

**Scrutiny Standing  
Panel Agenda**



**Constitution and Members Services Scrutiny Standing  
Panel  
Monday, 7th January, 2013**

You are invited to attend the next meeting of **Constitution and Members Services Scrutiny Standing Panel**, which will be held at:

**Committee Room 1  
on Monday, 7th January, 2013  
at 7.00 pm .**

**Glen Chipp  
Chief Executive**

**Democratic Services  
Officer**

M Jenkins - The Office of the Chief Executive  
Tel: 01992 564607  
Email:democraticservices@eppingforestdc.gov.uk

**Members:**

Councillors Mrs M Sartin (Chairman), A Watts (Vice-Chairman), R Cohen, J Markham, Mrs M McEwen, R Morgan, J Philip, B Rolfe, D Stallan, Mrs J H Whitehouse and G Waller

**SUBSTITUTE NOMINATION DEADLINE:**

**18:00**

- 1. APOLOGIES FOR ABSENCE**
- 2. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)**  
  
(Assistant to the Chief Executive) To report the appointment of any substitute members for the meeting.
- 3. NOTES OF THE LAST MEETING (Pages 3 - 8)**  
  
To agree the notes of the last meeting of the Panel, held on 4 December 2012 (attached).
- 4. DECLARATION OF INTERESTS**  
  
(Assistant to the Chief Executive). To declare interests in any items on the agenda.

In considering whether to declare a personal or a prejudicial interest under the Code of Conduct, Overview & Scrutiny members are asked pay particular attention to paragraph 11 of the Code in addition to the more familiar requirements.

This requires the declaration of a personal and prejudicial interest in any matter before an OS Committee which relates to a decision of or action by another Committee or Sub Committee of the Council, a Joint Committee or Joint Sub Committee in which the Council is involved and of which the Councillor is also a member.

Paragraph 11 does not refer to Cabinet decisions or attendance at an OS meeting purely for the purpose of answering questions or providing information on such a matter.

**5. TERMS OF REFERENCE / WORK PROGRAMME (Pages 9 - 14)**

(Chairman/Lead Officer) The Overview and Scrutiny Committee has agreed the Terms of Reference of this Panel and associated Work Programme. This is attached. The Panel are asked at each meeting to review both documents.

The OSC is about to formulate next years OS work plan incorporating a programme for this Panel. In view of this, the Panel may wish to bring forward suggestions/ideas on topics for inclusion in its work programme for next year.

**6. POLICE AND CRIME COMMISSIONER ELECTION - 15 NOVEMBER 2012 (Pages 15 - 24)**

(Assistant to the Chief Executive) To consider the attached report.

**7. ANNUAL COUNCIL MEETING (Pages 25 - 32)**

(Assistant to the Chief Executive) To consider the attached report.

**8. REVIEW OF OUTSIDE ORGANISATIONS (Pages 33 - 50)**

(Assistant to the Chief Executive) To consider the attached report.

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

To consider which reports are ready to be submitted to the Overview and Scrutiny Committee at its next meeting.

**10. FUTURE MEETINGS**

The next programmed meeting of the Panel will be held on 27 February 2013 at 7.00p.m. in Committee Room 1 and then on:

Tuesday 26 March at 7.00p.m. in Committee Room 1.

**EPPING FOREST DISTRICT COUNCIL  
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY  
STANDING PANEL  
HELD ON TUESDAY, 4 DECEMBER 2012  
IN COMMITTEE ROOM 1  
AT 7.05 - 8.25 PM**

**Members Present:** Mrs M Sartin (Chairman), A Watts (Vice-Chairman), R Cohen, Mrs M McEwen, J Philip, D Stallan, Mrs J H Whitehouse and G Waller

**Other members present:**

**Apologies for Absence:** J Markham, R Morgan and B Rolfe

**Officers Present** I Willett (Assistant to the Chief Executive) and M Jenkins (Democratic Services Assistant)

## **20. NOTES OF THE LAST MEETING**

### **RESOLVED:**

That the notes of the last meeting of the Panel held on 25 September 2012 be agreed.

## **21. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)**

There were no substitutions made for the meeting.

## **22. DECLARATION OF INTERESTS**

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

## **23. TERMS OF REFERENCE / WORK PROGRAMME**

### **(a) Terms of Reference**

The Panels' Terms of Reference were noted.

### **(b) Work Programme**

The Panel received updates to the Work Programme as follows:

#### **(i) Item 13 Employment Procedure Rules - Revision**

It was advised that this item was being deferred to the June 29013 Panel meeting as discussions were still on-going with the Council's barrister.

#### **(ii) Item 20 Housing Appeals and Review Panel – Terms of Reference**

This item should be brought forward to an earlier meeting of the Panel so that the new Housing Appeals and Review Panel Terms of Reference were finalised as soon

as possible after the April 2013 Cabinet meeting at which the housing register changes were made.

#### **24. QUESTIONS - PERIODS OF NOTICE**

The Panel received a report from the Assistant to the Chief Executive regarding the Periods of Notice for Questions at the Cabinet and Council meetings.

The District Council's Management Board had requested that consideration should be given to amending the deadlines for submission of questions by the public and Councillors at the Cabinet and Council meetings. The request was made because it had become increasingly difficult to compile answers for Portfolio Holders in the time available.

The following deadlines had applied to questions under notice:

##### **(a) Council Procedure Rules (Paragraph 11.3)**

The deadline for public questions was midday, seven working days before the relevant Council meeting.

##### **(b) Council Procedure Rules (Paragraph 12.3)**

The deadline for submission of questions by members under notice was seven working days before the relevant Council meeting.

##### **(c) Executive Procedure Rules (Paragraph 2.2(9))**

The deadline for submission of public questions was 4.00p.m. on the day of the Cabinet meeting.

Replies were given orally at the meeting concerned, in the case of Council meetings a copy of the reply was supplied shortly before the meeting to the questioner and tabled for other Councillors at the meeting. In the case of public questions, the reply was given orally and then communicated in writing to the questioner(s). Questions and replies were recorded in the minutes, the same procedure was used at the Cabinet.

#### **RECOMMENDED:**

- (1) That questions under notice from Councillors at Council meetings be made at least 4 working days before the date of the Council meeting in question;
- (2) That questions under notice from members of the public at Council meetings be made at least 4 working days before the date of the Council meeting in question;
- (3) That questions under notice from members of the Cabinet meetings be made at least 3 working days before the date of the Cabinet meeting in question and the restriction on the number of speakers per subject be deleted;
- (4) That if the questioner is not present at the meeting, the Portfolio Holder answer is sent to them;

- (5) That the same deadlines for the submission of motions at Council meetings remain;
- (6) That the Periods of Notice for Questions at the Cabinet and Council meetings be reviewed by this Panel in 12 months' time;
- (7) That a report be submitted to the Overview and Scrutiny Committee and the Council seeking adoption of these proposals;
- (8) That a revised order of questions at Council meetings be proposed, namely:
  - (a) Public Questions;
  - (b) Member questions under notice;
  - (c) Questions on Portfolio Holder reports; and
  - (d) Questions to Portfolio Holders without notice
- (9) That the practice of tabling all questions and replies at Council meetings be discontinued.

**25. AUDIT AND GOVERNANCE COMMITTEE (AGC) - PORTFOLIO HOLDER ASSISTANTS**

The Panel received a report from the Assistant to the Chief Executive regarding Portfolio Holder Assistants on the Audit and Governance Committee (AGC).

At the Council meeting on 13 December 2011, the Overview and Scrutiny Committee reported on proposals to amend Article 11 of the Constitution which set out the terms of reference of the AGC. The amendments were regarding whether a Portfolio Holder Assistant should serve as one of the councillor members of the committee, or whether this was not desirable because of conflicts of interest.

The Council adopted those proposals from the Overview and Scrutiny Committee whereby Portfolio Holder Assistants, provided that were not involved in Portfolios dealing with the Council's finances, could be eligible for appointment to the AGC. The Council directed that this arrangement should be reviewed after one year.

