

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON TUESDAY, 25 SEPTEMBER 2012
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.00 - 9.40 PM**

Members Present: Mrs M Sartin (Vice Chairman of Council) (Chairman), A Watts (Vice-Chairman), K Angold-Stephens, K Chana, R Morgan, J Philip, D Stallan, Mrs J H Whitehouse and G Waller

Other members present:

Apologies for Absence: R Cohen, J Markham, Mrs M McEwen and B Rolfe

Officers Present I Willett (Assistant to the Chief Executive), P Maginnis (Assistant Director (Human Resources)), P Freeman (UNISON Branch Secretary), S G Hill (Senior Democratic Services Officer) and M Jenkins (Democratic Services Assistant)

11. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel held on 16 July 2012 be agreed.

12. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that Councillors K Angold-Stephens and K Chana were substituting for Councillors J Markham and Mrs M McEwen respectively.

13. DECLARATION OF INTERESTS

There were no declarations of interest made pursuant to the Member's Code of Conduct.

14. TERMS OF REFERENCE / WORK PROGRAMME

The Panel's Terms of Reference were noted.

The Panel received updates to the Work Programme as follows:

The Assistant to the Chief Executive advised that the Panel would need an extraordinary meeting to deal with its workload. Members advised that regarding Item 12 Housing Appeals and Review Board – Review of Order of Presentation, would be checked with Housing officers, it was possible that a further matter regarding the Board would arise later in the year.

15. STAFF APPEALS PANEL

The Panel received a report from Ms P Maginnis, Head of Human Resources, regarding the Staff Appeals Panel's Terms of Reference. In attendance was the UNISON Branch Secretary, Mr P Freeman.

The report proposed changes in relation to the Staff Appeals Panel's jurisdiction in respect of appeals by staff. In regard to re-grading appeals, these proposals derived from a recent review of the Council's job evaluation scheme, and particularly the issue of a staff member's right of appeal. The report included proposals for removing from the Panel's responsibilities some other staff appeals for which it was currently responsible, these resulted from advice sought from Counsel. The proposals had been agreed by the Cabinet which had asked the Panel to review the Terms of Reference of the Staff Appeals Panel, to ensure that they accorded with the new policy.

Job Evaluation and Regrading Appeals

The Job Evaluation Maintenance Policy and the Job Evaluation Appeals Procedure were introduced in 2003 following the implementation of the national Job Evaluation Scheme as part of the Single Status Agreement. Implementation of the Job Evaluation process was subject to a Collective Agreement agreed by management, the trade unions and Members. Since 2003, the policy had stated that the employee had the right of appeal to an officer/trade union Appeal Panel and that the decision of the Appeals Panel was final.

It had come to light that the Council's Constitution had continued throughout this period to include re-grading matters within the Terms of Reference for the member Staff Appeals Panel. Four posts, involving seven members of staff appealed under these terms, those appeals having been heard and concluded.

In response, concerns were raised by UNISON's Regional Officer regarding the implementation of the policy and specifically the appeals procedure, as a result both UNISON and GMB representatives had withdrawn their support from the Job Evaluation process until matters were clarified.

The Staff Appeals Panel had indicated that it did not wish to consider job evaluation matters in the future. The Chairman of the Staff Appeals Panel had provided written evidence for the Panel which was tabled at the meeting. He felt that job evaluation required significant experience and "semi technical knowledge" that was not easily achieved by Panel Members. There was currently one level of appeal with a trained expert panel and there was a need for confidence by both staff and management in the process. The Panel supported the report's recommendations.

The opinion of the UNISON Regional Organiser was that job evaluation appeals should not be submitted to a Member Staff Appeals Panel. The local UNISON Branch Secretary had informed the Council that until all matters of concern regarding the Job Evaluation Policy were resolved they would continue to withdraw their support from the process. The Council recently obtained legal advice on the Terms of Reference for the Staff Appeals Panel regarding Job Evaluation at the same time.

