



Report of the Assistant Chief Executive (Corporate Governance)

General Purposes Committee

Date: 8th September 2009

Subject: Executive arrangements: proposals

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report advises the Committee of the results of the consultation on changes to the Council's executive arrangements. That is, changing to either an Elected Mayor and Cabinet executive, or to the "new-style" Leader and Cabinet form. The report also sets out the next steps which the Council must take, and asks the Committee to make recommendations to full Council about drawing up its proposals for changing its executive arrangements.
2. The main points to note are the results from individual members of the general public. Of these, 395 people preferred the Elected Mayor and Cabinet option, while 324 people preferred the Leader and Cabinet option. The response rate from members of the public represented 0.13% of the registered electorate. Of the responses from Leeds City Council Councillors, all of the 4 formal responses from party groups favoured the Leader and Cabinet form. The report also sets out responses from other consultees.
3. In deciding which of the two options to adopt, the Council should take into account the results of the consultation, but should also have regard to the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
4. The proposals for the Council to move to either of the options must include:
 - a timetable with respect to the implementation of the proposals;
 - details of any transitional arrangements which are necessary for the implementation of the proposals; and
 - the allocation of functions between the executive and the authority ("local choice functions").

5. In relation to the timetable, it is proposed that full Council will consider the recommendations of this committee at its meeting on 16 September, at which it will draw up its proposals for a change in form. These must then be publicised, and the Council then must resolve to change its executive form at a specially convened meeting of full Council before 31 December 2009. This could take place on the same date as the scheduled Council meeting in November 2009.

1.0 Purpose Of This Report

- 1.1 This report advises the Committee of the results of the consultation on changes to the Council's executive arrangements.
- 1.2 The report also sets out the next steps which the Council must take, and asks the Committee to make recommendations to full Council about drawing up its proposals for changing its executive arrangements.

2.0 Background Information

- 2.1 At its meeting on 30 October 2008, the Constitutional Proposals Committee received a report on the new executive arrangements introduced by the Local Government and Public Involvement in Health Act 2007. The report advised that, as a minimum, the Council must resolve **by 31 December 2009** to move to a "new-style" Leader and Cabinet form (or this would be imposed by the Secretary of State). Alternatively, the Council could choose by the same date, to move to a directly Elected Mayor and Cabinet form.
- 2.2 That report set out the main differences between the forms, which are:
- the **Elected Mayor** is directly elected, has a four year term and cannot be removed by resolution of the Council; but
 - the **Leader** is elected by the Council, will generally have a four year term¹, and may be removed by resolution of the Council².
- 2.3 The report also set out the new procedure for changing executive arrangements. The Council is required to:
- **consult** before drawing up proposals for a change in form;
 - **draw up proposals**³;
 - decide whether the change should be subject to approval by a **referendum**;
 - **publicise** the proposals;
 - **hold the referendum** if they have decided there should be one;
 - **resolve** to change the form;
 - **implement** the new governance arrangements; and
 - **publicise** the new arrangements.
- 2.4 Following recommendations from the Constitutional Proposals Committee, at its meeting on 19 November 2008 full Council delegated various functions relating to changes in executive arrangements, to the Assistant Chief Executive (Corporate Governance), including consulting prior to drawing up proposals, subject to consultation with group leaders about the consultation plan.
- 2.5 Full Council also instructed the Assistant Chief Executive (Corporate Governance) to begin the consultation process on the change in form.

¹ This Council has election by thirds, so this will not be the case if the Leader has less than 4 years left as a councillor when elected as Leader.

² if the Council makes provision to do this in its executive arrangements.

³ If proposals are for Leader and cabinet form, the proposals should include whether the Council proposes to adopt provisions to allow it to remove the executive leader during the leader's term of office.

3.0 Main Issues

3.1 The Consultation Exercise

3.1.1 After consultation with group leaders, the Assistant Chief Executive (Corporate Governance) approved a consultation plan. The principal consultation through Talking Point took place between 11 May 2009 and 3 July 2009. The consultation process involved consulting with:

- General public;
- Key Partners;
- Parish and Town Councils;
- Leeds Members of Parliament;
- Independent and co-opted Members of the Leeds City Council; and
- Leeds City Council Councillors.

3.1.2 Appendix 1 to this report sets out how this consultation was carried out.

3.1.3 Councillors had been previously briefed by the Assistant Chief Executive (Corporate Governance) through party groups about the two forms, and other information provided to them on the Members' Training and Development intranet site.

