

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON THURSDAY, 30 JUNE 2011
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.00 - 8.50 PM**

Members Present: D Stallan (Chairman), D C Johnson (Vice-Chairman), R Cohen, J Markham, Mrs M McEwen, R Morgan, J Philip, Mrs M Sartin and Mrs J H Whitehouse

Other members present: R Barrett

Apologies for Absence: B Rolfe and Ms S Watson

Officers Present I Willett (Assistant to the Chief Executive), G Lunnun (Assistant Director (Democratic Services)) and M Jenkins (Democratic Services Assistant)

1. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel held on 17 March 2011 be agreed subject to the following amendment namely that Councillor J Markham had sent his apologies.

2. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

There were no substitute members present.

3. DECLARATION OF INTERESTS

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

4. TERMS OF REFERENCE / WORK PROGRAMME

The Panel's Terms of Reference were noted. The Panel was advised of the following in relation to its Work Programme:

(a) Existing Programme

- Item 5 Review of Officer Delegation to be submitted to the February 2012
- Item 6 Review of Financial Regulations to be submitted to the February 2012.
- Item 7 Planning/Covenants – Council Responsibilities put before the July Panel meeting.
- Item 8 Review of Petitions – Change in Legal Requirements put before the November 2011 Panel meeting.

Item 9 Review of Annual Council arrangements put before the February 2012 Panel meeting.

Item 10 Statutory Review of Polling Stations put before the November 2011 Panel meeting.

(b) New Items

There were extra items announced for the Panel's Work Programme, as follows:

- Review of Audit and Governance Committee Membership. The Corporate Governance Group had queried whether a Deputy Portfolio Holder should sit on the Audit and Governance Committee. It was anticipated that a report would be submitted to the July Panel meeting.
- Report from External Auditor on the former Chief Executive, this was dependent on a Council decision expected in late July.
- Councillor Mrs M Sartin requested a report regarding a Review of Webcasting. This would be scheduled into this year's Work Programme.
- The Panel Chairman requested a report concerning Scrutiny Panel Chairmen making presentations at Council meetings.
- The Panel Chairman also requested a report on the Annual Report 2010/11 of the Remuneration Panel.
- It was advised that a report would be submitted to the Panel concerning how Member reports on Outside Bodies were presented at Council meetings.

The Overview and Scrutiny Committee were to note the additional work of this Panel.

5. REFERENDUM AND ELECTIONS 5 MAY 2011

The Panel received a report regarding the Referendum and Elections, held on 5 May 2011, from Mr I Willett, Returning Officer.

The Referendum on the voting system for United Kingdom Parliamentary Elections was held on 5 May 2011, together with the District and Parish/Town Council Elections. The Referendum was being held to decide on the following question:

"At present, the UK uses the "first past the post" system to elect MPs to the House of Commons. Should the "alternative vote" system be used instead?"

A total of 18 District Council Wards were contested and there were 4 Parish/Town Council wards contested.

Results

The electorate for the Referendum in the Epping Forest District was 95,778, the results were as follows:

- (1) A total of 36,909 papers were issued of which 36,908 were counted;

(2) 28,240 electors cast votes in favour of No (77% of the share votes cast) and 8,533 cast votes in favour of Yes (23% of the share of the votes cast). The turnout was 39%;

(3) The overall UK result of the Referendum was 13,013,123 in favour of No (67.9%) and 6,152,607 in favour of Yes (32.10%); and

(4) In each of the District Wards contested, one Councillor was due for election. Turnout in the District Wards varied between 47.80% in the Chipping Ongar, Greensted and Marden Ash Ward and 26.10% in the Waltham Abbey Paternoster Ward.

Arrangements

The Referendum was held under the framework provided by the Political Parties, Elections and Referendum Act 2000 (PPERA). It was therefore conducted under a different management and accountability structure requiring a Chief Counting Officer, responsible for certifying the overall result and giving specific directions to Counting Officers relating to the discharge of their functions in the Referendum.