One Portfolio Holder Assistant served on the AGC until the Annual Council meeting in May 2012, but subsequently the Leader of the Council decided not to create such positions for the current Council year. The AGC members had been consulted about their concerns with this arrangement. Two members commented, both stated that there had not been any difficulties prior to May 2012. There had been no adverse comments on this issue from officers and it was suggested that in view of current policy, there were no grounds for changing the current arrangements.

**RECOMMENDED:**

That no change be made regarding Portfolio Holder Assistants pending Government proposals for statutory Audit Committee, at which time the matter be reviewed again.

**26. ACCESS TO INFORMATION RULES**

The Panel received a report from the Assistant to the Chief Executive regarding Access to Information Rules.

On 10 September 2012, the Government brought into force new regulations concerning access to information and meetings for Local Authority Executives.

The 2012 regulations made the following key changes:

- (a) Executives were required to give 28 days' notice of an intention to make a decision in private session, along with the 28 day notice period, the public had an opportunity to make representations to the Council if they did not consider that a decision involved in private session was appropriate, and should be dealt with in public;
- (b) The existing notice period for Executive meetings and providing copies of relevant agenda and reports was reaffirmed, but this must be accompanied with a statement of whether representations were received at the 28 day stage concerning any report dealt with in public session;
- (c) The present requirements for excluding the public were reaffirmed;
- (d) There was a new category under which an executive could exclude the public from a meeting to maintain orderly conduct or prevent misbehaviour;
- (e) When giving 28 days' notice of private meetings of the Executive, a statement of why the meeting was being held in private must be made available at the Council offices and on its website;
- (f) the current arrangements for five clear days' notice of their availability was reaffirmed and the regulations re-stated the rule that there was no entitlement for an agenda, item or report to be available for inspection by the public before a copy was available to councillors;
- (g) The new regulations specified publicity requirements in connection with key decisions and were in effect the same notice as would notify the public as to whether any item was dealt with in private session;
- (h) General exceptions from the key decision notification requirement and the 28 days' notice period were reaffirmed, namely a general exception and special urgency. In both cases the proper officer must consult the Chairman of the Overview and Scrutiny Committee to allow the item to proceed, such decisions being subject to a separate notice which must be published as and when the approval was given;
- (i) Provisions relating to the inspection, by the public, of documents and background papers were included as was the supply of such documents to the press;
- (j) Additional rights were set out for access to documents by members of local authorities although there were some exclusions in terms of exempt and confidential business which permitted the Executive to refuse to supply the information and additional rights of access to documents for members of the Overview and Scrutiny Committee were also included in the regulations but the latter were not entitled to a document containing certain kinds of exempt or confidential information unless that member was reviewing or scrutinising the decision or the review of the decision was part of the programme of work of the Overview and Scrutiny Committee or a Panel,

the Executive must provide a statement to the committee if supply of a document had been refused.

### **Response to the Regulations**

The Panel was advised that most of the provisions were currently followed already. Officers had already been briefed on the importance of attaching to the 28 day period of notice in respect of decision in private, which if not adhered to and not covered by the general exception or special urgency provisions, may be liable to challenge. It was planned to give the 28 days' notice of the private meetings through the existing forward plan, officers had also been reminded of the need for diligence in listing background papers and having copies readily to hand and on the website for review by members of the public and councillors.

### **Executive Decisions Made by Officers**

The most novel aspect of these regulations was that they required all officer decisions, made under the Executive, to be recorded in the same way as a portfolio holder decision. This had attracted much criticism from many parts of local Government in that it covered day-to-day management and administrative decisions within the responsibilities of Directors. The regulations implied that routine delegated authorities of the kind set out in Part III of the Constitution would need recording in some way. These concerns had been directed to the Government, ministerial advice had been received indicating that the purpose of the regulations was to concentrate on key decisions made by officers on behalf of the Executive rather than ensuring written records of every decision. Therefore a new section had been added to the rules stating that the executive decisions of officers recorded must be those which derived directly from a decision by the Cabinet, a Cabinet Committee or a Portfolio Holder to delegate a task to a director.

Thus, the decision of the Cabinet to delegate the function would be subject to call-in and the delegated authority would only be exercised by the officer once the call-in period had expired. The action of the officer concerned would be strictly limited to the terms of the delegation and if there was any change in the situation the officer would have to report back to the Cabinet for a revised authority.

### **Appointment of Proper Officer**

In the Schedule of Delegation within the Constitution, the Assistant to the Chief Executive was currently designated for the purpose of Access to Information under the Local Government Act 1972, it was recommended that additionally he be authorised to be proper Officer for the 2012 regulations for the avoidance of doubt.

#### **RECOMMENDED:**

- (1) That the proposed revisions to the Access to Information Rules be recommended to the Overview and Scrutiny Committee and the Council that the proposed amendments be approved and the Constitution amended accordingly; and
- (2) That the Overview and Scrutiny Committee and the Council be recommended to appoint the Assistant to the Chief Executive as Proper Officer in respect of the Local Authorities (Executive Arrangement) (Meetings and Access to Information) (England) Regulations 2012 in conjunction with his existing delegation in respect of the Access to Information Act 1985.

**27. FUTURE MEETINGS**

The next Panel meeting was scheduled for Monday 7 January 2013 at 7.00p.m. in Committee Room 1, and thereafter on:

- (a) Wednesday 27 February at 7.00p.m. in Committee Room 1; and
- (b) Tuesday 26 March at 7.00p.m. in Committee Room 1.

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

That the following reports be recommended to the Overview and Scrutiny Committee:

- (a) Questions – Periods of Notice;
- (b) Audit and Governance Committee (AGC) – Portfolio Holder Assistants; and
- (c) Access to Information Rules



# Agenda Item 5

## TERMS OF REFERENCE - STANDING PANEL

<b>Title: Constitution and Member Services</b>
<b>Status:</b> Standing Panel
<b>Terms of Reference:</b>  1. To undertake reviews of constitutional, civic, electoral and governance matters and services for members on behalf of the Overview and Scrutiny Committee.  2. To report to the Overview and Scrutiny Committee, the Council and the Cabinet with recommendations on matters allocated to the Panel as appropriate.
<b>Chairman: Councillor Mrs M Sartin</b>

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## Constitution and Member Services Standing Panel (Chairman – Cllr Mrs M Sartin)

Item	Report Deadline / Priority	Progress / Comments	Programme of Future Meetings
(1) Review of May Elections	16 July 2012	<b>COMPLETED</b>	16 July 2012; <del>25 September;</del> <del>4 December;</del> 7 January 2013; and 27 February 26 March
(2) Complaints Panel - Jurisdiction	16 July 2012	<b>COMPLETED</b>	
(3) Review of Substitution at Meetings	16 July 2012	<b>COMPLETED</b>	
(4) Audit and Governance Committee – review of Constitution	16 July 2012	<b>COMPLETED</b>	
(5) Staff Appeals Panel Terms of Reference	25 September 2012	<b>COMPLETED</b>	
(6) Electronic Delivery of Agenda	25 September 2012	<b>COMPLETED</b>	

(7) Review of Petitions	25 September 2012	<b>COMPLETED</b>	
(8) Access to Information Rules revised Procedures	4 December 2012	<b>COMPLETED</b>	
(9) Questions – Review of Notice Periods	4 December 2012	<b>COMPLETED</b>	
(10) Review of Portfolio Assistants as Members of Audit and Governance Committee	4 December 2012	<b>COMPLETED</b>	
(11) Review of November 2012 Elections	7 January 2013		
(12) Review of Annual Council	7 January 2013		
(13) Review of Protocol on Outside Organisations	7 January 2013		
(14) Employment Procedure Rules - Revision	27 February 2013		
(15) Review of the Protocol on Officer/Member Relations	27 February 2013		
(16) Housing Appeals and Review Board – Review of Order of Presentations & Appeal Procedures	26 March 2013		
(17) Contact Standing Orders – Two Review Items	26 March 2013		
(18) Review of Financial Regulations	26 March 2013		
(19) Review of Officer Delegation (Including delegation of direct action under Section 178 of the Town and Country Planning Act 1990)	26 March 2013		



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## **Report to the Constitution and Member Services Standing Scrutiny Panel**

**Date of meeting:** 7 January 2013

**Portfolio Holder:** Leader  
(Local Returning Officer's Report)

**Subject:** Police and Crime Commissioner Election – 15 November 2012

**Officer Contact for further Information:** Ian Willett (01992 564243)  
Graham Lunnun (01992 564244)  
Simon Hill (01992 564249)  
Wendy MacLeod (01992 564023)

**Democratic Services Officer:** Mark Jenkins (01992 564607)



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### **Recommendation:**

To consider this review of the Police and Crime Commissioner Election held in this District on 15 November 2012.

