

## 2. CONSTITUTION AND MEMBER SERVICES STANDING PANEL

*The Constitution and Member Services Standing Panel consisted of the following members:*

Councillor M Sartin (Chairman)

Councillor A Watts (Vice Chairman)

Councillors K Angold-Stephens, K Chana, R Cohen, J Markham, M McEwen, R Morgan, J Philip, B Rolfe, D Stallan, J H Whitehouse and G Waller.

The Lead Officer was Ian Willett, Assistant to the Chief Executive.

### *Terms of Reference*

To undertake reviews of constitutional, civic, electoral and governance matters and services for members on behalf of the Overview and Scrutiny Committee and to report to the Overview and Scrutiny Committee, the Council and the Cabinet with recommendations on matters allocated to the Panel as appropriate.

*The Panel scrutinised a number of issues over the last year, which included:*

**(i) Local Elections (May 2012)** – In July 2012 the Panel considered a report on the recent local elections.

There were 22 District Council Wards and 9 Parish/Town Council Wards contested on 3 May. In each of the District wards contested except for Epping Lindsey and Thornwood Common, one Councillor was due to be elected. In Epping Lindsey and Thornwood Common, two Councillors were due to be elected, one to fill the scheduled vacancy, and another to fill a casual vacancy resulting from a resignation. An election was not scheduled for the Hastingwood, Matching and Sheering Village Ward, but was necessary following a boundary change. Turn out in the district wards varied between 39.06% in the Theydon Bois ward and 18.64% in the Waltham Abbey South West Ward.

In the Parish and Town Council Wards, the number of candidates per ward varied from 14 in Buckhurst Hill East to 4 in Loughton St. John's. The turnout ranged from 38.43% in Loughton Forest to 24.14% in Loughton Fairmead.

A project plan and a risk register for the elections was prepared in December 2011 and updated regularly. Returns were submitted to the Electoral Commission at intervals, regarding compliance with their guidance and actions in the Project Plan.

Members thanked staff for their hard work during the election period.

**(ii) Member Complaints Panel – Limits of Jurisdiction** - The Member Complaints Panel (CP) was responsible for considering complaints at Step 4 in the Council's complaints procedure. Some complaints fell outside the Panel's jurisdiction, and could not be considered. These exclusions were:

(a) a complaint about a situation which arose more than 12 months before it was brought to the attention of the Council; (b) where an alternative and formal right of appeal existed, and for which the complainant failed to exercise his/her right to appeal within the specified timescale, or had not yet appealed, or had already made such an appeal; (c) matters dealt best by the courts; (d) matters which would affect the majority of the people in the District; (e) complaints for which a resolution could only be achieved through a change in law, or a change on other policies; (f) complaints about policies currently subject to a review, or about matters for which it had already been agreed that a policy needed reviewing or formulating; (g) complaints about the frequency of delivery, or the level of a service which was subject to contract conditions; (h) where the customer elected to pursue legal action as a means of determining their complaint; (i) if the complainant, at Steps 1, 2 or 3, had already been offered the maximum remedy that the Complaints Panel was empowered to offer; (j) when there was no evidence that the complainant had suffered any harm or injustice even if there had been administrative fault by the Council; (k) if the complainant had already accepted the proposed remedy and had formally confirmed that they had done so in full and final settlement of all of their complaints; (l) if, by going to Step 4, the complainant would then be left with insufficient time to subsequently submit a complaint to the Local Government Ombudsman within the 12 month time limit; and (m) if the complaint had already been determined by the Local Government Ombudsman.

In the light of some complaints that were considered during 2011-12. It was recommended that the following further exclusions be applied:

(i) Where a complainant's claim for financial compensation or reimbursement had already been considered but rejected by an independent body which had the legal authority to determine such claims.

(ii) Where the complainant disagreed with a decision made by the Council but had neither suggested nor provided any evidence that there was any administrative fault in the way that decision was made.

(iii) Where the only remedy requested by the complainant was financial by nature and the amount requested was less than £150.00.

**(iii) Substitutions at Meetings - review after one year-** Following a request from the Overview and Scrutiny Committee on 11 April 2011, this Panel in June 2011 discussed the process of making substitutions for the Overview and Scrutiny Committees and the District Development Control Committee. The Panel recommended that the procedure was amended to allow for substitutions to be made up until 30 minutes before the commencement of the meeting concerned. However, at the Overview and Scrutiny Committee on 12 July 2011, members amended the report for substitutions to be made until 60 minutes before the meeting which was subsequently adopted by the Council on 26 July 2011. This Panel recommended that a review of this process take place in a year's time.

Officers advised that the generic email "Democratic Services," for Group representatives to notify officers at Democratic Services of substitutions was not always being used. Otherwise, from officer's perspective, the process appeared to have worked efficiently.

**(iv) Staff Appeals Panel** – In September the Panel received a report from the Head of Human Resources, regarding the Staff Appeals Panel's Terms of Reference. Also in attendance was the UNISON Branch Secretary.