3.1.4 All other consultees were provided with information about the two options, and asked to give their views through a short survey. The survey asked consultees to select their preferred form and to select up to three reasons why this was their preferred option. They were also invited to make any additional comments.

Response rates

3.1.5 In total, there were 740 responses received (excluding responses from Leeds City Council Councillors).

3.1.6 Of this figure:

- 719 were individual members of the general public (including members of the Citizens' Panel);
- 2 were from Key Partners (out of 34 consulted);
- 3 were from independent/co-opted members (out of 9);
- 13 were from Parish and Town Councils (out of 31); and
- 3 responses from other groups (responding as members of the general public).

3.1.7 No responses were received from Members of Parliament.

3.1.8 The number of responses and expressed preferences are summarised in appendix 2 to this report, and detailed below.

Methodology

3.1.9 Appendix 2 indicates where the preference expressed for a particular form by a specific group of consultees is statistically reliable, when considered by itself. (That is, where the difference between the preferences expressed for each of the forms by the specific group is real, and not due to chance; so if the survey were carried out again, the results would almost certainly be repeated in terms of the same overall preference expressed by that group).

3.1.10 The Citizens' Panel was independently conducted. The Citizens' Panel is demographically representative in terms of age, gender, ethnicity and geographic location⁴.

General Public preferences

3.1.11 In relation to the responses from individual members of the general public:

- 587 were from the Citizens' Panel (a 33% response rate); and
- 132 were generated from other sources such as Talking Point or About Leeds.

3.1.12 The total number of these individual respondents equates to 0.13% of the registered electors within the authority.

3.1.13 Of the 587 people who responded to the Citizens' Panel, 323 expressed a preference for the Council to have an Elected Mayor and Cabinet form, and 264 a preference for the Leader and Cabinet form.

3.1.14 When the responses of the Citizens' Panel are collated with the other responses from individual members of the general public, 395 of individual respondents preferred the Elected Mayor and Cabinet option, while 324 respondents preferred the Leader and Cabinet option.

Other stakeholders' preferences

3.1.15 Of the 2 responses received from the 34 Key Partners consulted, both preferred the Elected Mayor and Cabinet form. Of the 3 responses received from the 9 independent/co-opted Members consulted, 1 preferred the Elected Mayor and Cabinet form, and 2 the Leader and Cabinet form. Of the 3 other groups who responded as members of the general public, 2 preferred the Elected Mayor and Cabinet form, and 1 the Leader and Cabinet form.

3.1.16 Out of 31 Parish and Town Councils, 13 responded. Of these, 2 expressed a preference for the Elected Mayor and Cabinet form, and 11 the Leader and Cabinet form.

Reasons for preferences

3.1.17 As well as identifying which option they preferred, all survey respondents were also asked to provide up to three reasons (from a given list) for their choice. Analysis of these reasons is set out in appendix 3⁵ to this report.

3.1.18 Respondents were also invited to make any further comments. 515 people (70% of respondents) did not make any comments. However, the comments that were made are summarised in appendix 4.

3.1.19 The variety of comments makes them difficult to categorise with a high level of specificity; however themes do emerge, as follows:

- 34 comments referred to the Elected Mayor form increasing public involvement in local democracy. This links to the 44 comments which were positive about the Elected Mayor option, citing reasons such as increased visibility of the

⁴ Although responses are not demographically representative, because not all Panel Members responded to the survey

⁵ These have been analysed without distinction between responses from individuals and other stakeholders.

leadership of the city and benefits this might have in making Leeds better known nationally and internationally.

- 29 comments expressed concern about the Elected Mayor form, for example becoming a “personality contest”.
- 21 comments suggested possible improvements to the Elected Mayor and Cabinet form, including that the Council should be able to remove an Elected Mayor mid-term – although this is not an option under the current law.
- 14 comments expressed concern about the cost implications of the Elected Mayor and Cabinet form; either the cost of holding mayoral elections or the costs arising from the position itself.

Some comments (both positive and negative) referred to Boris Johnson. However, the powers and duties of the Elected Mayor of London are not the same as, nor comparable to, those of an Elected Mayor for a metropolitan district authority.

Responses from Members

- 3.1.20 Leeds City Council Councillors were asked to provide their views through their group leaders (or as an individual if they were not part of a political group). Formal responses were received from four of the five political groups. All of these groups favoured the Leader and Cabinet form.
- 3.1.21 Two groups went on to state that the Council should be able to remove a Leader mid-term. One of these groups added that, while the Council should be able to remove a Leader, this should only be done by elected representatives, and only in exceptional circumstances. (The other two did not express any opinion on this issue either way).
- 3.1.22 One group’s response also stated that they were concerned that “a directly elected mayoralty would concentrate too much power in the hands of a single individual”.