Polling Stations

The Chief Counting Officer directed ratios in relation to the staffing of polling stations. They were as follows:

- (a) Polling Station could not have more than 2,500 electors allocated to it;
- (b) additional to a presiding officer, there was one Poll Clerk for Polling Stations with up to 750 electors;
- (c) one additional Poll Clerk was appointed for Polling Stations with up to 1,500 electors;
- (d) one further Poll Clerk was appointed for Polling Stations with up to the maximum of 2,500 electors; and
- (e) In order to abide by this direction it was necessary to provide 87 Polling Stations on 5 May 2011 and the appointment of over 80 Presiding Officers, and around 150 Poll Clerks.

Postal Votes

The total number of Referendum postal vote packets issued was 9,540 many of which also included District Council ballot papers and some also Parish/Town Council ballot papers. Approximately 74% were returned. The Chief Counting Officer directed that arrangements were made for a final sweep of Royal Mail Sorting Offices on polling day, to locate and receive postal votes still in the postal system.

- (i) This required a licence from Royal Mail costing £598.00 and payment of £544.00 for a sweep of the Main Sorting Office in the District, and £435.00 for each additional sweep of other sorting offices;
- (ii) In the district there were a total of 5 Sorting Offices, a total of 4 postal votes were received as a result of these sweeps; and

(iii) In the Council's post on 6 and 9 May, a total of 26 postal vote packages were received, suggesting that some of these had been in the Royal Mail system on polling day.

The issue and opening sessions for postal votes went smoothly. The software and scanners used for checking personal identifiers again worked well. There was no evidence of any postal vote fraud although 177 postal votes were rejected because of a lack of comparison between signature and/or dates of birth. Members asked that clarification should be established with these electors concerning the signatures, as these sometimes change with age. The Returning Officer advised that he would include comments on the report to the Overview and Scrutiny on the process for this, or report back at a future meeting.

Spoilt Papers

There were 135 ballot papers rejected in respect of the referendum:

- 125 for being unmarked or wholly void for uncertainty;
- 7 for voting for both answers to the question asked; and
- 3 for writing or marking the ballot paper in a way by which the voter could be identified.

The number of ballot papers rejected in respect of the District Council Elections varied between 25 in the Grange Hill Ward and 6 in both the Roydon and Shelley Wards. The majority of papers were rejected for being unmarked or wholly void for uncertainty.

Verification and Counts

Verification of the Referendum, District Council and Parish/Town Council papers commenced at 9.00a.m. at Theydon Bois Village Hall on 6 May. The verification process and the counting of the District Council Wards were completed by 1.30p.m. The Chief Counting Officer had directed that the counting of the Referendum papers could not commence until 4.00p.m., the Referendum Count was completed by 5.30p.m. The results were published immediately on the Council's website.

The Parish/Town Council counts commenced at 10.00a.m. on 7 May 2011 and were completed by midday despite the need to use "grass skirts."

Police Liaison

Discussions were held with the police prior to the election and the police prepared a polling plan. The police response was again very good this year with all Polling Stations receiving regular visits and there were no instances requiring immediate police presence outside of the regular visits.

Complaints and Queries received in the Elections Office

No formal complaints had been received regarding an alleged breach of electoral law. Representations were made about the size of a badge being worn by a teller for the referendum. The Electoral Commission published teller's guidance including

views on the size of rosettes stating that they considered a badge of a reasonable size would be acceptable.

Feedback from Election Agents and Candidates

Election Agents were invited to express views on the running of the Referendum, Elections and Counts. Their feedback and responses were as follows:

- One agent drew attention to a lack of candidate lists inside polling stations;

Response: A direction from the Electoral Commission was that the Notice of Poll, which included candidates' details, must not be displayed in polling stations. They specified that the only notices permissible were an A3 one in the polling booths advising how many crosses to put on each ballot paper, and an A2 notice telling electors how to vote. The Notice of Poll in polling stations was, however not a requirement of the legislation, a fact which the Electoral Commission had drawn attention to.

