

# **Report to the Audit & Governance Committee**



**Report reference:** AGC-011-2011/12  
**Date of meeting:** 22 September 2011

**Epping Forest  
District Council**

**Report of:** Constitution & Member Services Standing Scrutiny Panel

**Subject:** Audit & Governance Committee – Membership of Deputy Portfolio Holders

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

**Democratic Services Officer:** Gary Woodhall (01992 564470)

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## **Recommendation:**

(1) To consider draft proposals from the Constitution and Member Services Standing Scrutiny Panel (SSP) for changes to the constitution of this Committee in regard to whether Deputy Portfolio Holders (DPHs) should be members.

## **Executive Summary:**

The Council's Corporate Governance Group has requested a review of the constitution of the Audit and Governance Committee to look at the appropriateness of Deputy Portfolio Holders being members. This review is being conducted by the Constitution and Member Services SSP. This report seeks views from the Committee on the Panel's provisional proposals.

## **Reasons for Proposed Decision:**

To ensure that the Scrutiny Panel can take into account the formal views of the Committee before reporting to the Council on constitutional changes sought.

## **Other Options for Action:**

The only option rejected by the SSP was for the current constitutional position to continue.

## **Report:**

### Background

1. The Audit and Governance Committee (AGC) comprises 5 members as follows:
  - 3 Councillors appointed annually at the Annual Council meeting; and
  - 2 co-opted members appointed following public advertisement and interview.
2. Currently, the three Councillors may not include:
  - (a) any member of the Cabinet;
  - (b) any member of a Cabinet Committee; or

(c) any panel appointed by the Overview and Scrutiny Committee to be responsible for reviewing the Council's finances or financial procedures.

3. The Chairman of the AGC is appointed from among the three Councillors whilst the Vice Chairman is appointed from one of the two co-opted members.

4. Since the establishment of the Committee, Deputy Cabinet positions have been created. The terms of reference of the AGC are currently silent on whether these deputies may be members.

#### Deputy Portfolio Holders (DPHs)

5. In summary, DPHs are appointed to support the appointed Cabinet members in their portfolios. They are also seen as positions which assist succession planning by showing deputies an insight at first hand of Cabinet work.

6. DPHs may not make decisions on behalf of the Cabinet member concerned. They cannot vote at Cabinet meetings or at Cabinet Committees and cannot sign Portfolio Holder decisions. In the event that any portfolio matter arises in the absence of the Cabinet member, it is for the Leader to allocate that matter to another Portfolio Holder.

7. This is not to say that DPHs are not involved in Cabinet business. They might be asked, for instance, to prepare reports or Portfolio decisions for approval by the lead Cabinet member. In that sense, they could be involved in the work associated with the portfolio.

8. The term "Deputy" may be a misnomer in that the DPHs do not deputise in the accepted sense. The Panel have considered a different title, such as "Portfolio Holder Assistant" which might better reflect the role.

#### The Audit Role

9. In Overview and Scrutiny, the Code of Conduct imposes restrictions on members being directly involved in reviewing decisions with which they were previously involved. There are parallels here with the role of AGC.

10. The essence of the AGC role is not to be involved in Council decision making by the Executive but to review and seek assurance that proper processes are in place and fit for purpose in respect of the management of risk. A wide range of such matters is set out in the Committee's terms of reference.

11. The Council's Corporate Governance Group and the independent members of AGC have queried the appointment of the Deputy Portfolio Holder for Housing to serve on AGC this year. The Constitution could be read as not giving authority for such an appointment because it is silent on the matter. By the same token, it could be argued that the Constitution does not prevent this.

12. The Corporate Governance Group has reviewed the situation and asked for a report to be submitted to the Constitution and Member Services SSP to consider clarifying the terms of reference of this Committee in relation to this matter.

13. The current terms of reference for the Audit & Governance Committee can be found on pages B30 to B33 within the Constitution.

## Views of the Council's External Auditors

14. The SSP has received the views of the Council's external auditors. Mr R Bint has commented as follows:

*"By way of background, there is no current legislation relating to Audit Committees. However as you are aware, the CLG is consulting on the future of local public audit and they are proposing that in due course Audit Committees of local authorities should be given the key role in appointment of external auditors. This latter role will be predicated on the independence of the Audit Committee including truly independent outside members. They propose introducing legislation requiring local authorities to have Audit Committees, specifying their role and almost certainly membership criteria. At that point it is highly possible that DPHs and similar would be excluded from membership of Audit Committees. However, that is two or three years away.*

*In the meantime while there is no legislation CIPFA public "Audit Committees: Practical Guidance for Local Authorities" which is the extant best practice guidance. The CIPFA Guide states in respect of independence:*

*"To be effective the Audit Committee needs to be independent from executive and scrutiny. The link with the scrutiny function can be beneficial but the ultimate power of the Audit Committee could be compromised by too much cross-membership. The Audit Committee needs to retain the ability to challenge the executive on issues and to report to it on major issues and contraventions. Therefore cross-membership should not be the norm, and if it is seen as necessary should be restricted to one member from each.*

