took up post in February 2023 but owing to the seriousness of the above context has been working with stakeholders, staff and official Ministerial representatives such as the Commissioner and the DFE since December 2022 to agree key approaches to drive forward the improvement of the Council. Positive engagement has resulted in the agreement of the following strategic approaches that must make significant progress as a matter of urgency:

- Governance Review,
- The People Strategy and
- Leadership and Direction through a revised Corporate Plan for the year ahead.

Separate reports will be considered by the Cabinet for each of the three strands. The Council will step off as one council with a consistent approach to corporate governance.

The purpose of this report is to agree the approach to reviewing the Council's corporate governance and a root and branch review of its governance arrangements.

Appendix 1 sets out the proposed review programme and timetable.

The aim of the Governance Review is to

- Implement effective scrutiny arrangements and functions in place for council decisions,
- Members and officers demonstrate that they understand and respect their roles in council business
- Develop an organisational culture, at all levels, where staff are enabled and empowered to constructively challenge and improve ways of working.
- Developing and deepening relationships with external partners across the County and sector.
- Achieving best value and a financially resilient council making investment decisions in the context of a longer-term financial plan.
- Ensure the Council have an absolute focus on its residents and customers and is responsive to their needs and demands
- The decisions made by the council are done so via well understood and transparent channels and supported by evidence.

- Maintain political stability
- Ensure the council is focused on continuously improving in all areas and has robust processes in place to collect and analyse data on its delivery, and to manage its performance effectively.

The working group will agree the project plan, milestones and performance measures for the review for the work streams in appendix 1.

3) Proposal

- 3.1 External regulatory bodies such as the Department for Education have been clear and in support of formal communication from the Minister stated that the Council's Corporate Governance needs to be strengthened and improved. The Council's last external reviews in relation to corporate governance were undertaken in 2016 and 2017 by the Local Government Association further assessment were not possible due to the impact of the Covid 19 pandemic. The Care Quality Commission have however continued to inspect the Health and Social Care provisions of the Council throughout this period with a further inspection imminent.
- 3.2 The proposed review seeks to rigorously examine and modify recent expenditure and to significantly improve governance to mitigate the current situation now facing the Council. This situation is material to the Best Value Duty and the requirement set out in the Local Government Act 1999 to "secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."
- 3.3 Since early 2020, the Council has continued to review and revise its governance and decision-making arrangements in order to meet the challenges and demands arising from the covid-19 pandemic. This review seeks to now review, reset and improve the current arrangements and ensure that they are fit for purpose. Some work streams have already commenced.
- 3.4 An annual external value for money review is currently being undertaken by the Council's external auditors Grant Thornton, and the findings may

result in further reviews of this plan to ensure that any recommendations are considered.

3.5 The Council have had a period of change in senior management and coupled with recovery from the pandemic and the criticism of corporate governance, this is an opportune time to consider the Council's future governance arrangements making the necessary improvements as expected by the Minister, the DFE, the Commissioner and the SEND Improvement Board. The review will focus on our corporate priorities and performance of the council going forward. With particular focus on

- Governance, for example, a sense of strategic vision and direction, adequate structure and internal processes; key senior posts filled with permanent appointments achieving stability, core purpose and focus on improvement with measurable targets and timelines.
- Culture and leadership, for example, positive and open relationships between councillors and officers, and openness to challenge with clearly understood roles and responsibilities with a clear link to accountability and a drive on performance and improvement.
- Financial governance, for example embedding good financial management into informed decision making, scrutiny of financial decisions and governance arrangements including for commercial investments resulting in a sustainable plan for the financial future and sustainability of the Council along with strong ethics of compliance and best value delivery across the whole Council supported by a People Strategy that has Learning and Development at its core with a clear investment strategy so that staff have the training and skills required to deliver a 'best value' Council;
- Services, for example, poor governance weaknesses can impact upon the effectiveness and/or efficiency of service delivery; there needs to be a clear and accountable process that links front line delivery to strategic planning, review and accountability frameworks both within officer structures and political frameworks that hold officer delivery to account.
- Capacity and/or capability to improve, for example, acknowledging problems and engaging with sector support from partners with an ambitious ethos focussed on governance structures that hold to account an improvement culture that looks inwards , outwards and forwards embracing SMART targets and accountability at every level

that is 'pulled up and through' governance structures at every level which is transparent and publicly accountable.

