

Report to the Council

Committee: Constitution Working Group

Date: 28 April 2016

Subject: New Council Constitution and Associated Matters

Chairman: Councillor M McEwen

Responsible Officer: Simon Hill (01992 564249)

Recommendations:

- (1) That, having considered the matter of the proposed Terms of Reference of the Audit and Standards Committee, referred by the Council at its last meeting, the proposals for a merged committee not be adopted as part of the changes to the constitution but that there be a review of this position in two years' time;**
 - (2) That, subject to (1) above, the following recommendations be adopted:**
 - (i) the membership of the Audit and Governance Committee be increased to five members;**
 - (ii) the Standards Committee be convened to meet only when there is business to be transacted; and**
 - (iii) the Remuneration Panel be asked to consider the appropriate level of remuneration for the Chairman of the Standards Committee and report back to the Council in due course;**
 - (3) That, the Housing Appeals and Reviews Panel be discontinued with immediate effect;**
 - (4) That responsibility for all Housing Appeals and Reviews currently within the scope of the Panel be delegated to the appropriate Assistant Director of Communities and, in the case of Homelessness Reviews, the Housing Options Manager as required, with appropriate changes being made to the list of officer delegations contained within Part 3 of the revised Constitution; and**
 - (5) That, consequent upon the above and on the completion of its review by the Constitution Working Group, the New Constitution of the Council be adopted with immediate effect.**
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1. (Chairman of the Working Group) The requirement for a Constitution stems from the passing of the Local Government Act 2000. This act also gave rise to the options for governance for Local Authorities which saw the establishment of Leader and Cabinet arrangements. Section 38 of the Act requires the Council to have and maintain a constitution.

2. In 2000 a team of officers brought together elements from previous handbooks and rules and put together a new constitution based upon a government model. Since that time, and to reflect changes required by circumstance, the Constitution had grown to over 650 pages in length. No overriding review has been undertaken since 2000.

3. In September 2014, the former Constitution and Member Services Panel of Overview and Scrutiny began the long task of systematically reviewing the content of our Constitution. The Panel, and latterly the new Constitution Working Group, have met on 10 occasions to shape a new Constitution document.

4. The final proposals of the Working Group have been published electronically separately. The final draft is just short of 400 pages, a reduction of some 250 pages. If members would like a hard copy before the Council meeting, please contact Simon Hill at shill@eppingforestdc.gov.uk.

5. The structure of the new document has been radically altered making navigation easier by members and the public. Each of the Articles now includes all matters relating to individual areas of operation, the scheme of delegation has been revised and shortened, the main rules set have been reworked into a tabular format allowing users to see which rule applies to which type of meeting and there has been significant work to reduce duplication within the whole document and its protocols.

6. The Working Group have reached the point where they can recommend the adoption of the new Constitution. The revisions have been subject to external Counsel review and are considered fit for purpose and legally sound.

New Procurement Rules

7. Part of the revised Constitution that we are recommending to the Council is a new set of Procurement Rules, to replace the Council's current Contract Standing Orders.

8. We noted at an early meeting in the Municipal Year that the (officer) Corporate Governance Group had considered the difficulty that many staff procuring contracts have in following and complying with the Council's current Contract Standing Orders - which were originally produced many years ago in a different local government and public procurement environment, and have since been amended and extended in an ad-hoc way on many occasions. The Corporate Governance Group concluded, and we agreed, that they needed to be fundamentally reviewed and new "Procurement Rules" formulated that:

- Adopt a more modern and flexible approach;
- Are simpler to understand and therefore to comply with;
- Are more responsive to the current and future procurement needs of the Council;
- Meet current EU Procurement Regulations; and
- Ensure appropriate controls and probity to safeguard the use of public money; and

9.. Accordingly, an Officer Working Group was established, chaired by the Director of Communities, to fundamentally review the Council's Contract Standing Orders and to formulate new ones for consideration by our Working Party, as part of our comprehensive review of the whole of the Council's Constitution.

10. We considered a draft version of the new Procurement Rules produced by the Officer Working Party and suggested some minor changes, which have been incorporated in to the final version. The Council's Legal Team also arranged for the Draft Procurement Rules to be considered by an external procurement solicitor, following which the Legal Team suggested some further relatively minor wording changes, which have also been incorporated within the final version. Training on the new Procurement Rules has already been arranged for early May 2016, for all staff involved in procurements.