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### **Background**

1. The Police Reform and Social Responsibility Act gained Royal Assent on 15 September 2011. The Act abolished police authorities in England and Wales (other than London), replacing them with a directly elected Police and Crime Commissioner in each police force area. The first elections for Commissioners were held on 15 November 2012. The Act also established Police and Crime Panels in each police force area, drawn from local councillors. This Council is represented on the Police and Crime Panel for Essex by Councillor Sartin with Councillor Waller as a deputy.
2. The Commissioner must issue a police and crime plan, set the budget (and therefore the policing precept) and produce an annual report. The Panel will scrutinise and advise the Commissioner.

### **Arrangements for the Election**

3. The legislation and regulations for this election provided for the appointment of a Police Area Returning Officer (PARO) for each police area. The role of the PARO was to ensure that the election was administered to a consistent standard across the police area, particularly in the areas that impacted on the voters' experience, eg. the issue of poll cards and postal votes, the staffing of polling stations, the verification and counting of votes. The appointed PARO for the Essex police area was Steve Packham, Chief Executive of Chelmsford City Council. The PARO was given the power to give directions to Local Returning Officers (LRO) during the election period. LROs were responsible in their voting area for the conduct of the poll, the printing of ballot papers, the issue and receipt of postal ballot papers, the verification of ballot paper accounts and the counting of votes.

4. Mr Packham held meetings with LROs and Electoral Administrators and corresponded by email during the election period to clarify the respective roles and duties, issue advice and directions, and generally ensure a consistent approach across the County. In addition he arranged a test of communications between Chelmsford and the local count centres prior to election day. A delay in the necessary statutory regulations being made was not helpful but was overcome.
5. LROs prepared Project Plans and a Risk Registers for the elections which were reviewed and updated during the election period. In addition returns were submitted to the Electoral Commission at regular intervals regarding compliance with their guidance and actions in the Project Plan.
6. In the Epping Forest District a Project Team comprising the Local Returning Officer and three Deputy Local Returning Officers met regularly between January and November 2012 to ensure that processes were undertaken at the appropriate time. In addition to discussing all the usual elements of an election, bearing in mind the timing of this election, a severe weather mitigation plan was prepared which set out measures to be taken in the event of widespread adverse weather such as snow, ice or flooding on election day. Mock counts involving senior staff were also held to draw attention to potential issues including doubtful ballot papers and to determine ways in which such issues should be resolved. Training and briefing sessions were held for polling station staff.

### **The Voting System**

7. The legislation required that elections with three or more candidates used the supplementary vote system. In Essex there were six candidates. The system requires two columns on the ballot paper – one for voters to mark their first choice and one to mark a second choice. Voters are expected to mark one “X” in each column, although they are not required to make a second choice if they do not wish to.
8. All the first choices are then counted, and if a candidate has received 50%+ of the votes cast they are elected. If no candidate receives 50%+ of the votes cast, the top two candidates continue to a second round and all other candidates are eliminated. The second-choice votes of everyone whose first choice has been eliminated are then counted. Any votes for the remaining candidates are then added to their first-round totals. Whichever candidate has the most votes after these second-preferences have been allocated is declared the winner.
9. At the conclusion of the count of first preferences across Essex no candidate had achieved 50%+ of the votes cast and it was necessary to undertake the second stage of the count (counting of the second-choice votes of everyone whose first choice had been eliminated).

### **Turnout**

10. Turnout was disappointing. The electorate for the whole of Essex for this election was 1,313,745 and a total of 171,617 ballot papers were counted (turnout of 13.06%). In the Epping Forest District the electorate was 98,862 and 10,221 ballot papers were counted (10.34% turnout) which included 4,245 postal votes. This represented the third lowest turnout of the 14 districts/boroughs in the County. The majority of polling stations in the Epping Forest District issued less than 100 ballot papers during the 15 hours they were open. Across the country turnout figures ranged between 11.6% and 19.5%, although the latter figure in Northamptonshire was probably helped by a higher turnout for the Corby by-election which was held at the same time.



## **Poll Cards**

11. Poll cards were delivered by canvassers or Royal Mail within the time frame specified by the PARO.
12. There was adverse publicity in the local press regarding some poll cards for a block of flats in Waltham Abbey being left on the windowsill in the lobby rather than being put through individual letter boxes. There were health and safety reasons for the canvasser not entering the property further than the front door. However, canvassers should return poll cards which they cannot post in the addressee's letter box so that alternative delivery arrangements can be made and as this did not happen on that occasion a public apology was given. The complainant referred the matter to the Electoral Commission but having been assured that this had been a one-off incident and that processes were in place to ensure the correct delivery of poll cards the Commission did not pursue the matter. The correct procedures will be emphasised to canvassers before they deliver poll cards for the next election.

## **Polling Stations**

13. In the Epping Forest District, there were 80 polling districts making 72 polling stations in 65 established Polling Stations on 15 November 2012. This required the appointment of 72 Presiding Officers and approximately 120 Poll Clerks. Sufficient staff were appointed including standby staff some of whom had to be called upon at short notice. Fortunately weather conditions on election day were good and did not prevent any staff from getting to their polling station.
14. No adverse comments have been received from electors or agents about access or other conditions at any of the polling stations. However, it was necessary on election day to call out the Council's direct labour to provide heating and lighting at the Faversham Hall, Chigwell Row Polling Station. This is a Council-owned building which is currently only used for election purposes. The future of the building is uncertain but if it is used as a polling station in future the Returning Officer will liaise with colleagues in the Housing Directorate to ensure that the heating and lighting are tested prior to election day.
15. The difficulty with polling station arrangements in Chigwell Row is the lack of any ready alternative to Faversham Hall.

## **Postal Votes**

16. The total number of postal vote packets issued was 8,331. Only three packs failed to reach the electors in the post and had to be re-issued. 4,245 (50.95%) were returned.
17. It was a requirement that arrangements were made for a final sweep of Royal Mail Sorting Offices on polling day at a cost in the Epping Forest District of £718 (inc VAT) in order to locate and obtain postal votes still in the postal system. This resulted in two postal votes being received. In order for the sweep to be undertaken, in addition to the cost of the sweep itself it was also necessary to obtain a postal vote licence from Royal Mail which amounted to £500. The cost of retrieving the two votes was therefore over £600 per vote. Although these costs are met centrally, representations have been made previously about the value of such sweeps and these will be repeated although it appears that they continue to be favoured by the Government and the Electoral Commission. Certainly if in the future there are any steps proposed to require sweeps

for local elections these should be resisted strongly as such costs will fall on the relevant council.

18. 25 postal votes were handed in at polling stations. In the Council's post on the days immediately following polling day a total of 35 postal vote packages were received, some of those may have been in the Royal Mail system on polling day. A few were returned as undelivered because electors had moved or died and the Elections Office had not been notified.
19. The issue and opening sessions for postal votes generally went smoothly despite a problem at opening sessions with one of the scanners used for checking personal identifiers (signature and date of birth). This scanner on occasions jammed and after being cleared failed to record a number of postal vote statements on the print outs although they were recorded as having been received in the system. This resulted in a mismatch between the number of ballot papers and statements received. Fortunately the problem was realised at the first opening session and steps were taken to overcome the issue which persisted at the other opening sessions. The error has been reported to the Council's software supplier, Express who are investigating the matter and will be reporting back. There was no evidence of any postal vote fraud although 128 postal votes which the scanning process questioned were rejected after manual inspection for various reasons – no ballot paper, no postal voting statement, mismatched signature or date of birth or both.