The timescales of the reviews will allow for consultation, engagement and then training of both officers and elected members to provide consistency across the whole council in a one council approach and embed and ensure successful delivery of any improvements and importantly celebration of success in order to build confidence, well-being and belonging specifically recognising the links between the Governance Review and the People Strategy.

- 3.6 Strong, trusted governance is essential if the County Council is to continue to be a credible and authoritative democratically accountable champion for the people and communities of Devon. Members of Parliament, local authority partners, key stakeholders both in the public and private sector, and the wider public must have confidence that the decisions, services and financial management of the County Council are firmly grounded in robust governance procedures that exemplify the very best practice.
- 3.7 The Council has combined resultant activity into a single Governance improvement action plan attached at appendix 1 and outlines each and every review action linked to the governance review in one table for completeness. The action plan will be updated regularly. Each individual review has details of the engagement required, the consultation process and where any changes will require approval. Some of the review areas will be the responsibility of other related committees and they will be reported to procedures with an update of progress in order to provide the full improvement journey of the Council's governance arrangements.
- 3.8 The Governance review will consider the best practice guidance of the LGA and Cipfa and provide assurance that the Council is delivering value for money, backed by strong corporate governance and oversight. The governance review will be the vehicle on which the ongoing responsibility for best value will be measured. The review itself is multi-faceted, with the overarching ambition to deliver an effective and efficient governance infrastructure which is embedded across the whole organisation. To support the successful realisation of this ambition, the review will also incorporate a development and engagement programme for officers and

elected members and a strategy to build upon the already excellent relationships fostered between the council and its stakeholders.

- 3.9 The review will ensure external confidence in the Council's democratic legitimacy and provide for greater oversight and accountability and specifically progress the formal processes in place eg the role of the Commissioner linked to the improvement of Children's Services and the Improvement Board linked to SEND provision.
- 3.10 Whilst governance arrangements will continue to evolve to meet emerging need and new legislative provisions, there are a number of fundamental issues to be addressed corporately alongside an opportunity to review and implement change over a 12 month period, with longer term aims (including a review of the effectiveness of any changes and supporting the governance arrangements of other corporate initiatives) scheduled over a 2-year timeframe. The review programme has been divided into phases with an indicative timescale for each strand. The initial 2 phases are set out below.
- 3.11 Phase 1 will focus on the critical areas of the governance arrangements for the next 1-6 months which have been identified by the Chief Executive, the Monitoring Officer, Senior Leadership Team, political leadership and external partners as high risk for governance compliance. Some areas of the review have already commenced.
- 3.12 Phase 2 of the review focusses on high priority matters for the next 6-12 months.
- 3.13 It is proposed that a cross-party member working group is established to lead on review activity with officer support drawn from colleagues across Democratic Services, Finance and Public Value, Legal and Democratic Services, HR, performance and internal Audit with input from other services as needed. The review will also focus on the Council's relationships and engagement with MPs, key stakeholders and the wider public.
- 3.14 A programme of wider elected member engagement in relation to review themes will support the development of recommendations to be considered by the Committee and this will be addressed at the Council Member day on the 11th May 2023 whereby the Leader of the Council has invited all

Members of the Council to a full engagement day which considers the 're-set' of Council priorities and Governance in light of the context set out within the introductory part of this report

4) Options / Alternatives

4.1 Good Corporate governance is the foundation of a well performing Council with good services and underpins the Council's ability to balance the budget, provide good services to the residents of the County, to provide a strong strategic vision and direction, to have key posts filled with permanent staff and provide a healthy culture and strong leadership. There is no alternative proposal as failure to implement and uphold strong corporate governance places the council at a significant risk.

5) Consultations / Representations / Technical Data

5.1 Elected members will be consulted and provide views to shape the Governance review programme and themes.

5.2 Key stakeholders, partners, staff and statutory partners such as the Commissioner for Children's Services will be consulted. The review will clarify the roles and responsibilities of Officer and Members, clearly specify delegated decision-making thresholds and responsibilities and provide accountability and authority for financial decisions by an increased understanding and awareness.

