

Review of governance and decision-making at Southampton Council

Findings and suggested actions

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About Centre for Governance and Scrutiny

The Centre for Governance and Scrutiny is an organisation with particular expertise in corporate governance in local government. We work closely with councils, and with the LGA, to provide support and advice to councils on their governance systems overall, on their constitutional arrangements, on relationships between members and officers and on the operation of systems for scrutiny, accountability and transparency.

1. Introduction

CfGS has been assisting the council to consider how it might enhance its approach to governance and decision-making.

The Council wishes to address:

- The consistency of decision-making systems;
- The speed of those systems;
- Clarity in who leads on, and makes, decisions;
- Checks and balances with regard to the above;
- The expectations of both members and officers with regard to the above.

This report seeks to identify where changes can be made to effect improvements in governance systems. These changes relate to the consistency of informal systems of member-officer liaison and member oversight, as much as they do to the prospect of formal changes to the constitution.

The review is based on a range of interviews with members and officers, detailed examination of a very small number of recent decisions, supplemented by a more general review of Cabinet and scrutiny committee papers, the Forward Plan and other relevant material. Webcasts of key meetings were observed.

Decision dip-testing

We looked at the following decisions as part of the evidence-gathering for this work:

- Lordswood Close Maintenance
- Northern Above Bar Properties
- Land at the Corner of Lime Street / Evans Street
- Action taken on children's services inspection

Our intention in looking at the decisions was not to scrutinise the substance of the decisions themselves or to make judgements about members' political priorities and choices. We instead sought to examine that process, with that examination being based on the following questions:

- What is the overall approach taken towards member direction / member oversight given in respect of the decision?
- How do officers develop proposals relating to decisions, and how are members ordinarily provided with advice on the impacts of the decisions and alternative options?
- How is professional advice (legal and financial) sought and given?
- How is paperwork drafted and brought together to support the process?
- What mechanisms are usually established at the outset to evaluate the decision and its impact?
- Formally, who usually takes responsibility for making certain decisions and by what legal mechanism?

It should be noted that evidence-gathering to support this exercise predominantly occurred prior to the change of administration in May 2022. While the situation as described therefore reflects many of the circumstances applying to decision-making in the Council prior to this date, the findings we have made, and the actions we think necessary, still have salience and need to be acted on.

2. Overall

- The council experienced changes in administration in 2021 and 2022. **In 2021, the new administration was keen to take immediate action to bring forward its plans** – having prepared those plans in detail prior to the election, and expecting to be able to move swiftly to implement them. Over the course of the one year life of the administration, leading councillors felt a sense of impatience with officers, and existing systems, which it saw as holding up the need to act quickly and decisively;
- **The former administration felt that resistance and pushback from officers on some issues derives from a slow pace in getting used to a new direction for the authority** – that officers may not be “on board” with the new agenda. However, there is evidence that under the administration in place **prior to 2021, similar challenges with the speed and focus of decision-making also existed**. That said, this was a member issue as much of an officer issue – members of the former administration did not always appreciate their own part in the collective responsibility needed to support good governance;
- The former administration’s approach presented **risks relating to rigour in decision-making**, in particular around the council’s Best Value duties. In some instances, clear officer advice to members is difficult to follow through the system;
- **Officer concerns on the lack of clarity and assurance in decision making first emerged in relation to decision-making taken forward under the pre-2021 administration but became more significant over the course of the 2021/22 administration**. Despite this, concerns were not raised and discussed systematically with members, matters were dealt with individually. **There seems to be a lack of political astuteness in how this matter has been dealt with**;
- **It is not the case that the change of administration in 2022 will necessarily lead to a correction in these arrangements**. A lack of clarity in officer and member roles and uncertainty about the way in which officer advice is provided, and about the substance of that advice, continues, and will need active steps from both members and officers to address;
- This having been said, and while noting the deficiencies and shortcomings that this report highlights, **there are no fundamental and systemic flaws in the council’s governance framework overall**. The election of a new Council and appointment of a new administration provides an opportunity to reset relationships and reflect on where improvement should be made. **In most cases, these improvements relate to tackling relationships rather than undertaking fundamental revisions of processes, structures and systems**.