3.2 The proposals

- 3.2.1 Following the consultation process, the Council must now draw up proposals for the change in form.
- 3.2.2 In drawing up the proposals, the Council must consider the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness⁶ - that is, their primary best value duty.

Timetable and transitional arrangements

- 3.2.3 The proposals must include:
- a timetable with respect to the implementation of the proposals; and
 - details of any transitional arrangements which are necessary for the implementation of the proposals.

⁶ Section 33E(7) Local Government Act 2000

- 3.2.4 In relation to the timetable, it is proposed that full Council **draw up the proposals** at its meeting on **16 September 2009**, taking into account the recommendations of this committee.
- 3.2.5 The proposals must then be publicised in accordance with statutory requirements.
- 3.2.6 The Council must resolve before 31 December 2009 to change its executive form, taking into account any representations received following the publicity about the proposals. This must be done at a specially convened meeting of full Council. Unless the Council resolves to hold a referendum⁷, (see paragraph 3.2.15 below), it is proposed that it meets to **change its executive form** on **18 November 2009**, the date of a scheduled Council meeting. This committee will also have to meet before that date, to make recommendations to full Council about the issue.
- 3.2.7 The Council must stop operating the old form and **start operating the new form** of executive **three days after the relevant elections**⁸. If a Leader and Cabinet form is adopted, these will be the first elections of councillors after December 2009. For an Elected Mayor and Cabinet form, the relevant election is the first election of the Mayor⁹.
- 3.2.8 Until the new form of executive comes into operation, the old law will apply to the Council's arrangements¹⁰.
- 3.2.9 If the Council moves to a "new-style" Leader and Cabinet form, the **Leader must be elected at the first annual meeting following the adoption of the new arrangements**¹¹, and their term of office will start that day. There may therefore be a number of days between the date of adoption of the new form and the date on which the new Leader is elected at the Council's annual meeting.
- 3.2.10 Under existing legislation, retiring councillors retire on the fourth year after election, and the newly elected councillors come into office that same day¹², which is generally before the annual meeting. There is, therefore, usually a change-over period before a Leader is formally elected at the annual meeting.
- 3.2.11 In terms of transitional provisions therefore, the proposals could provide for the Leader in office at the time of the elections to remain in place until the annual meeting in 2010 (even though the form itself would change before the annual meeting).
- 3.2.12 If the Council moves to an Elected Mayor and Cabinet form, the **Mayor is elected on the ordinary day of election**. Given the more significant change in form, further consideration would need to be given to transitional arrangements, if full Council was minded to move to this form.
- 3.2.13 Appendix 5 summarises this timetable.

⁷ Timescales for the Council's resolution would need to be revised if a referendum is held

⁸ Section 33G Local Government Act 2000 – applied by Paragraph 3 of Schedule 4 to Local Government and Public Involvement In Health Act 2007

⁹ Mayoral elections would take place on the same day as ordinary elections of councillors.

¹⁰ Schedule 4 Paragraph 2(2) Local Government and Public Involvement in Health Act 2007

¹¹ Section 44B Local Government Act 2000

¹² Section 7(3) Local Government Act 1972.

Local choice functions

- 3.2.14 The proposals must also deal with the allocation of functions between the executive and the authority.¹³ They must state the extent to which functions specified in regulations are to be the responsibility of the executive. This relates to “local choice” functions which the Council may choose to be the responsibility of the executive or Council. They are currently listed at Section 1 of Part 3 of the Constitution, which is attached for information as appendix 6 to this report. The Council should therefore review the current allocation.
- 3.2.15 The Assistant Chief Executive (Corporate Governance) is not aware of any concerns about the current allocation, under the present Leader and Cabinet form. She does not therefore recommend any amendments to the current allocation, if the Council should propose to move to a new-style Leader and Cabinet form.

Referendum

- 3.2.16 The Council may decide that its proposals *may* provide for the change in form to be subject to approval in a referendum. The results of any referendum would be binding on the Council, in that if the result of the referendum was to approve the proposals, the Council would have to make the proposed change¹⁴.
- 3.2.17 Consultation guidelines issued in 2000 suggests that a council could commit to a binding referendum on the issue, where opinion is evenly split. However, see further paragraph 6.6 below, on the status of the guidelines.
- 3.2.18 If the Council decides to make the change subject to approval in a referendum, it must resolve to approve the change in form which has been approved by a referendum, within 28 days. This would have to be taken into account in the timetable.