### **Ballot Papers**

20. The proof of the ballot paper was scrutinised carefully and all ballot papers were printed in the correct format. In addition a manual check was made of each printed ballot paper prior to being allocated to Presiding Officers to ensure that books were printed correctly and that all papers included the official mark and ballot paper number. All of the papers were printed by the Council's Reprographics Section and as with previous elections they provided an excellent service bearing in mind the tight timescale for printing. Anecdotally, use of an in house print unit may have offered some cost advantages in comparison with councils using external printers.
21. There were no reports from Polling Stations of printing errors on the papers which suggests that the checks made before polling day were accurate.

### **Spoilt Papers**

22. There were 219 rejected ballot papers at stage 1 of the count and 702 at the second stage. This is higher than normal but appears to have been due in the main to electors deliberately spoiling their ballot paper in protest about the election rather than a failure of understanding a voting system not previously used in this District.

### **Count**

23. Verification and counting of ballot papers took place at Theydon Bois Village Hall. Under a direction from PARO, verification took place at the close of poll on 15 November 2012 and counting from 10.30am on Friday 16 November 2012. Both processes went smoothly although there was a communication fault at verification which initially prevented information from being sent to Chelmsford in the required format and at the count there were long periods of inactivity waiting for other districts/boroughs to complete their processes.

## **Police Liaison**

24. In view of the subject of the election, the Police decided across the country that they would not be making the usual visits to Polling Stations but would attend if called out. The Police also advised that they would not be present at the counts. In this District, Presiding Officers were advised to telephone 999 in the event of an emergency and the Elections Office for advice in relation to other issues not requiring immediate Police presence. In this District there were no incidents on either election day or at the count which necessitated Police presence.

## **Complaints and Queries Received in the Elections Office and at Polling Stations**

25. There were few telephone calls made to the Elections Office on 15 November by electors. The majority that were received sought information about the candidates and/or the role of the Police and Crime Commissioner. There were no calls from persons who had been unable to vote because their name was not on the Electoral Register.
26. In polling stations, comments were made about the timing of the election, the necessity for a Police and Crime Commissioner, general support for the Police and many wry comments about the turnout. There was also comment about the absence of leaflet drops by candidates resulting in a lack of knowledge about those standing for election.

## **Finance**

27. The Home Office was required to fund "stand-alone" Police and Crime Commissioner elections outright (there were no other elections held in the Epping Forest on 15 November 2012). However, due to the way in which payments are made it is necessary for the Council to advance money to the Local Returning Officer which is then refunded on receipt of funds from the Home Office.
28. A total sum of £203,000 was included in the Council's budget as an advance to the Local Returning Officer. This sum matched the allowance figure for the election specified by the Home Office. A sum of approximately 75% of the Home Office's allowance figure for the Epping Forest District (£148,000) was paid by the Home Office to the Local Returning Officer one month before the election. The Local Returning Officer is then required to submit a claim to account for the amount actually spent and claim any additional funding required above the sum previously provided. The Elections Claims Unit scrutinise the returns and pay any outstanding monies owed, referring any excessive, questionable or borderline claims with the Home Office for consideration in consultation with Cabinet Office before any such claim is settled. At the time of preparation of this report the claim for the second payment was still being finalised. However, it appears that total expenditure is likely to be in the region of £170,000. An oral update on the position will be made at the meeting.

## **Feedback from Election Agents and Others**

29. Views on the running of the election and the count in this District were sought from appointed sub-agents for the candidates.

### **(a) Conservative Candidate**

30. Valerie Metcalfe, a sub-agent for the Conservative candidate, attended one of the postal vote opening sessions and the count. She has commented "as usual the actual administration of the election process was absolutely fine, and as you say other

comments re. wording on the ballot paper etc is not exactly within your control..... I have taken this up with Eleanor Laing. The only thing of interest to me was that different Presiding Officers in different polling stations seemed to take a varied approach to your instructions to inform electors that they had a choice of a 2nd vote, rather than it appearing compulsory... But just to be clear, I thought that the elections were 'run effectively' . Sadly because of the somewhat enforced lengthy and disjointed nature of the Count across the County, there was no appropriate occasion for the staff at EFDC to be thanked for their efforts with these elections, so I would like to put on record my thanks on behalf of the Conservative Candidate and Campaign for the hard work and efficiency of everyone involved”.

### **Comments on Mrs Metcalfe’s views**

31. The reference to the wording on the ballot paper relates to the instruction:  
  
“Vote once × in column 1 for your first choice; and  
Vote once × in column 2 for your second choice.”
32. PAROs and LROs could not change this wording. It seems clear that some voters interpreted these instructions as meaning that they had to vote for a first and a second choice candidate for their vote to be valid. In fact under the supplementary vote system it is entirely up to voters whether they want to vote once or twice.
33. Presiding Officers received a briefing the day before the election at which it was emphasised that voters should be informed when handed a ballot paper that they should vote by placing a × in the first column against their preferred candidate and could, if they wished, place a × in the second column for their second preference.
34. Checks made with a number of Presiding Officers have confirmed that they gave the correct instruction but it is possible that some may instead have instructed voters strictly in accordance with the wording on the ballot paper.
35. The interpretation of the wording on the ballot paper has been an issue across the country particularly in police areas where the candidate with most votes after the first stage count failed to get elected when second preferences were taken into account.
36. The lengthy nature of the count was inevitable given that completion of the various stages was dependent on the processes being completed at all of the fourteen count centres across the county.

### **(b) Oral Comments made at the Count**

37. Some adverse comments were made about the fact that the final result was known to agents at the local count at Theydon Bois through tweets before the Local Returning Officer received official notification from Chelmsford. This is a sign of the times but for future elections of this nature consideration could be given to the PARO placing an embargo on the media and agents from communicating the result until all LROs have been notified.

**(c) Essex Association of Electoral Administrators**

38. At a meeting of Essex Association of Electoral Administrators reference was made to polling station staff tweeting or sending Facebook messages during the hours of poll advising of the number of votes cast at their station in order to establish who had the lowest number of voters. Although this did not appear to be an issue in this District the matter will be taken forward with staff advised that they must not communicate face to face or via social networks during the hours of poll any information about the number of votes cast.

**(d) Electoral Commission Accredited Observer**

39. Michael Summerville, Head of Electoral and Member Services, London Borough of Hackney is an accredited Electoral Commission observer to observe election proceedings. He attended the count at Theydon Bois and has subsequently sent an email to the Local Returning Officer stating "I thought you and your dedicated team did a fantastic job, very professional and smooth all the way through from start to finish .....It is all good learning from my point of view to actually see first hand outside of our Mayoral elections the process at work....and I take away some learning points for future polls".

**(e) PARO**

40. Steve Packman has thanked all the LROs in Essex for the smooth running of the election.

**Review by the Electoral Commission**

41. The Electoral Commission have a statutory duty to report on the administration of all elections and will be doing this for the Police and Crime Commissioner elections. As part of their assessment, they will be looking at the factors that may have contributed to low turnout. This will include, for example, whether voters had enough information about the elections and the candidates standing to make an informed choice, and the unfamiliar time of year that the elections took place.
42. They will also consider the impact of the content and timing of the legislation that enabled these elections to take place. In doing so, they will look at the role of the Home Office – a Department not usually tasked with the running of elections.
43. The Commission will report their findings in early 2013, alongside recommendations for future Police and Crime Commissioner elections, and broader lessons for other polls.