3. Detailed findings

3.1 On decision-making processes

- 3.1.1 The usual processes exist to support conventional officer and member decision-making. The council has a constitution which is fairly typical; it conforms with the sector norms for the document, derived from the “model constitution” produced by Government in the form of statutory guidance in 2000. This means that it is quite difficult to follow and navigate, with decision-making arrangements, and oversight systems, being spread across multiple different parts. The form and content of the constitution has not contributed to the Council’s challenges but it may be that, as part of steps to bring about improvements, review, revision and restructure of the constitution would be useful.
- 3.1.2. There are process diagrams and online guidance in place which set out how decisions are made. Officers in particular (especially those at the top of the organisation) generally understand how decisions ought to be made and their roles and responsibilities within the governance framework more generally. In this regard, the Council is not out of kilter with its peers. However, as we will note below, other pressures have recently conspired to place those processes under stress. This suggests that they will need to be strengthened to enhance their, and the Council’s, resilience.

Actions

(1) While immediate changes to processes are not necessary in the medium term the council should reflect on the formal systems in place to support decision-making (including the constitution) and consider how they might be changed to facilitate the other actions in this paper.

(2) Any changes to governance systems should pay particular attention to the need for professional advice on law, finance, and equality throughout the process of taking decisions through the system (as discussed below).

3.2 On member leadership and direction

Political direction

- 3.2.1 Leading members in the 2021/22 administration wished to exert strong control over decision-making. The administration came to power with a well-developed sense of what they wanted to achieve. This led to a post election, short term focus on driving certain key decisions through the system quickly. The former administration valued pace above some other considerations – wishing to cut through bureaucracy to deliver their objectives - and in some cases responded poorly to reasonable officer advice that a more considered approach was necessary.

Working relationships

- 3.2.2 In any council effective working is based on positive and constructive working relationships between members and officers. This relationship requires candour, frankness, respect and mutual challenge. It requires that officers have a clear understanding of members’ motivations and objectives and that members understand

where and how officers can assist them in delivering those objectives – and where the constraints might lie. Positive relationships rest on clarity on roles and responsibilities – a clear understanding between members and officers about who does what, where members lead and where and how officers should provide advice while also following members’ directions.

- 3.2.3 At the Council officers do not seem to have engaged consistently with these issues, or with members’ priorities more generally. From the evidence we have been able to gather we think that this may have started with a lack of planning before the 2021 election to understand how priorities would need to shift if there was a change in administration. The incoming administration’s priorities and plans were clear in advance – more should have been done to ensure that organisation-wide the officer corps was primed to act on the administration’s priorities. It meant that during 2021 and 2022 there was a lag around decision-making on some important issues, feeding further into the frustrations of members of the administration.
- 3.2.4 This has been part of the challenge, but it does not reflect the whole picture. Member impatience with the pace of decision-making, and the pace of policy development, developed – in a minority of instances – into an unwillingness to take and accept officer advice. In some cases disagreement is necessary and productive – but advice needs to be engaged with and talked through.
- 3.2.5 During the 2021/22 municipal year relationships between senior officers and members of the administration did not allow these conversations to happen with the necessary frankness and candour. Members of the administration, in some cases, felt that certain officers were politically biased against them, and were “going slow” on taking decisions forward because of their personal opposition to them.
- 3.2.6 Some members interpreted these challenges as a barrier to things they wanted to get done, rather than as being the responses of professionals wishing to protect and support the position of the council overall. This black-and-white view of officers’ motivations made it difficult for officers to navigate complex and difficult situations arising in respect of specific decisions, where legitimate concerns were interpreted as being driven by officers’ general reluctance to sign up to the administration’s agenda.
- 3.2.7 This resulted – in some cases – in situations where members of the administration disputed in public the contents of officer reports. This in itself may be understandable (it is legitimate for members to take a different view on the facts, or on the interpretation of those facts). However we have also been advised that members of the administration specifically requested that certain reports be redrafted to remove advice, or analysis, which contradicts action which they proposed to take.
- 3.2.8 This comes as part of a situation where officer reports were written defensively and where some interviewees suggested that risks, or negative consequences, of taking certain decisions in certain ways were downplayed. Officers were clearly been placed under pressure by members on operational, and other matters. This substantively altered the nature of the advice that they were prepared to give, certainly publicly and possibly in private as well.
- 3.2.9 Members need robust professional advice in order to make sound decisions. That advice might be disagreed with but there has to be a reason for that disagreement, and the advice has to be given in a way that reflects officers’ professional expertise.