Counsel's opinion on job evaluation could be summarised as follows:

- (a) the original job evaluation scheme precluded any appeal to the Staff Appeals Panel;

(b) job evaluation reviews which were not part of the original process could be referred to the Staff Appeals Panel; and

(c) notwithstanding (b) above, the Staff Appeals Panel was not an appropriate forum to hear such appeals since Members were not trained in or hold expertise in the Job Evaluation process, and a second avenue of appeal against job evaluation decisions was not required.

Other Staff Appeals

As part of the review of the job evaluation scheme, Counsel was asked for legal advice on whether it was preferable to rely on existing procedures at officer level to deal with other staff appeals currently shown as part of the terms of reference of the Staff Appeals Panel. Paragraph 2 (a) of the Panel's Terms of Reference stated that it was empowered to consider and determine appeals by employees of the Council for the following matters:

- (i) Regrading;
- (ii) Grievance;
- (iii) Disciplinary;
- (iv) Re-deployment;
- (v) Redundancy; and
- (vi) Dismissal

Counsel advised that the suggestion that the remit of the Panel should be further limited, to appeals against decisions which only involved dismissals, had merit as it eased workload on member panels and focused on the most serious of cases leaving less disciplinary matters to be dealt with by those with managerial authority and experience.

Counsel was also asked for views in relation to grievances, he advised that serious grievances could be reserved to the Panel whilst less serious cases could be dealt with at management level. However, Counsel pointed to the possibility of disputes arising over what constituted a serious grievance, and felt that, on balance, all grievance appeals should remain within the jurisdiction of the Panel.

In considering the question of grievance appeals the Panel felt that there would be better dealt with at Director level. However it was accepted that some cases involving grievances might still find their way to the Staff Appeals Panel if dismissals were involved.

RECOMMENDED:

That a report be submitted to the Overview and Scrutiny Committee and Council recommending:

- (1) That the Terms of Reference of the Staff Appeals Panel be amended so as to delete all appeals by staff except those involving dismissal, including those deriving from selection for redundancy;

(2) That this alteration be published in the Constitution when agreed by the Council; and

(3) That any amendments elsewhere in the Constitution to reflect these changes in the Panel's Terms of Reference be delegated to the Assistant to the Chief Executive.

16. REVIEW OF PETITIONS SCHEME

The Panel received a report from S Hill, Senior Democratic Services Officer, regarding the Review of the Petitions Scheme.

On 14 December 2010 the Council approved a new Petitions Scheme required by the Government. The legislation, and subsequent statutory guidance, had placed a requirement on the Council to have a scheme which would include introduction of an ePetitions facility through the Council's website by 15 December that year.

In the autumn of that year, following the general election, the Government withdrew the statutory guidance and gave authorities more scope to define their own scheme. The Government also funded the Council a sum of just over £6,000 for the expense of introducing such an electronic facility. The Council's Committee Management System provider supplied an additional facility for no cost and the system was implemented by the statutory deadline. No grant funding was called upon. This sum remained within the Council's DDF.

During December 2010 the Government gave notice that provisions of the Localism Act removed any duty to provide such a system. The Localism Act gained Royal Assent in November 2011, Section 46 of the act completely repealed the earlier Act's provisions, including any duty to promote democracy and having such a petitions scheme. However members had requested a periodic review of the operation of the system to assess its effectiveness.

During the period January 2011 to August 2012 the Council received 12 formal petitions on paper and during the same period 2 electronic petitions were received and completed. One related to provision of places at Epping Forest College and the other regarded the St. John's Road Development Brief. No petitions during this period met the threshold for debate at either Overview and Scrutiny or at Full Council.

One issue that had been raised by the Director of Planning and Economic Development related to the approval to list petitions during formal consultation periods. During the St. John's Development Brief Consultation a request for a petition was received and approved for the website. This allowed people to register their names against a petition calling for the Council to acknowledge objections to the development of a supermarket on the site. The view had been put forward that where such formal consultations were being carried out, either current or contemplated, allowing such petitions weakened the results of the consultation and gave signatories the false impression that their views would be automatically taken into account in the consultation responses.