6) Strategic Plan

Resources:	Appropriate officer support from a variety of governance disciplines will support the review activity.
Legal Democratic and Governance:	The Council's governance arrangements should reflect the current legislative framework and offer efficient, effective and appropriately placed decision making.

Risk:	Risks to the Council arise where governance arrangements are not routinely reviewed and aligned with legislation and guidance.
Equality:	The Council's governance arrangements should offer equality of access to all.
Health and Wellbeing:	A key theme of review activity relates to the Council's Health and Wellbeing board arrangements.
Social Value	None associated with this report.

- 6.1 The proposal, aligns closely with the vision and priorities in the Council's Strategic Plan 2021 – 2025. A full governance review is required to ensure that processes and procedures are fit for purpose. The Governance review will be concurrent to establishing a complete performance framework which will track the improvement journey. The Governance review programme is ambitious, it supports a one council, consistent approach for all services at pace; there are many areas of good practice which will be celebrated. Each element of the review will allow for consultation, engagement and training to ensure successful delivery.
- 6.2 The governance review contributes to the voice of children and families in our communities to ensure that decisions are made based on the best available information, following established policies and procedures at the appropriate level of responsibility and ensuring that our communities are connected and resilient,

7) Financial Considerations

7.1 There are no financial implications in relation to the governance review. The review will however ensure that the Council has good financial management and follows its own rules and processes.

8) Legal Considerations

8.1 The Council's Best Value Duty and the requirement set out in the Local Government Act 1999 to "secure continuous improvement in the way in which its

functions are exercised, having regard to a combination of economy, efficiency and effectiveness must be adhered to” Poor decision-making leads to potential challenge.

9) Environmental Impact Considerations (Including Climate Change)

9.1 There are no identified environmental considerations within the proposals in this report.

10) Equality Considerations

10.1 The proposals in the report will have a positive impact on people with protected characteristics across the workforce and the County. This will support the council meeting its Public Sector Equality Duty. Any actions undertaken will include an Equality Impact Assessment as necessary to ensure all relevant considerations are taken into account.

11) Risk Management Considerations

11. 1 No new risks have been identified in the proposals in this report. Failure to follow good governance places the council at significant risk.

12) Summary / Conclusions / Reasons for Recommendations

12.1 Devon County Council is committed to driving improvement in all its services, ensuring value for money and embedding good governance in all that we do.

Name

Director Maria Price, Director of Legal and Democratic Services,
Angie Sinclair, Director of Finance and Public Value

Electoral Divisions: All

Chair of Procedures Committee: Cllr Ian Hall

Cabinet Member – Cabinet Member for Policy, Corporate and Asset Management (Councillor John Hart)

Local Government Act 1972: List of background papers

Local Government Act 1999

LGS guidance

Cifa guidance

Results/ findings of member engagement workshop

Democratic Governance Review Approach and Timeline Appendix 1

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Phase 1 March 2023 to August 2023				
Governance Topic	Action/themes	What will the review strand look to achieve	Lead Committee/Board	Indicative timetable for decision by Council/Leader
Member Engagement Strategy		To develop a targeted member engagement approach to gauge as broad a view on any proposed governance changes as possible	Workshop with elected Members 11 May 2023	N/A
Review of elected Members delegated authority arrangements	Consult and engage with Cabinet members, officers and partners	To review and benchmark against other Local Authorities and engage with external partners and Commissioners and establish clear roles and responsibilities for elected members, ensure that the Cabinet and individual members are aware of their powers and the information required to make informed decisions	Changes to constitution to be agreed by the MO	Completion May 2023

<p>Standardised report templates and sign off sheets</p>	<p>Consult and engage with SLT members, staff and Executive</p>	<p>Standardised decision-making documents, clear expectation and audit trail of decisions, ensure that decisions are made at the appropriate time and level of responsibility, processes properly followed, appropriate briefings and decisions based on the best available evidence. Consistent approach across the council and clear lines of accountability.</p>	<p>MO in consultation with SLT member and Cabinet</p>	<p>April- May 2023</p>
<p>Review of all external boards and Committees which DCC a member of</p>	<p>Consult and engage with SLT members, staff, Executive and Partners</p>	<p>Provided clarity as to the decision-making capabilities, governance and roles and responsibilities of members of committee and boards</p>	<p>SLT members, staff, Executive and Partners (i.e., LEP, NHS, DfE, Police, combined authority, other LA's, schools, etc)</p>	<p>May-September 2023</p>