Arrangements to remove the Leader

- 3.2.19 If the Council is minded to draw up proposals to move to a Leader and Cabinet form, the Council **may** also make arrangements to remove the Leader at any time. If the Council did not make any arrangements for mid-term removal, the Leader would remain in office¹⁵ for their full term of office. (This would be up to the day when the Council holds its first annual meeting after the Leader’s normal day of retirement as a councillor, so may be 4 years or less, depending how long the Leader’s term of office as a councillor has to run when elected as Leader).
- 3.2.20 Article 7 of the Constitution (which relates to the Executive) already provides for removal of a Leader mid-term by resolution of the Council. This is currently by a simple majority, in accordance with Council Procedure Rules. This issue is considered further in paragraph 5 below.
- 3.2.21 As set out above, there is no provision under the legislation to allow a Council to remove an Elected Mayor.

¹³ Section 33J(3) Local Government Act 2000

¹⁴ Section 33K Local Government Act 2000

¹⁵ Subject to the provisions relating to disqualification.

Constitutional amendments

- 3.2.22 Constitutional amendments will be required, whichever form the Council decides to adopt. The main amendments would be to:
- Article 7 to make reference to the Elected Mayor (if that is the form chosen), and/or to insert provision for a deputy Mayor or deputy Leader (which the Mayor or Leader will have to appoint);
 - Council Procedure Rules, to reflect the change in term of office from one year;
 - Executive Procedure Rules, including an amendment to reflect that the Leader/Mayor may choose to delegate functions to individual Executive Members¹⁶.
- 3.2.23 There will also be a number of consequential minor amendments throughout the constitution particularly if the form adopted is an Elected Mayor and Cabinet form.
- 3.2.24 It is proposed that these amendments to the constitution are considered by full Council when full Council meets to approve the new form. The amendments would be of effect from the date the new arrangements are to be implemented, that is, three days after the elections in 2010.

4.0 Implications For Council Policy And Governance

- 4.1 The Council has complied with its community engagement policy, and the principles of good governance, in engaging in robust consultation over the form of executive.
- 4.2 The form of executive is one of the most fundamental aspects of the Council's governance arrangements. A change to either form will require amendments to the constitution.

5.0 Legal And Resource Implications

- 5.1 Following recommendation by this Committee, full Council will need to draw up proposals to move to one of the forms. The Council is then required to make the proposals available for inspection by the public, and publish a notice in one or more newspapers in the area stating they have drawn up the proposals, describing the main features, and stating where the copy may be inspected.
- 5.2 The Council must formally resolve by 31 December 2009 to adopt one of the forms. By law this will have to be done at a specially convened meeting of full Council.
- 5.3 Although an election for Mayor would be run in tandem with Council elections, additional costs would arise from the requirement to publish a booklet containing details of all mayoral candidates, and to deliver a booklet to every person on the electoral role in Leeds. Also, the voting system is also slightly different (the supplementary system) and can be more costly¹⁷. There are also potential by-election costs where a candidate elected as Mayor is also elected as a councillor.
- 5.4 Additional costs would arise from holding a referendum, if the Council chooses to do this. The Electoral Services Manager has advised that a referendum would cost a minimum of £750,000, which would have to be borne by the Council.

¹⁶ Currently, the Council precludes this, but will no longer be able to do so whichever new form is adopted.

¹⁷ By way of illustration, the costs that were directly attributable to the mayoral election in Mansfield in 2007 amounted to £40,000 (Source: Nottinghamshire County Council report of the Chief Executive to County Council, 4th December 2008)

5.5 Changing to the “new-style” Leader and Cabinet form would involve minimal additional expenditure, as changes to current arrangements would be minimal.

6.0 Conclusions

6.1 The consultation process has been comprehensive and impartial. All electors and other interested parties have been given the opportunity to express a preference for a particular form. The Council has therefore properly discharged its duty to consult.

6.2 The general public through the consultation process has expressed a preference for the Elected Mayor and Cabinet form. However, these results do not show an overwhelming preference for the Elected Mayor and Cabinet form. The response rate was relatively low, and fell far short of the 5% of the electorate which would be required to support a petition for a referendum on leadership arrangements.

6.3 Those Town and Parish Councils and Leeds City Council Councillors who expressed a view, expressed a strong preference for the Leader and Cabinet form. These stakeholders are themselves directly involved in the democratic process.

6.4 The responses received from other stakeholders (key partners, independent and co-opted Members and other groups), were too low to be statistically significant in terms of each distinct type of stakeholder, although they should be taken into account in terms of overall responses.