- The number of tellers/supporters outside of one polling station;

Response: Some issues regarding the presence of supporters and tellers, at or in the car park of the Saxon Way, Waltham Abbey polling stations, were reported on the day, and the stations were visited by both the returning Officer and one of the deputy Returning Officers. As there were two polling stations within the one building, it was permissible to have separate tellers for each station.

- The layout of the small hall for the count at Theydon Bois Village Hall;

Response: It was considered that the layout and the arrangements at Theydon Bois Village Hall were probably the best that could be achieved.

- The need to keep ballot papers face up during the count; and

Response: Staff were reminded of the need to keep ballot papers face up during the count proceedings, both at training and at the count. The Returning Officer and Deputy Returning Officer did not witness ballot papers face down at the verification or counting stages, except for some instances when bundles of 50 papers were being double checked when counters experienced papers sticking together when face up.

- Representations were also made about tellers having to stand outside of a polling station and to one presiding officer retaining poll cards and not allowing electors to keep them to hand to tellers on exiting the polling station.

Response: In some polling stations it was possible to accommodate tellers inside the building, for example, in a lobby to the main room where voting took place. However, some polling stations only comprised the main room and at such locations tellers stood outside.

Presiding officers were instructed to arrange for the secure destruction of poll cards left by electors, they were not expected to retain poll cards and it was a matter for the elector as to whether they handed their poll card to a teller on leaving the polling station. The Returning Officer was making enquiries to establish whether a Presiding Officer misinterpreted the instructions given.

- One agent referred to the locally agreed protocol which continued to require tellers to approach electors for their addresses and registration numbers on their way out of the polling station. The agent asked that the protocol should be changed, as in his view, electors were less likely to have their poll cards or talk to tellers when leaving the polling station. The Electoral Commission had advised that it was permissible for electors to be approached by tellers when entering the polling station.

Response: The protocol was agreed with agents of all parties a few years ago and had worked well. Electors were not delayed from entering the polling station. The Returning Officer would consult election agents about whether the protocol should continue to operate and advise members of the outcome, as Panel members shared the view of the agent.

All the issues raised would be taken into account in relation to the planning and running of future elections.

Members thanked officers for their work during the election period.

RECOMMENDED:

That the Review of Referendum and Elections – 5 May 2011 be noted.

6. COMPLAINTS PANEL - LIMITS OF JURISDICTION

The Panel received a report from Mr I Willett, Assistant to the Chief Executive, regarding Member Complaints Panel – Limits of Jurisdiction.

The Member Complaints Panel (CP) was responsible for considering complaints at Step 4 in the Council's complaints procedure. Currently, certain types of complaints fell outside the limits of jurisdiction of the Panel and cannot therefore be considered at Step 4.

These exclusions were:

- (1) A complaint about a situation which had arisen more than 12 months before it was brought to the attention of the Council.
- (2) Where an alternative and formal right of appeal existed, and for which the complainant failed to exercise his/her right to appeal within the specified timescale, or has not yet appealed, or had already made such an appeal.
- (3) Matters which would best be dealt with by the courts.
- (4) Matters which would affect the majority of the people in the Epping Forest District.
- (5) Complaints for which a resolution could only be achieved through a change in the law, or a change in the policies of another organisation.
- (6) Complaints about policies currently subject to a review, or about matters for which it had already been agreed that a policy needed to be reviewed or formulated.

(7) Complaints about the frequency of delivery, or the level of a service which was subject to contract conditions.

(8) Where the customer elected to pursue legal action as a means of determining their complaint.

In recent years, other types of complaints had been made for which consideration by the Complaints panel was found inappropriate. It was therefore recommended that the limits of jurisdiction should be extended to encompass these as well:

(a) If, at Step 1, 2 or 3 in the complaints procedure, the complainant had already been offered the maximum remedy that the Complaints Panel was empowered to offer.

Reason: The complainant gained no additional benefit from a further review at Step 4.

(b) When there was no evidence that the complainant had suffered any harm or injustice even if there had been administrative fault by the Council.