Other matters

Terms of Reference of the Audit and Standards Committee

11. At the last meeting of the Council in February 2016 we were asked to consider:
 - (a) whether adjustments could be made to the suggested terms of reference of the proposed Audit and Standards Committee to achieve greater flexibility of membership to allow standards complaints matters to be dealt with more effectively; and
 - (b) whether in light of any suggested wording adjustments any further constitutional matters require change.
12. Having considered the matter at our March 2016 meeting, a majority of members of the Working Group were of the opinion that the two Committees should not be combined. The reasons for this recommended position are:
 - (a) The proposal would dilute standards matters within a committee with a larger remit;
 - (b) The proposal would be unfair to those co-opted members on the Standards Committee. Who under legislation cannot participate in voting whereas on the current Audit and Governance meeting co-opted members could vote.
 - (c) If the Standards Committee moved to a 'meet as and when business requires' basis there would be little impact on the number of overall meetings.
13. We have looked at the level of membership of the current Audit and Governance Committee and we feel that there is merit in increasing the membership to five district members to lessen the chance of a meeting being inquorate. We are also recommending that the level of remuneration of the position of Standards Committee Chairman be referred for review by the Remuneration Panel. In recommending this course of action we are mindful of the need to keep the matter under review and have recommended that after a further period the issue is looked at again.
14. We agreed that, given the closeness of the vote at the meeting, this report would contain the details of the option for a combined Committee. The suggested Constitution Article on that basis is attached as an Appendix to this report. The un-combined option is contained within the final Constitution proposals.

Housing Appeals and Reviews Panel

15. At its meeting on 13 March 1991 (Minute 91 (7) refers), the former Housing Committee agreed that the Council set up a Housing Management Appeals Panel under its revised Committee structure. At that time, any client of the Housing Directorate could appeal against (or request a review of) any decision made by an officer from the Housing Directorate on any Housing Management matter including all Statutory Homelessness Reviews and decisions concerning Improvement Grants.
16. Since the Panel was originally set up a number of changes have been made to reduce its scope due to the numbers of applications being made.
17. The current scope of the Panel was revised and agreed by Council at its meeting on 20 April 2010. As a result, housing clients can now only Appeal on the following specific issues:
 - (a) Whether a homeless applicant is intentionally homeless in accordance with the Legislation and the associated Code of Guidance;

- (b) Whether any family is deemed to be not homeless;
- (c) Housing succession cases, where the successor is under-occupying Council accommodation and has been required to transfer to smaller accommodation;
- (d) Non-provision of discretionary home improvement grants;
- (e) Refusal of requests for disabled adaptations to Council properties requested by the tenant;
- (f) Refusal to sell Council-owned land under 50 square metres to occupiers for garden use;
- (g) Refusal of requests from tenants for priority transfers under the requirements of the Council's Housing Allocations Scheme; and
- (h) Disagreements with tenants and former tenants on the level of liability for current or former rent arrears.

18. The Panel only consider a small number of cases the majority of which are Appeals against homelessness (predominantly intentionality) decisions. However, we understand the process is very time consuming and only two cases have been upheld in the last two years.

19. Officers are not aware of any other Council where such decisions are taken by Member Panels. In addition, there is some doubt around the legality of Members making decisions on homelessness cases and the fact that any decision becomes a Member decision rather than an officer decision. Furthermore, any review currently undertaken by the Panel could be completed by a senior officer who specialises in such complex Reviews in around one half day or less compared to the 3 days of officers time and 1 day of up to 5 Members time needed for each case considered by the Panel.

20. Members of the Housing Appeals and Reviews Panel and the Housing Portfolio Holder have been consulted and support the proposal to discontinue the Panel. We are so recommending together with a change to the officer delegation to deal with such cases in future.

Conclusions

21. Having considered the foregoing matters we are therefore recommending the new Constitution for adoption with immediate effect.

Adoption of this alternative would also require:

- (1) The deletion of Article 9 (The Standards Committee)
- (2) Renumbering of Articles 10 to 18 accordingly
- (3) The referral to the Remuneration panel under Recommendation (2)(iii) would not be required

Alternative Article 11 - Audit and Standards Committee

Statement of Purpose

1. The role of the Audit and Standards Committee is a key component of the council's corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial statements and provides a forum for considering ethical issues and ensuring high standards of conduct. The role of the committee is two-fold:
 - Audit - the purpose of the Committee is to provide independent assurance to the members of the adequacy of the risk management framework and internal control environment. It provides independent review of the council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes. It oversees internal and external audit arrangements, helping to ensure efficient and effective assurance arrangements are in place.
 - Standards – The Committee deals with a range of matters including issues concerning Councillor's conduct, provides advice and guidance to the Council, the Cabinet and individual Councillors and advises on the application and review of the Members' Code of Conduct.