6.5 The Council will need to take into account responses received from all stakeholders, including the general public. In terms of the weight to give to the preferences expressed by each type of stakeholder, consultation guidelines issued to councils in 2000 advised “it would seem appropriate for public opinion to dominate at least in terms of the broad option that is chosen ... where relevant letting the opinions of partner agencies take a more dominant role in deciding the detailed aspects of any arrangement. The system of governance should have the approval of its electors as to its broad form but the specific features may matter more to other governance and partner agencies and may also be better understood by them.”

6.6 Local authorities were encouraged to consider the guidelines¹⁸. However, the guidelines are not statutory guidance to which the Council must have regard. Moreover, they should be considered in the context in which they were made – that of implementing executive arrangements as a whole, including the introduction of not only the executive, but area management and overview and scrutiny arrangements. No further guidance or guidelines have been issued in relation to consultation to be carried out by councils to implement the changes made by the 2007 Act.

6.7 As set out above, in drawing up the proposals, the Council have a specific duty to consider the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness.¹⁹

6.8 The Council must have regard to the results of the consultation, and take them into account. The Council is, however, entitled to take other factors into account, in drawing up the proposals, and indeed must do so, in exercising the duty set out in paragraph 6.7 above. The Council should take into account the different features of

¹⁸ Paragraph 11.25 Statutory guidance

¹⁹ Section 33E(7) Local Government Act 2000

each form, as summarised above, and set out in greater detail in the previous report to this committee.

- 6.9 Cost is an additional relevant factor. In relation to the additional costs arising from an Elected Mayor and Cabinet form, referred to above, the Council should consider the extent to which these costs may be offset by any improvements secured by a change to the Elected Mayor and Cabinet form.
- 6.10 The Council has discretion whether or not to make its proposals subject to a referendum. A referendum would require the general public to endorse the proposed form, and would promote community engagement in the issue. However, given the low level of interest shown by the public about leadership arrangements, it may be considered that there is insufficient justification to incur the substantial costs which would arise.
- 6.11 In the event that the Council may be minded to adopt the new-style Leader and Cabinet form, it should also consider whether to adopt arrangements for the Leader to be removed by resolution of the Council. In considering this, the Council should consider the views expressed by the general public²⁰ as well as other stakeholders.
- 6.12 If the Committee are minded to recommend arrangements to remove a Leader mid-term, they should consider whether the current arrangements should be amended, in view of the proposal that this power should only be exercised in exceptional circumstances, referred to in paragraph 3.1.19 above. For example, any resolution to remove the Leader could be made by, for example, a two thirds majority, as opposed to the current simple majority.

7.0 Recommendations

- 7.1 General Purposes Committee is asked to recommend to Council whether Council should draw up proposals to change to an Elected Mayor and Cabinet form, or the new-style Leader and Cabinet form.
- 7.2 Whichever form is recommended, the Committee is also asked to consider:
- whether to recommend that the proposals should provide for the change to be subject to approval in a referendum; and
 - whether to recommend to Council any amendments to the current allocation of “local choice” functions between the Council and the executive, or whether to recommend that the allocation stays the same (as set out in appendix 6 to this report).
- 7.3 In the event that the Council are minded to draw up proposals to adopt the new-style Leader and Cabinet form, the Committee are asked to recommend whether the Council should:
- not make any arrangements for the Leader to be removed; or
 - retain the current arrangements for the Leader to be removed by resolution of the Council (by simple majority); or

²⁰ The views of those who expressed a preference for an Elected Mayor, and gave as a reason for this the Mayor’s 4 year term are relevant here, as well as the views of the public citing the importance of being able to remove the leader.

- make revised arrangements for the Leader to be removed by resolution of the Council.

7.4 The Committee is also asked to:

- consider the proposed timetable set out in appendix 5 of this report;
- consider the proposed transitional arrangements set out in paragraph 3.2.11 of this report; and
- instruct the Assistant Chief Executive (Corporate Governance), in consultation with group leaders, to draft proposals reflecting their recommendations, to be considered by full Council at its meeting on 16 September 2009.

7.5 The Committee is also requested to recommend to Council to authorise the Assistant Chief Executive (Corporate Governance) to take the necessary steps requisite to carrying out the Council's legal requirements in relation to this matter.

Background documents:

- Report to Constitutional Proposals Committee 30 October 2008
- Report to full Council 19 November 2008
- Citizens' Panel report dated 12 June 2009
- Consultation survey and responses
- Consultation guidelines 2000