*The Audit Committee chair should not be, expressly, a member of the executive. A non-executive chair is important in order to promote the objectivity of the Audit Committee and to enhance its standing in the eyes of the public.*

*Whilst a separate voice is vital, a clear right of access to other committees of the Council and strategic functions is also important if such independence is to lead to any beneficial action."*

*It should be noted that whilst it stresses the general importance of independence a line is drawn in relation to the membership only of the chair not being a member of the executive. As I state above it is likely in my view future legislation may go further than this.*

*I am not aware of any other local authority we audit where members involved at member level in the executive process are members of the Council's Audit Committee.*

*Having regard to the above my view on the four options in respect of the Scrutiny Panel paper are as follows:*

*It is highly preferable that DPHs should not be members of the AGC. In practice the only obvious good case for this is if it meant a member or members with particularly relevant qualities and experience could become members and if they were debarred there would be no comparable alternative. Since contribution to the Committee's affairs is also important this may sway the decision.*

*If the Council did decide to appoint them as AGC members I think, whilst*

*prospectively the AGC may review any area of the Council's business, finance and ICT roles are closer to the core of AGC functions and these should certainly be precluded.*

*There should also be rules about declarations of interest but further than that if there were a report specifically on a DPHs portfolio area he or she should be proscribed from taking part in the debate. I accept there are some composite reports, e.g. the internal audit annual report which might impinge on many areas and in that case the DPH should be permitted to contribute (e.g. housing may be mentioned in a few cases in an internal audit report covering the whole Council).*

*So, while there is no prohibition, the CIPFA Guidance draws the line only at a need for non-executive chairs and therefore the Council can appoint DPHs to the AGC. I think it would be highly preferable they did not. In the event that they were to decide to do so there needs to be clear rules to deal with the most obvious areas of potential conflict.*

*Incidentally, I agree that the title Deputy Portfolio Holder is misleading and Portfolio Holder Assistant would be preferable and at least avoid some unnecessary perception issues."*

#### The Review and Proposals of the SSP

15. In reaching a provisional view, the SSP took account of a number of factors:
- (a) the fact that DPHs were not fully fledged members of the Executive and could not exercise decision making powers which are reserved to the Leader and Portfolio Holders;
  - (b) it was not possible to be prescriptive about the level of involvement by Deputy Portfolio Holders in the conduct of executive business, some might be closely involved in issues whilst others might not;
  - (c) that the Code of Conduct sets rules about conflicts of interest where they arise, as in the case with Overview and Scrutiny;
  - (d) that debarring DPHs from membership the Audit and Governance Committee might result in members with particular skills being excluded;
  - (e) that there was a case for saying that a DPH attached to the Finance and Economic Development Portfolio could be excluded as audit work was a significant part of the Committee's responsibilities; and
  - (f) an acceptance that public perception of the separation of Audit and Governance from the Executive is important and can be maintained if members are careful about declaring interests when conflicts of interest arise without the need for rigid membership rules.
16. The Committee noted also that there appeared to be no clear rules at present, although the Government was consulting on new audit arrangements which might affect the Committee in the future.
17. After debate on the merits of a policy of precluding DPHs from membership, the SSP has reached a majority view about how the situation should be clarified. However, before recommending constitutional changes, it wishes to hear the views of the Committee. The SSP will therefore review the comments made following this meeting before making a final recommendation to the Council.

18. These provisional proposals are that the terms of reference of the Committee should be amended as follows:

(a) that DPHs should not be debarred from membership except if they are involved in the Finance Portfolio;

(b) that conflicts of interest which arise for DPHs should be addressed by reference to the Code of Conduct and the declaration of personal or prejudicial interests;

(c) that the title "Deputy Portfolio Holder" should be replaced with "Portfolio Holder Assistant" so as to more accurately reflect the role; and

(d) that these arrangements should be subject to annual review or at any time if the roles of Portfolio Holder Assistants or the Audit and Governance Committee change.

**Resource Implications:**

None.

**Legal and Governance Implications:**

The Audit & Governance Committee's constitution is not based on statutory powers. Its current terms of reference are based on best practice guidance and local preference for a constitutional body to review Council processes from the point of view of good governance, financial probity and management of risk. The Government is currently considering the results of consultation on statutory Audit Committees for the future and may legislate to put such Committees on a statutory basis in the future.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

External Auditors, Audit and Governance Committee, Corporate Governance Group.

**Background Papers:**

None.

**Impact Assessments:**

Risk Management

The independent scrutiny of executive processes by the Audit and Governance Committee could be compromised if a DPH member of the latter has already been involved in the executive matter under review. The risk of reputational damage to the standing of the Committee is greater if the position remains unclear.

Equality and Diversity

*Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?*

No

*Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?* No

*What equality implications were identified through the Equality Impact Assessment process?*  
N/A.

*How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?*  
N/A.