3.2.10 Although there has since been a change in administration, both the member and officer corps must still take steps to address the weaknesses in relationships that have led to this situation.

Actions

(3) As part of ongoing member induction activity, member development activity should incorporate mandatory training for all councillors on member and officer roles. This should be complemented by parallel workshops, also mandatory, for senior officers on the skills and expertise needed to operate in a political environment. These sessions should complement broader training on political awareness which have been recently rolled out.

(4) This training should lead into dialogue between senior officers and all political groups to negotiate and agree a revised member-officer protocol that provides clarity on mutual roles and responsibilities, including setting out ways to resolve potential tensions and problems (and a set of scenarios to demonstrate examples of such tensions in practice). The protocol should also include commitments from parties on Group discipline around these issues.

(5) EMB/SLG meetings should incorporate a look ahead at members' policy development and decision-making priorities on a rolling six month basis with a view to identifying matters of forthcoming political priority and contention, with named directors taking ownership to shepherd such decisions through the system.

(6) More frequent (at least monthly) meetings between Group Leaders and the CEO, s151 and Monitoring Officer to maintain oversight over the decision-making system, feeding into the ongoing work of Audit in ownership of the governance framework more generally.

3.3 The use of information and professional advice to support decision-making

3.3.1 We have already noted that in order to make effective decisions councillors need access to accurate information, and high quality professional advice.

Skills

3.3.2 Overall, the senior officer cohort needs to develop their skills in understanding politicians' objectives and motivations, and their political astuteness overall. We have noted already that challenges around resilience in decision-making, which we mentioned above, were exacerbated in 2021 by a lack of pace on the part of officers in coming to terms with a new political environment, and thinking about how the councils' priorities were likely to shift as a result.

3.3.3 The council recognises this weakness, and has taken significant steps in recent months to deliver training and development training for a wide cohort of officers on politics and political awareness.

3.3.4 Members of all parties need to develop their own skills in understanding how to engage productively with professionals whose advice may not always align with their objectives.

Quality of officer reports

- 3.3.5 The general quality, and level of detail, of officer reports used to support decision-making has been quite variable.
- 3.3.6 We would expect to find consistency in the availability of background papers supporting decisions but this was often lacking. Reports that we reviewed often seemed perfunctory, lacking detail and failing to meaningfully present alternative options. Many reports, for example, specify only “take no action” as an alternative option when setting out recommendations on decisions, which does not provide an accurate picture of the range of policy options available in most decision-making situations – for example decisions can be made which direct resources in different ways, depending on different priorities.
- 3.3.7 While officer reports do not need to set out these other options in detail they do need to specify what other options exist in headline terms, and why they will not be followed. In some instances, this may quite legitimately be because of councillors’ political priorities.
- 3.3.8 Some equalities impact assessments have been of a particularly low quality. Little to no consideration was given to the equality, diversity and inclusion implications of a range of decisions we looked at across the 2021/22 year, nor was there consistency around the way that stakeholders in decisions are identified and informed/involved before decisions come to be made.
- 3.3.9 We consider that a lot of these shortcomings, in the 2021/22 year, owed themselves to the pace of decision-making, and in the overreach that some members wanted to take in influencing the content of reports, and the content of professional advice. But that has highlighted weaknesses in the system which are likely to persist.

Risk

- 3.3.10 It has also difficult to find consistent examples of judgements on risk having been used to inform decision-making. Although we know that the council does have a risk management framework which has been, and is, actively used to understand and mitigate risk, councillors need to play a more central role in “owning” such risks, particularly from a political perspective.
- 3.3.11 The corporate risk register is held by the Governance Committee – it is considered by members in committee as an exempt item and there is no clear evidence that its contents are used to inform decision-making more generally.

Provision of expert professional advice

- 3.3.12 We are particularly concerned about the provision of timely advice to councillors on legal, financial, and equality matters. It is not atypical in many councils for advice from professionals in these areas to not be sought until late in the decision-making process but in Southampton’s case that habit has led to real difficulties in the past year.
- 3.3.13 The way in which advice from lawyers has been sought by other officers has at times been chaotic – with lawyers receiving instructions and requests for advice at the last minute when they should be involved throughout the decision-making process. This was in part because the council corporately was slow in responding to members’ (sometimes unreasonable, sometimes legitimate) expectations around decision-making, in a way that saw usual processes around decision-making (including officer signoff on legal matters) contorted and constrained.