## Review of Procedures

44. A thorough evaluation has been undertaken of all of the processes outlined in the Project Plan taking account of feedback from agents etc.
45. As a result of the unfortunate issue concerning polling cards in Waltham Abbey the future instructions to canvassers will emphasise the need to post cards through an addressee's letter box or if this is not possible to return them to the Elections Office so that alternative arrangements for delivery can be made.
46. Poll cards and ballot papers were printed internally by the Reprographics Section within the specified timescales. Being in-house it was easy for officers to liaise with the printers and achieve speedy turnaround times for approving drafts etc.
47. Training was provided for Polling Station and Senior Count staff.
48. Using established polling stations ensured that the buildings were suitable. Following the elections in May 2012 the ramp leading to the Allnutts Institute Polling Station was repaired and this work overcame the issue. The use of Faversham Hall, Chigwell Row as a Polling Station will be reviewed before the next elections. If the building is used again the Council's Housing Directorate will be asked to test the heating and lighting prior to election day to ensure that the services are available on election day. In view of the continued uncertainty about the future of this building steps will be taken to try to identify a suitable alternative building in the locality.
49. Theydon Bois Village Hall again proved to be a good venue for the verification and count. Members will be aware that there is not a suitable alternative venue readily available in the District. Steps were taken to control the use of the car park on 16 November to ensure that parking spaces required for the nursery held at the Village Hall were reserved and not used by those attending the count. The North Essex Parking Partnership agreed not to issue notices to staff parked on single yellow lines in the locality if they displayed an agreed sign on the dashboard of their cars.
50. Arrangements for the security of ballot boxes at the close of verification, storage overnight and delivery to the count centre on the following day worked according to plan.
51. Once the ballot papers had been printed a system was put in place to ensure that they were securely stored and free from interference at all times. Staff checking books of ballot papers ensured that the papers were not left unsupervised at any time.
52. The Council's Public Relations and Marketing Officer supported by the Website Officer attended meetings as required and ensured that appropriate publicity was made available at all stages. Liaison was maintained with colleagues at Chelmsford City Council to ensure that there was no duplication of effort. The local media followed the Council's tweets which allowed them to update their own websites without having to be at the count. Building the webpage of coverage using Twitter and Flickr on Thursday night and Friday was particularly successful.

53. As in the past the value of Royal Mail Sorting Office sweeps on election day to capture postal votes still in the postal system has to be questioned in view of the very small number of postal votes which materialised from this exercise. However, it seems likely that this will remain a requirement of the Electoral Commission.
54. Arrangements are being made with the Council's election software supplier, Express to undertake a "health check" of the laptops and scanners used for postal vote purposes to establish and correct the fault which occurred with one of the scanners.
55. At briefing sessions, Polling Station staff are instructed to give non specific replies to questions to electors, candidates, agents etc about the level of turnout. This instruction will in future be extended to require that such information is not tweeted or put on Facebook during the hours of poll.
56. The issue of the result being available via Twitter and Facebook before the PARO had notified LROs is a matter which can only arise at future Police and Crime Commissioner elections or European Parliament elections where local counts are fed to a central count centre. The issue will be raised at the appropriate times with the Returning Officers appointed to co-ordinate such counts.
57. All of the statutory timescales were met.

#### **Lessons Learned**

58. Broadly speaking there were no key issues arising for the Local Returning Officer at the November 2012 elections. Generally all procedures were completed successfully and this is reflected in the comments made by appropriate stakeholders.

#### **Members' Views**

59. Members are invited to express views on the running of the Election held on 15 November 2012 which will also be taken into account for future elections.

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## SCRUTINY



### **Report to Constitution and Members Services Standing Scrutiny Panel**

**Date of meeting: 7 January 2013**

**Subject: Appointments at Annual Council - Review**

**Officer contact for further information: Simon Hill Ext 4249**

**Committee Secretary: Mark Jenkins Ext 4607**

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#### **Recommendations/Decisions Required:**

- (1) That the Panel consider the operation of the Appointments Panel last year and**
- (2) To consider suggested changes to the Constitution in relation to:**
  - (i) The protocol on the allocation of Chairmanships and Vice Chairmanships and Outside Organisation Places;**
  - (ii) The Terms of Reference of the Appointments Panel and its formal inclusion in the 'Responsibility for Functions' Section of the Constitution;**
  - (iii) Consequential amendments to the Council Procedure Rules section 1 to reflect the Report of the Appointments Panel directly to the Annual Council meeting.**
- (3) To consider changes required to Annual Council procedures as thought necessary by the Panel and recommend to Overview and Scrutiny Committee and Council accordingly;**
- (4) To recommend to Council (if appropriate) 9 May 2013 as the date for the Appointments Panel for 2013;**

#### **Introduction:**

1. (Senior Democratic Services Officer) Members will recall discussions in February 2012 on the Appointments Panel and also a review of the process of the annual meeting. This resulted in a report to Council which confirmed the operation of the Appointments Panel for that year and continued the suspension of the relevant protocol for a further year.
2. The Panel requested that the operation of the new system be further reviewed after one year. This is the second such review.
3. This report sets out some proposals for finalising the Panel.

## **Report:**

4. The original request to the Panel to look at the operation of the Annual Council meeting covered a number of issues which included briefing information; liaison and consultation between political groups, pro rata on outside organisations and the process of appointment; simplifying paperwork at the Annual Meeting; suggestions for improvement of the civic ceremonial aspects of the annual meeting and a review of the appointment process of the Vice-Chairman of Council.

## **Operation of the Appointments Panel**

5. Last year we operated the Appointments Panel for the second time. As in the previous year documentation was circulated by officers prior to the election period. This information comprised:

- (a) A pre-election pro rata exemplification table
- (b) A pro rata advice sheet
- (c) Counsel opinion on calculating pro rata
- (d) New Group Constitution Forms
- (e) Individual group member forms
- (f) Terms of Reference of the Panel (attached for reference – Appendix 2)
- (g) A blank Committee nominations sheet (showing previous years nominations)
- (h) A blank outside organisations sheet for council appointed bodies
- (i) Vice Chairman nomination forms (as appropriate)

6. In 2012 the Appointments Panel met on 11 and 15 May and in those two meetings managed to report fully on all matters. This enabled a supplementary agenda to be circulated prior to Council on 22 May meeting the target set by Council of not having tabled schedules of appointment recommendations.

7. Members are asked whether they wish to recommend any changes to the method of operation of the Panel for this year. The Terms of Reference are attached to this report as Appendix 1. It is recommended that these be included into Part 3 of the Constitution, "Responsibility for Functions" and a corresponding entry made into the "Responsibility for Functions" responsibility table in Section 2 to reflect the Council/Appointments Panel relationship.

## **Protocol on the Allocation of Chairmanships and Vice-chairmanships and Outside Organisations**

8. Members will recall that the protocol (attached) has been suspended for two years (except for sections 6(a) to (c) ) to allow the new system to operate. The Panel have been asked to review this element in the light of operational experience.

9. This Panel could recommend:

- (i) To reinstate the protocol (it will require amendment now); or
- (ii) To continue its suspension; or
- (iii) Recommend the rescinding of the protocol subject to amendments to the Councils procedure rules section 1 (attached) to reflect the relationship the Council has with the Panel. This would have the effect of simplifying Sections 1.1 and 1.2 so that they accord with the Terms of Reference of the Panel.

10. The Panel should consider whether there is no confidence in the Panel's operation among Councillors and political groups. If not, it is suggested that further annual review and treating the Panel as a temporary measure is no longer necessary. As with any other part of the Constitution, there will inevitably be reason to review arrangements as and when necessary.

**Date for the Appointments Panel for 2013**

11. It is suggested that Tuesday 9 May 2013 should be the recommended date for the Appointments Panel meeting this year. There are no scheduled District Elections for May 2013 which should make the process of agreeing memberships easier.

**Resource implications:**

Budget provision: Nil none required

Personnel: existing

Land: none

Community Plan/BVPP reference: none

Relevant statutory powers: Local Government and Housing Act 1989 sec 15 and 16

Background papers:

Environmental/Human Rights Act/Crime and Disorder Act Implications: none

Key Decision reference: (if required) not a key decision

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**APPOINTMENTS PANEL  
TERMS OF REFERENCE**

**1. Title**

The Panel shall be known as the "Appointments Panel".

**2. Terms of Reference**

(a) To receive and make recommendations to the Annual Council on nominations for the following appointments from political groups and non-affiliated members:

(i) Chairman and Vice Chairman of Council;

(ii) Leader; Deputy Leader and Cabinet members;

(iii) Chairmen; Vice-Chairmen and membership of Cabinet Subcommittees;

(iv) Chairmen; Vice-Chairmen and members of Committees and Sub-Committees (excluding Scrutiny Panels); Panels; Boards Working Groups and similar bodies;

(v) Outside body appointments falling to the Council to fill;

(b) In recommending appointments to the Council, the Panel will:

(i) Propose nominations based on the entitlement of each political group in accordance with the statutory pro rata;

(ii) Ensure that consideration is given to any nominations made by non-affiliated members for any position or appointment;

(iii) Ensure, so as far is practicable, an equitable allocation of Chairmanships and Vice Chairmanships across the political groups or to non-affiliated members having majority support that is not inconsistent with the provisions of the Council's Protocol; and

(iii) Permit schedules of recommended appointments to be circulated to all members prior to the date of the Council meeting.