Decision Making	Review key decision financial threshold	The review will benchmark against other County and neighbouring Councils to understand current financial thresholds and how they support strategic ambitions. Any decision to revise thresholds will be a matter for Council and will impact on other review activity including Contract Procedure Rules, Financial Regulations, the Scheme of Delegation and	Procedures Committee 25 April 2023 for first consultation then consideration by working group, officers and Members	Council December 2023
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	<p>Consider individual cabinet member decision making and associated thresholds</p>	<p>individual Cabinet Member decisions.</p> <p>This element of the review will aim to evaluate the decision-making powers delegated by the Leader to individual cabinet members; understanding the associated impact on collective cabinet decisions and determining the process, including checks and balances to ensure robust governance arrangements are in place, including the role of scrutiny</p>		
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<p>Review number and type of committees</p>	<p>A holistic review of the committees and boards and remits</p>	<p>The key aims of this element of the review is to consider the number of committee and boards, review the terms of reference, re set decision making committees, benchmark against other local authorities and rationalise remit and number of committees and boards</p>	<p>Procedures Committee working group May 2023</p>	<p>Council December 2023</p>
<p>Constitution Review: Contract Procedure Rules (CPR)</p>	<p>A holistic review of contract procedure rule</p>	<p>This strand of the review will be influenced by any decision on the key decision threshold.</p> <p>The key aims of the review are to ensure that the council's contract procedure rules are robust, compliant with relevant legislation (following the UK departure</p>	<p>Procedures Committee</p>	<p>December 2023 Council</p>

		<p>from the EU), offer sufficient checks and balances to provide assurances to members in relation to procurement decision making processes without being prohibitively bureaucratic.</p> <p>Review activity will be supported by officer focus groups on the procurement processes that underpin CPRs with a view to ensuring that processes are effectively supportive</p>		
<p>Constitution Review Financial Regulations</p>	<p>A holistic review of financial regulations and asset management provisions</p>	<p>This strand of the review will be influenced by any decision on the key decision threshold.</p> <p>The key aims of the review are to ensure that the council's financial regulations are robust, compliant with relevant legislation and guidance (Including CIPFA</p>	<p>Procedures Committee, Finance and public value, legal and democratic Services and SLT</p>	<p>Council December 2023</p>

		<p>guidance), offer sufficient checks and balances to provide assurances to members in relation to the Council’s strategic and operational financial management</p> <p>Review activity will be supported by officer focus groups on the processes that underpin Financial Regulations with a view to ensuring that processes are effectively supportive</p>		
<p>Constitution Review: Council Procedure Rules</p>	<p>To review and refresh constitutional provisions relating to the operation of Council meetings</p>	<p>The Council Procedure Rules have not been reviewed for a number of years. This strand of the governance review will analyse the effectiveness of current practices and look to develop, where appropriate, revised procedures and practices that provide clarity</p>	<p>Procedures Committee</p>	<p>Council December 2023</p>

		<p>and broader engagement.</p> <p>Exploring initially:</p> <ul style="list-style-type: none"> • Lead Member reporting mechanisms • Committee minutes received for information • Rules of Debate • Re-ordering of sections of the CPRs for clarity 		
Constitution Review: Scheme of Delegation	A comprehensive review of the Scheme of Delegation to Officers	<p>This strand will benchmark against good practice schemes and other local councils with similar strategic ambitions. This will look also at different model schemes, with a view to ensuring that Devon's scheme of delegation is accessible and easier for officers to utilise</p> <p>Alongside this there will be an analysis of current legislative</p>	To be agreed by Monitoring Officer in consultation with SLT	September 2023

		provisions, ensuring that any superseded, new or repealed legislation is accounted for, again, supported by officer focus groups.		
Scrutiny Review	Comprehensive review of the scrutiny function	Develop best practice recommendations considering issues such as a scrutiny toolkit, alternative mechanisms for delivering work programmes and demonstrating effectiveness and improvements across the function and the role and remit of scrutiny chairs.	Scrutiny Board Chairs' recommendations on structure to be considered by Procedures Committee Any revisions to terms of reference and structures can be developed throughout the remainder of the calendar year Reviewed by Procedures Committee	Council November 2023