Members requested that Portfolio Holders should advise the Full Council of the number of petitions they have received when they make their reports.

RECOMMENDED:

- (1) That the present petition scheme be captured subject to the following amendments:
 - (a) exclusion from the scheme of petitions which are the subject to an open consultation exercise;
 - (b) revised website content; and
 - (c) new requirement for Portfolio Holder reports at Council meetings to include references to petitions received and action taken;
- (2) That the public questions procedure at Council and Cabinet meetings be amended to as to include the presentation of petitions by the public at those meetings; and
- (3) That the Task and Finish Panel on the Overview and Scrutiny Review be asked to consider what is to be the role of Overview and Scrutiny in relation to monitoring petitions and any subsequent action taken by the Council.

17. ELECTRONIC DELIVERY OF AGENDA AND OTHER INFORMATION

The Panel received a report from the Senior Democratic Services Officer, regarding the Electronic Delivery of Agenda and Other Information.

Background

The District Council introduced its Committee Management System (CoMS) in April 2005, the system was a large database containing information presented via the website and internally, allowing for all of the Council's information to be stored automatically with some sensitive items being stored on an Intranet version.

The workflow handled by the system was:

- (1) 268 clerked meetings' agendas and minutes;
- (2) 50 Member's Bulletins; and
- (3) 21 Policy Bulletins

This workflow amounted to 20,000 pages of agenda in 2011-12 a reduction from 294 meetings and 24,000 published pages the previous year.

The Panel had been asked by the Overview and Scrutiny Committee to investigate the number of agendas sent to all members, the use of technology for agendas and meeting arrangements and the legal advice on the provisions of the Local Government Act 1972 concerning paper copies of agenda and whether electronic dispatch arrangements compromised the Council's responsibilities.

Printing Costs

All Council agenda printing was carried out by the in-house Print Unit. By April 2005 expenditure on agenda printing had reached £79,000 per annum, last year (2011-12), printing expenditure was £33,700 on a budget of £49,900, some £16,000 under budget. This reduction was due to new bulk printing machines a general reduction in

printed copy circulation, shorter agendas, and the move to electronic distribution methods offered by the technology.

This budget was a mix of fixed and variable costs. The Print Unit ended the year with a cost centre deficit and therefore, these were reallocated from the Print Unit back to the services based on usage of the service. This charging back meant that print spending for Democratic Services was approximately £2,000 overspent last year. Were the Council to continue to actively seek to reduce its level of agenda paper printing then the Print Unit fixed costs would be recovered from other departments, not reducing the overall costs to the Council save those associated with the variable costs element. The panel were advised that the arguments for moving to electronic delivery could not be based on paper/print usage. Officers advised that there was an inconsistency in the accounting of paper copies and who were charged. It was unclear as to how effectively was the Print Unit utilised, staff were often using cartridge printers and photocopiers for large copies. Members requested that a report regarding printing charges should be submitted to the Audit and Governance Committee.

Member's IT Related Costs

It was agreed in 2005 that an IT allowance would be paid to members as part of their remuneration scheme was intended to assist with IT running costs. The total budget sum was £17,000 per annum. This was payable on the basis that Members attending IT Connectivity training, and signing a connectivity agreement which stated that they could opt out of receiving paper agenda for those committees they were not a member of, relying on electronic notification and delivery.

This was inconsistent with the decisions of the Overview and Scrutiny Committee in March 2012 at which it was agreed that non-members of any Council body be invited to "opt in" to receive paper agenda, and that paper copies of Council, Cabinet, and the Overview and Scrutiny Committee should continue to be sent to all councillors. It was suggested that this anomaly could be solved by a change to the members connectivity agreement.