(c) The Panel shall, in recommending outside body appointments to the Council, do so as to give precedence to local ward members for those that have a 'local' designation and an equitable allocation of places across the political groups of the Council;

### **3. Membership**

- (a) Each statutory Political Group on the Council shall appoint two members from to form the Panel;
- (b) Where an appointed member ceases to be a member of the Council, the appropriate Political Group Leader may nominate a substitute from within their membership;
- (c) All unaffiliated members of the Council shall have the right to attend the Panel meetings and/or submit nominations in accordance with statutory provision.

### **4. Chairman**

- (a) The Chairman of the Panel shall normally be the Leader of the Council but if the Leader is not a member or present, the Chairman shall be determined by the Panel; and
- (b) The Chairman shall be responsible for reporting the recommendations of the Panel to full Council.

### **5. Meetings**

- (a) Meetings of the Panel shall be held as required following elections each Council year at the Civic Offices, Epping at the date and time indicated on the agenda timed so as to enable the prior circulation of their recommendations for nominations to the Council.
- (b) Minutes and agenda of the Panel meetings shall be circulated to the following:
  - Panel Members
  - Group Leaders or Deputy Group Leader not members of the Panel
  - Unaffiliated Members of the Council

### **6. Effect of Nominations**

Nothing in these Terms of Reference precludes any Political Group or non-affiliated member of the Authority from making nominations directly at full Council or from any group or non-affiliated members changing or withdrawing previously made nominations.

### **7. Officers**

The Panel will be supported by the attendance of relevant officers from the Office of the Chief Executive and such other officers as may, from time to time, be required.

## COUNCIL PROCEDURE RULES (Extract)

### 1. ANNUAL MEETING OF THE COUNCIL

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May.

The annual meeting will:

- (i) elect a person to preside if the Chairman of Council is not present;
- (ii) elect the Chairman of Council;
- (iii) elect the Vice-Chairman of Council;
- (iv) approve the minutes of the last meeting;
- (v) receive any announcements from the Chairman;
- (vi) elect the leader;
- (vii) appoint at least one Overview and Scrutiny Committee, a Standards Committee, an Audit and Governance Committee and such other committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions as set out in Part 3, Table 1 of this Constitution;
- (viii) appoint Chairmen and Vice-Chairmen to those bodies;
- (ix) agree the scheme of delegation excluding delegation of executive functions which are the responsibility of the Leader of Council;
- (x) approve a programme of ordinary meetings of the Council for the year;
- (xi) consider any business set out in the notice convening the meeting;
- (xii) receive a work programme for the Executive and a joint work programme for Overview and Scrutiny Committees for the ensuing year;
- (xiii) be notified of Group Leaders and Deputies and Group representatives on relevant Committees;
- (xiv) to debate and respond to petitions where the number of signatures meets or exceeds the trigger level contained in the Council's petitions scheme; and
- (xv) be notified by the Leader of the Council of appointments to the Cabinet, on the establishment of Cabinet Committees, delegation of executive responsibilities to

Cabinet members and officers and appointments to outside organisations carrying out executive functions.

## **1.2 Selection of Councillors on Committees and Outside Bodies**

At the annual meeting, the Council will:

- (i) decide which committees to establish for the municipal year excluding those committees which are the responsibility of the Leader of Council;
- (ii) decide the size and terms of reference for those committees;
- (iii) decide the allocation of seats to political groups in accordance with the political balance rules;
- (iv) receive nominations of councillors to serve on each committee and outside body excluding those committees and outside bodies which are the responsibility of the Leader of the Council; and
- (v) appoint to those committees and outside bodies except where such appointments are exercisable only by the executive.



# **Report to the Constitution and Members Services Standing Scrutiny Panel**

## Agenda Item 8



# SCRUTINY



**Report reference:**

**Date of meeting:** 7 January 2013

**Report of:** Assistant to the Chief Executive

**Subject:** Protocol on Partnerships and Other External Organisations

**Responsible Officer:** Ian Willett (01992 564243)

**Democratic Services Officer:** Mark Jenkins (01992 564607)

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### **Recommendations:**

- (1) To review the Protocol on Partnerships and Other External Organisations and to determine those aspects which should be considered in detail; and
- (2) To indicate any further data required.

### **Report**

#### **1. Introduction**

1.1 At the Panel meeting on 20 February 2012 (Minute 49), members asked for a scoping report on the Council's links with outside organisations. Members asked for consultation arrangements to be part of the review and that it should be completed during the current Council year.

#### **2. Introduction**

2.1 A copy of the Constitution's current protocol is attached. This document was first agreed in 2005 and revised in 2007 and 2011.

2.2 The protocol gives guidance on the following:

- (a) appointment procedures in respect of Councillors and officers serving on such bodies;
- (b) policy matters;
- (c) insurance and indemnities;

- (d) compilation of written agreements to regularise links between the Council and organisations;
- (e) Directorships (including trustees of charities);
- (g) code of conduct issues;
- (h) joint working.

2.3 The protocol is not statutory in nature and derives from problems which were experienced with a business organisation with which the Council had links prior to 2007 when the protocol was first compiled.

### **3. Possible Areas for Review**

3.1 The protocol is well intentioned and seeks to put the relationship between the Council and external organisations on a business-like basis and to ensure the Councillors are aware of their roles and possible risks. Whether this initiative has been successful is a moot point as is explained in section 4 of the report.

3.2 For the purposes of this review, possible topics which could be examined are as follows:

- (a) the effect of the new Code of Conduct;
- (b) the effectiveness of reporting arrangements;
- (c) conflicts of interest involving charities and similar bodies;
- (d) executing and keeping up to date the agreements with outside bodies; and
- (e) the number of outside organisations on which the Council wishes to be represented.

3.3 The Panel may have additional items of their own.

3.4 The most recent review resulted in a new requirement that (a) reports from Councillors serving on outside bodies should submit written reports in time for publication with Council agenda; and (b) addition to Council agendas of a standing item allowing Councillors to seek reports on specific outside bodies at the following meeting.

## **4. Overview**

4.1 On the last occasion the Panel expressed dissatisfaction about the submission of reports on the activities of external bodies. Other than this, no specific points were raised. Over recent years, some reports have either been requested by the Council or volunteered by representatives (eg Grange Trust and Stansted Airport). The numbers have not been large.

4.2 The question of trustee status has continued to cause concerns. It is clear that accepting trustee status can create conflicts of interest for District Councillors and potential risks. When accepting such positions, Councillors must act in the interests of the Trust but this might create conflicts with their role as Councillors. This dilemma has not been resolved. Attempts have been made to negotiate with some trusts to secure a lower level than full trustee status for Council representatives. This has been unsuccessful not least because Trusts might be limited in its ability to act if its membership did not have full trustee status in compliance with its Trust Deed.

4.3 On annual reports from organisations by members and the organisations concerned, these have proved very difficult to obtain. 100% coverage has never been achieved. Likewise, the annual agreement has proved a cumbersome procedure and, has been viewed with concern by some organisations.

4.4 Over the years, the Council has reduced the number of outside bodies on which it is represented. After time, however, there is a tendency for the numbers to increase once more.

## **5. Internal Audit**

5.1 In the past, the Council's Internal Audit service has provided input to this issue. However, a review is not at present included in its work plan for the current year.

## **6. Action Required**

6.1 To advise officers to the scope of the proposed review, the Panel is asked to think about how it sees the future management of these links. An indication of further information required would also assist.