Governance, risk and control

2. To review the council's corporate governance arrangements against the good governance framework and consider annual governance reports and assurances
3. To review the Annual Governance Statement prior to approval and consider whether it properly reflects the risk environment and supporting assurances, taking into account the internal audit opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control.
4. To note the council's overall approach to value for money in ensuring the council is making best use of its resources.
5. To consider the council's framework of assurance and ensure it adequately addresses the risk and priorities of the council.
6. To monitor the effective development and operation of risk management in the council.
7. To monitor progress in addressing risk-related issues reported to the committee
8. To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions

9. To review the assessment of fraud risks and potential harm to the council from fraud and corruption.
10. To monitor the anti-fraud strategy, actions and resources.

Internal Audit

11. To approve the Internal Audit Charter
12. To approve the internal audit strategy and plan, including internal audit resource requirements, the approach to using other sources of assurances and any work required to place reliance upon these other sources. To approve any significant interim changes to the plan and resource requirements and make appropriate enquires of both management and the Chief Internal Auditor to determine if there any inappropriate scope or resource limitations.
13. To consider regular reports from the Chief Internal Auditor which:
 - Updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work
 - Highlighting where there are concerns about progress with the implementation of agreed actions or where management has accepted a level of risk that the Chief internal Audit considers is unacceptable to the council.
 - Reports on instances where the internal audit function does not conform to the Public Sector Internal Audit Standards, considering whether the non-conformance is significant enough that it must be included in the Annual Governance Statement
14. To consider the Chief Internal Auditor's annual report:
 - The statement of the level of conformance with the Public Sector Internal Audit Standards and results of the Quality Assurance and Improvement Programme that supports the statement – these will indicate the reliability of the conclusions of internal audit
 - The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control together with the summary of the work supporting the opinion – these will assist the committee in reviewing the Annual Governance Statement.
15. To support the development of effective communication with the Chief Internal Auditor.

External Audit and Financial Reporting

16. To consider the external auditor's annual letter, relevant reports and the report to those charged with governance.
17. To review the annual statement of accounts. Specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the council.
18. To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.
19. To be responsible for the appointment of the Council's external auditors and ensure it is in line with the requirements of the Local Audit and Accountability Act 2014.

Treasury Management

20. To be responsible for the scrutiny of the Council's Treasury Management Strategy, including receiving regular reports on activities, issues and trends to support the committee's understanding of treasury management activities, risks and associated assurances.

Accountability arrangements

21. To report to those charged with governance on the committee's findings, conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks, financial reporting arrangements and internal and external audit functions.
22. To report to the full Council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose.

Membership

23. The committee shall comprise 7 members, including 5 Councillors and 2 co-opted members. Additionally the Council is required to appoint at least 1 Independent Person to advise on Standards relating to complaints who shall be invited to meetings in a non-voting capacity.
24. Councillors serving as members of the Committee shall be appointed at the Annual Council meeting of Epping Forest District Council for a term of office of one year and shall be eligible for re-appointment for further terms of office.
25. That the seats should be allocated so they are not all drawn from one political group and are also open to councillors who are not affiliated to any political group.
26. Co-opted members shall serve for a period of 3 years from appointment. Such three year appointments shall be overlapping in terms of their expiry dates. A co-opted member may serve for a total of two such terms as of right but may be considered for two further three year terms, provided he or she is successful after open competition following public advertisement. Re-appointment for further terms shall be subject to satisfactory attendance.
27. Casual vacancies for members of the Committee who are Councillors which occur shall be filled at the next ordinary Council meeting (but not an extraordinary meeting) with a term of office expiring on the date of the next Annual Council meeting.

Standards Committee

28. Promoting and maintaining high standards of conduct by Councillors and Co-Opted Members.
29. Assisting Councillors and Co-Opted Members to observe the Members' Code of Conduct.
30. Advising the Council on the adoption or revision of the Members' Code of Conduct
31. Monitoring the operation of the Members' Code of Conduct.
32. Advising, and/or censuring and/or imposing a sanction on a Councillor or Co-Opted person of a Committee (or former Councillor or Co-Opted person) of the Council.
33. To advise the Council to ensure that all members of the Council have access to training in all aspects of the Member Code of Conduct.
34. Considering dispensations to Councillors and Co-Opted Members (including Parish and Town Councillors) from requirements relating to interests set out in the Members' Code of Conduct.