Reason: Unless the complainant could show that they have suffered an injustice, there were no matters that required rectification. Members noted that the Local Government Ombudsman applied the same exclusion.

(c) If, at Step 1, 2 or 3 in the complaints procedure, the complainant had already accepted the proposal remedy and had formally confirmed that he or she had done so in full and final settlement of all of his or her complaints.

Reason: Formal acceptance of a remedy concluded the complaint.

(d) If, by going to Step 4, the complainant would then be left with insufficient time to submit a complaint to the Local Government Ombudsman within the Ombudsman's 12 month time limit.

Reason: The Ombudsman would not usually consider a complaint of more than 12 months had elapsed since the complainant first became aware of the problem. If the Council insisted that all complainants always go through Step 4 before being able to make a complaint to the Ombudsman and, by doing so, the complaint was then unable to comply with the Ombudsman's 12 month rule, this would leave the Council vulnerable to a further complaint that its actions prevented the complainant from being able to exercise their right to request a final review by the Ombudsman.

(e) If the complaint had already been determined by the Local Government Ombudsman.

Reason: The decisions of the Ombudsman took precedence over the decisions of the Council.

Members were asked to note that, if a complainant felt they had been wrongfully denied a Step 4 review, then they were entitled to make that complaint to the Local Government Ombudsman.

RECOMMENDED:

(1) That revisions to the limits of jurisdiction of the Complaints Panel be approved; and

(2) That a report be submitted to the Overview and Scrutiny Committee and the Council recommending that Annex 1 (Section 1) to the Terms of Reference of the Complaints Panel be amended as set out in paragraph 3 and published in the Constitution.

7. SUBSTITUTIONS AT MEETINGS

The Panel received a report from Mr I Willett, Assistant to the Chief Executive, regarding Member Substitution at Committees.

The District Council's Constitution allowed for substitutes to be nominated at Overview and Scrutiny Committee/Panels and the District Development Control Committee.

Currently a substitution was notified to Democratic Services by 10.00a.m. on the day of the meeting. The point of contact being a single member for each group. The Constitution stipulated that only the Deputy Group Leader could undertake this role. The Panel considered whether there was scope for widening this role to include the Group Deputy Leader and a political group whip or other delegated individual.

At the last Overview and Scrutiny Committee meeting on 11 April 2011, a request was made for a report to be submitted to this Panel, regarding the process of making substitutions for Overview and Scrutiny Committee and the District Development Control Committee. The request had been to change the 10.00a.m. deadline for notification to 4.00p.m. on the day of the meeting, providing groups with greater flexibility when arranging substitutions. It was noted that not all meetings concerned here started at the conventional time of 7.30p.m. In these cases notification for substitutions should take place earlier.

Members requested that notification should take place not later than 30 minutes before the start of the meeting.

RECOMMENDED:

(1) That a report be submitted to the Overview and Scrutiny Committee and then Council recommending as follows:

(a) to permit a Leader, Deputy Leader or other appointed member of a political group to notify the Assistant to the Chief Executive of any substitute members to attend a meeting;

(b) to require that any political group member so appointed be notified to the Assistant to the Chief Executive at the beginning of each Council year;

(c) to amend the deadline for notifying substitutes from "not later than 10.00a.m." to "not later than 30 minutes before the commencement of the meeting concerned."

(2) That a report be submitted to the Council recommending that approval be given to these alterations and their publication in the Constitution.

(3) That, if possible, the substitution notification deadline be included on every agenda where this is permitted under the Constitution; and

(4) That this process be reviewed after 1 year.

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

The following reports were being submitted to the Overview and Scrutiny Committee on 12 July 2011:

(1) Referendum and Elections 5 May 2011;

(2) Complaints Panel – Limits of Jurisdiction; and

(3) Substitutions at Meetings

9. PROVISIONAL DATES FOR PANEL MEETINGS

The next programmed meeting of the Panel was 27 July. It was advised that two extra meetings would be needed because of Panel workloads. Officers would inform members of the suggested dates.