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		The remaining aspects for this strand are to consider the future structure of the scrutiny function, including the proposal of inclusion of a dedicated board to examine the performance of commissioned and externally contract service providers		
Review of Elected Member learning and development	Development of Member offer for 2023	<p>This strand of the review aims to develop a Member Development Programme and facilitate separate programmes that are tailored to meet the needs of:</p> <ul style="list-style-type: none"> • Newly elected members • a core programme for all members (including essential elements); 	Member Development Steering Group in consultation with elected members	15 June 2023 with a rolling programme to ensure that elected members are fully engaged and aware of any constitutional changes and all emerging needs are captured

		<ul style="list-style-type: none"> • bespoke programmes for members with specific responsibilities (cabinet, scrutiny, committee chairs, chairperson) • Members aspiring to take on new roles in the future <p>Feed Member Development needs (identified in PDPs) into the mid-year review of the member development programme</p>		
Officer development & governance engagement	To design and deliver officer learning and development on corporate governance	To support the need for shared corporate ownership of governance, this strand of the review will explore, with colleagues across the	Officer working group	ongoing

		<p>organisation, to identify any gaps in understanding and build an effective programme of tailored learning and development for officers.</p> <p>There will be specific focus on-</p> <ul style="list-style-type: none">• Briefing elected members• Report writing• Options appraisals• Awareness of constitution and legislative requirements• Standardised reports, templates and oversight of recommendations will be considered, processes reviewed and approval of reports prior to adding to forward plan and published. <p>*This will be dependent upon the timetable for constitutional changes</p>		
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Relationships with partners and key stakeholders	Review the relationships between the council and its key stakeholders, members of parliament and government	This strand of the review will consider and build on the strong relationships which have already been fostered and explore the opportunities for growth ensuring that all decisions are made within legislative provisions.	tbc	tbc
Phase 2 September 2023- April 2024				
Governance Topic	Action/themes	What will the review strand look to achieve	Lead Committee/Board	Timeline for decision by Council/Leader
Constitution Review: General Provisions	Alignment of the remainder of the constitution	Following any earlier changes to constitutional provisions, this strand of the review will look to align the remainder of the constitution to those changes. This is primarily administrative in nature; however, some analysis will be required, and a decision taken on the current		April 2024

		discretionary elements of the constitution		
Modern.gov development	Roll-out full functionality of modern.gov supported by Officer Development Programme	This element of the review aims to develop the committee management system following any constitutional changes and enable officers and elected	Democratic Services	

		<p>members to utilise full system functionality.</p> <p>Elements of the wider corporate governance officer development programme will address any training needs</p>		
Modernisation of the Chamber	Review the technology and fitness of the council chamber	Review and refresh of technology	Director of Legal and Democratic Services and Director of Transformation in consultation with SLT, executive, elected members, staff, and partners	December 2023 - April 2023
Democratic engagement	Public engagement platforms	This strand of the review will explore opportunities for wider democratic engagement including digital democratic presence and enhancing public engagement and participation in democratic processes	Governance & Constitution Review Committee (this will be an element of the phase that continues into year 2)	

Corporate Governance	Review of Annual Governance Statement and Code of Corporate Governance mechanisms	This strand of the review will explore the effectiveness of the current mechanisms for the development of the Annual Governance Review	Governance Review Officer Group	April 2024
Committee structure	Review the effectiveness of existing arrangements	This strand of the review will examine the current decision-making structure and explore any appetite for change, considering the appropriate placement of decisions in line with legislative provisions		tbc

<p>Member's Code of conduct and Arrangements</p>	<p>Consult and engage all members to review code of conduct and arrangements</p>	<p>To review and benchmark against other Local Authorities and the LGA model code to ensure that the Code of conduct and arrangements and robust and provide assurance in the Nolan principles and upholding the highest standards of behaviour.</p>	<p>Standards Committee working group engagement sessions and recommendations</p> <p>December 2023</p>	<p>March 2024</p>
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