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**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**Adopted by Epping Forest District  
Council on 13.12.05  
Revised on 18.12.07**

## **PROTOCOL - PARTNERSHIPS AND EXTERNAL ORGANISATIONS**

### **1. Purpose of Protocol**

- 1.1 To provide a framework of advice for the conduct of members and officers when representing the Council on external partnerships and other organisations.
- 1.2 To provide specific guidelines on questions relating to:
  - (a) member and officer liabilities;
  - (b) indemnities;
  - (c) reporting back to the Council;
  - (d) annual reports; and
  - (e) training.
- 1.3 This protocol is limited to appointments made in connection with the Council's powers, duties and general activities. It does not apply to membership of outside organisations held on a personal basis (i.e., independently of the Council). In such cases the member or officer concerned has a personal responsibility to consider issues such as indemnities, potential conflicts of interest and declarations of interest (see paragraphs 6.4 and 6.5 of this protocol).

### **2. Council involvement with External Partnerships and Organisations**

- 2.1 The Council is routinely invited to appoint representatives to external bodies. Such invitations usually arise in one of the following ways:
  - (a) by virtue of a statutory duty or other legal requirement;
  - (b) by virtue of a specific decision or policy adopted by the Council;
  - (c) by virtue of invitations deriving from the Council's community leadership/consultative role; and
  - (d) by virtue of professional contacts among officers or through liaison arrangements delegated to them.
- 2.2 This protocol is intended to regularise the arrangements operating in any such case.

### **3. Appointments - Members of the Council**

- 3.1 Member appointments are usually consolidated in May each year at the Annual Council meeting. Other Council meetings sometimes deal with appointments, usually in relation to casual vacancies or new bodies. All bodies will be reviewed annually.
- 3.2 Member appointments are subject to separate protocols in the Council's Constitution covering:
  - (a) allocation of places between the political groups; and
  - (b) allocation of places on outside organisations to Portfolio Holders where Cabinet functions are directly involved.
- 3.3 Reference to those separate rules is necessary on all questions of appointment procedure. No appointment of a member to an outside body or partnership can be

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made without a Council decision. In deciding to make any appointments, the Council will satisfy itself that this involvement is relevant for the power and duties of the Council or is otherwise desirable.

- 3.5 When taking up their appointments, Councillors will be provided with a copy of this protocol and past annual reports so that they are fully briefed on the organisation concerned.

#### **4. Appointments - Officers of the Council**

- 4.1 Officers serve on outside bodies in 3 main capacities:

- (a) when appointed by the Council, in lieu of a member representative or where both a member and an officer is desirable;

These appointments under 4.1 (a) above are subject to the same rules as applied to members.

- (b) by virtue of the post occupied or professional background/development requirements;

These are agreed by Heads of Service. For more junior positions, Heads of Service give approval, except where consultation with members or Management Board is desirable.

- (c) by virtue of a special invitation outside the normal terms of an officer's employment.

These appointments require approval by the Management Board and the Council in the case of Senior Officers. Junior staff are dealt with by Heads of Service. The Council's staffing policies stipulate the correct method of making these appointments.

#### **5. Appointments – Non-Councillors**

- 5.1 Sometimes the Council appoints representatives who are neither Councillors nor officers. Such representatives are subject to the provisions of this protocol except in so far as they may not be able to report back in the manner prescribed for elected members and officers. In the latter circumstances, they should contact the relevant Head of Service or the Portfolio Holder concerned for advice.

#### **6. Representatives on Outside Partnerships and Organisations - Policy Aspects**

- 6.1 Where any external organisations are involved in any matter which directly or indirectly affects the policies, responsibilities and powers of the Council, representatives must be aware at all times that the Council's policy is paramount. No undertakings should be given which in any way compromise the legal requirements applying to Council operations or which compromise the policy of the Authority.
- 6.2 Representatives should report back to the Council on any matters affecting the Council and seek information with which to advise an external organisation or partnership. In reporting back, a representative may wish to request the relevant decision maker (e.g. the Cabinet or a Portfolio Holder) to consider any recommendations from the organisation concerned. No undertakings should be given on the outcome.

- 6.3 Some external partnerships have a basis in statutory powers whereby a number of partner bodies work together to achieve joint objectives. Although representatives are already able to participate in the proceedings of such partnerships, they should bear in mind at all times:
- (a) that the Council may have established policies and procedures which may be affected by those decisions; and
  - (b) that implementation of partnership objectives may still require decisions by the Council in terms of staffing, finance and other resourcing matters.
- 6.4 In relation to Trusts, it is likely that if a Council representative accepts a position of trustee, this will create a legal duty to work for objectives of the Trust instead of the Council. In such circumstances serving Councillors acting as representatives must be mindful of conflicts of interest, which may be created, and act in accordance with the Council's code of conduct. (See Section 12 below.)

## **7. Representatives on Outside Organisations and Partnerships - Insurance and Indemnities**

- 7.1 Local Authorities are unable to provide all embracing indemnities or incur costs for all activities on all outside bodies. The Council's insurers can provide an indemnity to individual members and employees in limited circumstances only.
- 7.2 The circumstances in which the Council's insurers (currently Zurich) advise an indemnity can be provided are:
- (a) where an individual acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers;
  - (b) where the individual acts solely in an advisory capacity in connection with the local authority's functions;
  - (c) where the individual occupies an observer role on the board or committee of an outside organisation, representing the local authority's interests (rather than in a decision-making capacity);
  - (d) where the individual acts on behalf of a joint committee established by two or more local authorities.
- 7.3 The authority is not able to provide an indemnity in respect of those activities where the individual acts:
- (a) solely on behalf of an outside body; or
  - (b) outside his or her delegated powers; or
  - (c) outside the authority's statutory powers.
- 7.4 Members and officers of the Council can therefore participate on outside organisations as observers or facilitators in the exchange of views or information as an extension of their position as local authority Councillors, but they may not make any decisions which are binding on the local authority.



7.5 Members are also not indemnified if they serve in an executive capacity on an outside body. A Member's status as a local authority councillor does not prevent the Member serving on an outside body in a personal capacity (i.e. not as a Council representative), provided that this does not create a conflict with his or her duties as a local authority member. Outside bodies must provide cover in either of these situations and local authority Members and employees should ensure that adequate cover for them is in place before agreeing to being appointed.

7.6 The same principles apply to officers as are set out in paragraph 6.4 above.

## **8. Written Agreements**

8.1 The Local Government Association, in conjunction with the National Council for Voluntary Organisations, has produced a Code of Practice, a key recommendation of which is a formal written agreement between external organisations and the Council. This protocol therefore requires such an agreement to be compiled in each case covering the following:

- (a) the relationship between the local authority and the organisation e.g. funder, partner;
- (b) the formal role and responsibilities of the authority, employee or Member, e.g. director, trustee, adviser, observer;
- (c) a general statement regarding what is expected from the local authority Member or employee;
- (d) the responsibilities and liabilities of members where board membership of the outside organisation is involved in terms of legislation, regulation and accounting standards;
- (e) confirmation that, where the outside organisation is a charity, a Member or employee who is acting as a trustee must act in the interests of the charity rather than the authority when serving in that capacity;
- (f) the role of observers, including receipt or withholding of confidential papers, attendance or exclusion from meetings and any speaking or voting rights;
- (g) the arrangements made by the outside organisation to indemnify their members against the risk of personal liability where board or trustee membership is involved; and
- (h) the arrangements made by the authority to cover their Members and employees whilst serving on outside organisations.

8.2 The Council will maintain up-to-date records of the approved involvement of the authority and its members and employees who serve on outside organisations including:

- (a) regular reviews of all placements and categorisations;
- (b) the establishment of a register to be used as the basis for central record;

- (c) specific terms of reference being given to each individual involved with an outside body;
- (d) confirmation of the extent to which the authority's indemnity does apply, emphasising the consequences for the individual if his or her terms of reference are exceeded;
- (e) a clear statement that the authority's indemnity will not be available where the individual is:
  - a director on the board of a limited company; or
  - a trustee of a trust or charity; or
  - a voting member of the management committee of an unincorporated association;

and is not exercising a local authority function;
- (f) the position of an individual member on the Board or Committee of a grant-aided organisation to be amended to observer only; and
- (g) written confirmation to all Members and employees that personal or social memberships (i.e. those not connected with the Council) are not covered by the authority's indemnity.