35. Dealing with reports referred from or on behalf of the Monitoring Officer on any matter, including investigations relating to Councillor conduct.
36. The exercise of (29) to (35) above shall apply to parish councils and their members either directly or through a joint standards arrangement
37. Adjudication on complaints regarding the operation of District Council protocols annexed to the Constitution.
38. The Committee may appoint a Complaints Sub Committee to conduct any hearing into an allegation that a Member or Co-opted Member has breached the Council's Code of Conduct. The Audit and Standards Committee shall decide the membership of the subcommittee, ensuring where possible there is a minimum of three members of the Audit and Standards Committee.
39. The Complaints Sub Committee will undertake the following functions:
 - To conduct any Hearing into an allegation that a Member or Co-opted Member has breached the Council's Code of Conduct.
 - Following a hearing, make one of the following findings:
 - That the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the hearing: or
 - That the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the hearing: or
 - That the Member has failed to comply with the Code of Conduct and that a sanction and/or informal resolution should be imposed. The subcommittee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.
 - After making a finding, providing written notice of its findings and the reasons for its decision to the Member and complainant.

Eligibility for membership

Councillor members

40. Councillors appointed to the Audit and Standards Committee may not also be members of the Cabinet or any select committee appointed by the Overview and Scrutiny Committee with responsibility for reviewing the Council's finances or financial procedures.
41. A Portfolio Holder Assistant (other than any Assistant involved in any portfolio dealing primarily with the Council's finances) appointed by the Leader of the Council shall be eligible for appointment to the Committee.
42. Appointment of Councillors shall be made on the basis of evidence of the aptitude, experience or interest and for this purpose the normal rules for pro rata appointments shall not apply.

43. Formal attendance standards be operated in respect of the three councillor members when reappointment is under consideration by the Council's Appointments Panel and the Chairman and co-opted members of the Audit and Standards Committee be consulted informally about the appointment or reappointment of councillors at the appropriate time.

Co-opted members

44. Co-opted members, independent of the Council, shall be appointed by the Council on the basis of their professional expertise, experience and background as relevant to the role and responsibilities of the Audit and Standards Committee. Initial appointments of co-opted members and the filling of casual vacancies shall be made following public advertisement and interviews, the latter conducted in accordance with arrangements agreed by the Council. If the number of suitable applicants exceeds the number of co-opted places on the Committee, the Council shall keep a waiting list of suitable applicants should casual vacancies occur.

Chairman and Vice Chairman

45. The Chairman and Vice Chairman of the Audit and Standards Committee shall be appointed at the first meeting of the Committee in each Council year for a term of one year expiring on the date of the first meeting of the Committee of the next Council year.
46. Casual vacancies in the position of Chairman and Vice Chairman shall be filled in the same way as required in respect of members of the Committee (see paragraph 28 above).
47. Both Councillors and co-opted members serving on the Committee shall be eligible for appointment to the office of Chairman and Vice Chairman.
48. Where the Chairman of the Committee is a Councillor, the Vice Chairman will be appointed from among the Co-opted members. Where the Chairman is one of the Co-opted members, the Vice Chairman shall be a Councillor.
49. The Chairman and Vice Chairman shall be eligible for re-appointment.

Parish/Town Councils

50. Parish/Town Councils affiliated to the Standards Committee will be sent meeting agendas and invited to attend where appropriate.

Meetings of the Committee

51. The Committee shall meet at least three times each financial year.
52. The Committee shall be entitled to require any Member, Director, their representatives or any other officer to attend their meetings in order to discuss any matters under discussion including the annual audit programme.

Decision Making

53. Only the Councillors and co-opted members serving on the Committee shall be entitled to vote.
54. All members of the Committee shall be entitled to all documents advice and facilities relevant to their membership of the Committee, regardless of their status as either a Councillor or Co-opted member.

Other Requirements

55. All members of the Committee shall respect the confidentiality of Council information and proceedings where appropriate, particularly where exempt or confidential business is involved.
56. All co-opted members of the Committee shall be required to make a statutory registration of interests in the same form as those required of serving councillors and to be aware at all times of the requirement to clear any interest relating to their work on the Committee.
57. Members of the Committee should seek to attend all meetings of the Committee unless there are exceptional circumstances which prevent this.
58. All members of the Committee should ensure that they participate fully in any training designed to assist them in their responsibilities as members of the Committee. Similarly all members should act on appropriate advice and other information supplied by the Council to improve their effectiveness.