3.3.14 It was the former practice in the council for the Monitoring Officer not to be regularly present at EMT meetings. Although this is no longer the case, this undervaluing of legal expertise is taking time to be addressed. It seemed to us that part of this undervaluing was informed by an unwillingness on the part of the former administration (and, potentially, previous administrations) to treat such advice with the seriousness it deserves, and having an unsophisticated view of whether a proposed decision was or was not “legal” in a technical sense, without wishing to take into account the council’s broader duties (in particular, those relating to Best Value, as we note below).

Corporate focus

3.3.15 There has been certain activity, relating to future decision-making, happening on which the council’s corporate centre is not sighted. This led to decisions and policies being developed (and often prepared for members), with that work having to be halted and revisited to ensure that legal issues are properly taken into account. It is too early to say whether this practice has continued into the life of the new administration in 2022 but the risk does continue to be present.

3.3.16 There has not been, council-wide (amongst both members and officers), an especially sophisticated understanding of how legal advice can also help the council to understand its wider obligations.

3.3.17 There has, for example, been little understanding (particularly from former administration members) of how effective legal and finance advice combine to help councillors to address their duties to deliver Best Value. As a result, there are some recent decisions where the Council may find it difficult to assert that BV principles have been adhered to as part of the decision-making process.

3.3.18 Formal arrangements for the provision of legal (and other) advice, and signoff from lawyers, and other professionals, is present but is often not followed. The nature of “signoff” of reports themselves is also unclear, with the circulation of draft reports by officers sometimes not following mandated procedures. This feeds into wider issues around officer and member ownership of reports and decisions.

Actions

(7) Revisit the format and content of officer reports to support member decision-making on key decisions, and in due course the format and content of all officer reports going to formal member bodies. In particular, new approaches will need to take account of:

- The objective or business need being met as a result of the decision, including where and how this need relates to a corporate priority;
- The business case for a particular course of action and whether other options were considered;
- Headline risks associated with a particular information;
- Legal and financial information sufficient to allow councillors to make an informed decision on Best Value, lawfulness and other important considerations.

The above is a guide – the content and format of reports should be finalised in consultation with members, including members of opposition parties.

(8) Redrafting processes for managing decisions through the policy development process. Systems do already exist but they are scattergun and not consistent across the council; unified standards will make it easier for the council corporately to assert PMO-style control and oversight over the most complex decisions. These processes should ensure legal and financial involvement in the development of decisions at the earliest possible opportunity. (Practical work by officers, complemented by ongoing training and development on political awareness, will help to ascertain where thresholds for such involvement are met – given that robust advice is particularly necessary for more contentious, high profile issues).

3.4 Oversight and scrutiny

Call-in

- 3.4.1 In 2021 and 2022 there has been quite heavy use of call-in, which reflects the contentious and urgent nature of some decisions taken by the former administration. Use of call-in is probably above the national average but within the bounds of what we would consider normal. Thresholds for key decisions and the arrangements for legitimating call ins are not atypical for a council of Southampton's type.
- 3.4.2 Debate in committee when decisions are called in seems superficially forensic because councillors are making attempts to delve into the detail. However, questioning and debate can feel quite scattergun because the quality of information, as noted above, is not there to allow members to dig into and understand why decisions are being made.
- 3.4.3 In 2021 and 2022 committee sessions relating to call-in have seemed to have involved some testy member exchanges (visible in meeting webcasts but not always apparent from the minutes) which highlights the political contention around this element of the scrutiny process.

Scrutiny more generally

- 3.4.4 This review has not looked at the council's scrutiny arrangements in depth, but we have noted that scrutiny committees have had a tendency to wish to revisit recent Cabinet decisions, even if that does not happen under the "call in" banner. While this has a risk in terms of duplication of work undertaken elsewhere, we know that members would argue that such debate is critical in an environment where decision-making has been sub-optimal, as we have set out above.

Actions

(9) When other changes have been made, revisit the operation of call-in as a long-stop mechanism to secure member accountability within the governance system.

(10) In the medium to long term, consider whether a more systematic approach to "pre-decision" scrutiny could form part of the processes described elsewhere in this paper, providing further assurance on the quality and rigour of the most complex and politically contentious decisions.

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