8.3 A form of agreement document is attached as Appendix 2.

## **9. Representatives on External Organisations/Partnerships - Directorships**

9.1 Memberships of some organisations confer executive responsibilities on Council representatives. Cases in point are trustees of charities, directorships and membership of other statutory authorities.

9.2 There is a general presumption against such positions being held by representatives of this Council. This reflects conflicts of interest which can arise between the aims and objectives of the Council and those of the organisation concerned.

9.3 In cases where representatives hold such positions they must ensure:

- (a) that they have been duly appointed by the Council (in the case of members) or the Management Board (in the case of officers);
- (b) that their duties on behalf of the organisation do not conflict with their role as Councillor or officer; and
- (c) that they maintain a clear distinction of responsibilities by declaring interests and not participating in Council meetings or discussions where there is a direct conflict of interest as defined by the Code of Conduct.

9.4 Representatives should seek timely advice on their position under the Code of Conduct for Members and Officers and any advice issued by the Standards Board for England and the Epping Forest District Standards Committee.

## **10. Reporting Arrangements - Members of the Council**

- 10.1 A prime responsibility for members and non members who serve on outside organisations and partnerships is to keep the Authority informed of the work of those bodies. Such reports can also provide useful information by which the Council can judge whether continued involvement is of benefit to the Council. The Council will seek to receive copies of minutes of organisations but the reports by the representative may still be required.
- 10.2 Such reports should cover:
- (a) reports to the Cabinet on specific matters actually or potentially affecting the Council or on urgent matters; and
  - (b) annual reports (even if these are produced separately by the organisation concerned).
- 10.3 Reports under 10.2(b) should be made in cases where an organisation does not produce its own annual report. A prescribed format (attached Appendix 3) should be used. A relevant timescale will be prescribed for this leading to the Annual Council meeting each year. Copies of these reports will be provided to all political groups on the Council.
- 10.4 Where a representative is not a Councillor, reports under 9.2(a) above should be directed to the Head of Service concerned or the appropriate portfolio holder.

## **11. Reporting Arrangements - Officers of the Council**

- 11.1 Officers serving on outside organisations or partnerships as representatives of the Council shall keep their line manager(s) or Head of Service informed about the work of the body concerned. Heads of Service shall determine whether any information should be referred to the Management Board/Portfolio Holder.
- 11.2 Where officers serve on such bodies either as Council representatives or independently they must include those appointments in their declarations of interest under the Officer Code of Conduct.

## **12. Effect of the Code of Conduct – Elected Members**

- 12.1 The Council's Code of Conduct states that a Councillor has a personal interest in any business of the Authority where it relates to or is likely to affect any external body to which they are appointed or nominated by the Council as its representative. However, that interest need only be disclosed at a meeting if the Councillor speaks on the matter concerned.
- 12.2 Such personal interests are prejudicial interests if they affect the financial position of any organisation on which they are represented or relate to the granting of any consent, approval, licence or registration of such a body. In those two circumstances the Councillor must declare that interest and leave any meeting for the duration of the discussion. Questions of grant aid, planning consent licensing are cases where elected Councillors need to exercise care not to breach the Code.

### **13. Review of Protocol**

- 13.1 The protocol shall be subject to review on a regular basis or according to specific circumstances.

# LIST OF APPENDICES

- Appendix 1 - Statement of Indemnities/Insurance in respect of outside bodies**
- Appendix 2 - Agreement Document**
- Appendix 3 - Annual Report Format**

**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**APPENDIX 1**

**INSURANCE AND INDEMNITY STATEMENT**

**1. Circumstances in which indemnities that can be provided by the Council's Insurers in respect of member or officer involvement in external partnerships and organisations:**

- (a) Where an individual acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers;
- (b) Where the individual acts solely in an advisory capacity in connection with the local authority's functions;
- (c) Where the individual occupies an observer role on the board or committee of an outside organisation, representing the local authority's interests (rather than in a decision-making capacity);
- (d) Where the individual acts on behalf of a joint committee established by two or more local authorities.

**2. Activities for which the Council is unable to provide indemnities**

Activities where the individual member or officer acts:

- (a) solely on behalf of an outside body; or
- (b) outside his or her delegated powers; or
- (c) outside the authority's statutory powers.

**Notes:**

- 1. This statement derives from the indemnity provisions and exclusions from the Council's Public Liability Policy held with Zurich Municipal.
- 2. This statement will be reproduced as part of the agreement with each outside organisation. (See Appendix 2)

**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**APPENDIX 2**

**STANDARD FORM OF AGREEMENT  
BETWEEN EPPING FOREST DISTRICT COUNCIL AND \_\_\_\_\_**

**A. STATEMENT OF PARTICULARS \_\_\_\_\_**

NAME OF ORGANISATION/ PARTNERSHIP (1)	
ADDRESS FOR CORRESPONDENCE (2)	
E-Mail (3)	
Telephone No (4)	
Fax No (5)	
AIMS AND OBJECTIVES OF ORGANISATION (Supply copy of Constitution, governing instrument or trust deed) (6)	
MEETING/AGENDA ARRANGEMENTS (Please describe) (7)	
WHAT STATUS/ROLE WILL THE COUNCIL REPRESENTATIVE FULFIL? (viz observer, voting committee member, trustee, director etc)  (Please state any restrictions including any on confidential information) (8)	

DOES PUBLIC LIABILITY INSURANCE EXIST FOR THE WORK OF THE ORGANISATION? (Give name of insurer and policy number) (9)	
IS THE ORGANISATION A REGISTERED CHARITY? (Give registration number) (10)	

**B. FINANCIAL INFORMATION**

Does this organisation receive grant aid or similar financial support from Epping Forest District Council? (Give details) (11)	
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**C. STATEMENT OF PARTICULARS - EPPING FOREST DISTRICT COUNCIL**

REPRESENTATIVES OF EPPING FOREST DISTRICT COUNCIL	
STATUS (OFFICER/MEMBER) (12)	
TERM OF APPOINTMENT (13)	
CONTACT DETAILS (Address, telephone, fax, e-mail) (14)	



#### **D. TERMS OF AGREEMENT - [Organisation]**

The \_\_\_\_\_ agrees to:

- (a) provide details of all relevant documentation and access to all meetings to the representatives of Epping Forest District Council;
- (b) provide details of meeting venues, times of meetings;
- (c) acknowledge that no Council representative may make decisions or give commitment on behalf of the Council in respect of any matter affecting the organisation;
- (d) acknowledge that no Council representative may commit the Council to any action or policy affecting the organisation;
- (e) acknowledge that a Council representative may be required to declare a personal interest in terms of his or her representation on the organisation and in some circumstances, may have a prejudicial interest which will require withdrawal from any District Council body considering a matter concerning that organisation;
- (f) note that Council representatives will only be indemnified as set out in the enclosed statement;
- (g) assist the Council representative in submitting regular reports to Epping Forest District Council on matters affecting the organisation;
- (h) agrees to provide separate copies of agenda, minutes, reports, statements of accounts, annual reports to Epping Forest District Council in addition to those provided under 1(a) above;
- (i) where appropriate, agrees to the attendance at meetings of nominated deputies when the representative is absent.

#### **E. TERMS OF AGREEMENT - EPPING FOREST DISTRICT COUNCIL**

The Epping Forest District Council agrees as follows:

- (a) to appoint representatives and deputy representatives in accordance with the organisation's requirements;
- (b) to keep the organisation informed of relevant Council decisions via its representative(s);
- (c) to indemnify its representatives but only in accordance with the statement attached;
- (d) that it expects Council representatives to attend meetings and participate in any training deemed necessary by the organisation;
- (e) to advise representatives on any matters relating to interests as they arise.

#### **F. SIGNATURES**

(a) For \_\_\_\_\_ [Organisation]

On behalf of the above-named organisation, I agree to the conditions attaching to the appointment of representative(s) by Epping Forest District Council

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

(b) For Epping Forest District Council

On behalf of Epping Forest District Council, I confirm the conditions and undertakings attaching to Council representation on the above-named organisation.

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_