Officers advised of the development of "App" based end user software for apple and android devices and received a demonstration of the system. Members supported a bid for funding to continue of Mod Gov App past the current one year trial period which concluded at the end of the current financial year. Members requested a review in a year's time.

All Council meeting rooms were covered by a member WIFI network enabling access to the internet and Council papers, there remained an issue about access to power sockets in the chamber which was also subject to a recommendation for funding by the Council. During the same period, members had received training on the use of the Council's Virtual Private Network (VPN) system, which gave them access to all meeting papers. Virtually no members were currently digitally disconnected.

Legislative Position

The Local Government Act 1972, Schedule 12 paragraph 4 provided that a summons to attend the meeting, specifying the business proposed to be transacted thereat shall be left at or sent by post to the usual place of residence of every member of the Council. In the case of committees, this would apply to members of that body. This must be carried out five days before the relevant meeting, as a physical distribution.

At the request of members a legal opinion had been sought on the Council's current arrangements complying with the requirements of the Local Government Act 1972, and other relevant legislation. Whether moving to wholly electronic notification and delivery methods, or part electronic notification and delivery would comply with the requirements of the LGA. Whether a Council member opting out of the physical delivery of agendas was able to do so legally. Whether a Council member could insist upon physical delivery. Members supported the initiation of a joint approach, with other councils, to the Secretary of State for Communities and Local Government, to seek permissive statutory provisions allowing members to receive electronic agenda and papers lawfully.

The opinion had confirmed that the Council's current procedures were lawful and compliant, wholly electronic notification and service would not be lawful, a Council member may not lawfully opt out of hard copy deliveries, a Council member may not rely on legislation to insist upon physical delivery of any document other than the summons to a meeting.

Counsel had suggested that the wording of Committee and Sub-Committee agenda should be more in line with that used for Council, this suggestion had already been implemented by officers as good practice.

RECOMMENDED:

- (1) That Counsel's advice that the Council's current distribution procedures are lawful and compliant be noted;
- (2) That it be noted that wholly electronic notification and service would not be lawful and that this applied to Council and committees and sub-committees;
- (3) That a Council member may not lawfully opt out of hard copy deliveries;
- (4) That the addition of a formal summons to notices of meetings as implemented by officers be noted;
- (5) That a joint approach with other Councils to the Secretary of State for Communities and Local Government seeking permissive statutory provisions to allow members to receive such electronic agenda and papers lawfully be pursued;
- (6) That the proposed to implement a summons based system relying on a move to members receiving supporting papers electronically be not implemented at this time pending this approach;
- (7) That the existing Members connectivity agreement be amended by the removal of term 1(iv) from that agreement pending further review after (5) above;
- (8) That further research with members of the Council on their social media facilities to support a bid for funding to continue the Mod. Gov App begins the current trial period be undertaken;
- (9) That the Cabinet be requested to approve further DDF bids as follows:

(a) A sum of £4,000 for 2013-14, to fund the installation of electrical outlet sockets in the Council Chamber; and

(b) A sum of £1,000 for 2013-14 to continue funding the Mod Gov App for a further year to facilitate (8) above;

(10) That the Portfolio Holder for Support Services be notified of current accounting procedures in respect of recovery of Reprographic Section costs by means of re-charges to internal service users and asked to review and report to the Cabinet and the Audit and Governance Committee.

18. FUTURE MEETINGS

The next Panel meeting was scheduled for Tuesday 4 December 2012 at 7.00p.m. in Committee Room 1, and then on:

(a) Monday 7 January 2013 at 7.00p.m.; and

(b) Tuesday 26 March at 7.00p.m.

19. REPORTS TO BE MADE TO THE NEXT MEETING OF THE OVERVIEW AND SCRUTINY COMMITTEE

The following reports would be forwarded to the Overview and Scrutiny Committee:

(a) Staff Appeals Panel;

(b) Review of Petitions Scheme; and

(c) Electronic Delivery of Agenda and Other Information