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

The opinion of the UNISON Regional Organiser was that job evaluation appeals should not be submitted to a Member Staff Appeals Panel.

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

- (a) the original job evaluation scheme precluded any appeal to the Staff Appeals Panel;
- (b) job evaluation reviews which were not part of the original process could be referred to the Staff Appeals Panel; and
- (c) notwithstanding (b) above, the Staff Appeals Panel was not an appropriate forum to hear such appeals since Members were not trained in or hold expertise in the Job Evaluation process, and a second avenue of appeal against job evaluation decisions was not required.

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

In considering the question of grievance appeals the Panel felt that there would be better dealt with at Director level.

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

Following the general election, the Government withdrew the statutory guidance and gave authorities more scope to define their own scheme. The Government also funded the Council a sum of just over £6,000 for the expense of introducing such an electronic facility. The Council's Committee Management System provider supplied an additional facility for no cost and the system was implemented by the statutory deadline.

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

The Panel recommended that the present petition scheme be kept subject to the following amendments:

- (a) exclusion from the scheme of petitions which are the subject to an open consultation exercise;
- (b) revised website content; and
- (c) new requirement for Portfolio Holder reports at Council meetings to include references to petitions received and action taken;

They also recommended that the public questions procedure at Council and Cabinet meetings be amended to include the presentation of petitions by the public at those meetings and that the Task and Finish Panel on the Overview and Scrutiny Review be asked to consider what is to be the role of Overview and Scrutiny in relation to monitoring petitions and any subsequent action taken by the Council.

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

The workflow handled by the system was:

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

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

Counsel's opinion had confirmed that the Council's current procedures were lawful and compliant, wholly electronic notification and service would not be lawful, a Council member may not lawfully opt out of hard copy deliveries.

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

**(vii) Questions – Periods of Notice** - 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.

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.

On consideration the Panel recommended that questions to Cabinet and Council be made at least 4 working days before the date of the meeting in question.

**(viii) Audit and Governance Committee (AGC) – Portfolio Holder Assistants -**

The Council had adopted a recommendation whereby Portfolio Holder Assistants, provided they were not involved in any Portfolio dealing with the Council's finances, could be eligible for appointment to the AGC. It was directed that this arrangement should be reviewed after one year.

The Panel had now reviewed the position as requested. They noted that one Portfolio Holder Assistant had served on the AGC until the last Annual Council meeting in 2012, but subsequently the Leader of the Council decided not to create such positions for the current financial year. The AGC members had been consulted and had stated that there had not been any difficulties and indeed the benefits of having a Portfolio Holder Assistant had been emphasised by showing the importance of its Councillor members having knowledge, expertise or interest in the Audit function.

**(ix) Access to Information Rules -** On 10 September 2012, the Government brought into force new regulations concerning access to information/meetings for Local Authority Executives. The Panel reviewed the impact of these regulations on the Access to Information Rules in the Council's Constitution.

They noted that the 2012 Regulations were a long and complex document which made changes to the access to information arrangements for local authority executives whilst consolidating existing provisions in other regulations made over the years.

The Panel noted that most of the provisions were already followed by this Council and noted that officers already had been briefed on the importance now attached to the 28 day period of notice in respect of decisions.

**(x) Police and Crime Commissioner Election -** Legislation in 2011 had 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 election for commissioners was held on 15 November 2012. The Commissioner must issue a police and crime plan, set the budget and produce an annual report.

The election used the supplementary vote system. Essex had six candidates. It was found that, no candidate had achieved 50%+ of the votes cast and it was necessary to undertake the second stage of the count. In this district, of an electorate comprising 98,862, there were 1,221 ballot papers counted which included postal votes (10.34% turnout). The majority of polling stations in the district issued less than 100 ballot papers. For the whole of Essex it was 13.06%.

All of the Ballot 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.

Broadly there were no key issues arising for the Local Returning Officer at the elections.

**(xi) Appointments at the Annual Council Meeting -** Last year, the District Council operated the Appointments Panel for the second time. In 2012 the Panel met on 11 and 15 May and had managed to report fully on all matters, enabling a supplementary agenda to be circulated prior to Council on 22 May. It was

recommended that the Terms of Reference for the Panel be included into Part 3 of the Constitution.

The protocol on the Allocation of Chairmanships and Vice Chairmanships and Outside Organisations had been suspended for two years allowing the new system to operate.

The Panel were of the view that the Appointments Panel had operated successfully for two years and should be permanently established and that a further annual review and treating the Panel as a temporary measure was no longer necessary.

**(xii) Review of Outside Organisations** - At the Panel meeting on 20 February 2012, members asked for a scoping report on the Council's links with outside organisations. Members asked for consultation arrangements to form part of the review and it be completed during the current Council year. The protocol was not statutory in nature. The protocol sought to put the relationship between the Council and external organisations on a business-like basis and ensure the members were aware of their roles and possible risks.

The Panel had expressed concern about the submission of reports on external bodies. Over recent years some reports had either been requested by the Council or volunteered by representatives but the numbers were not large.

The question of trustee status continued to cause concern; accepting trustee status created conflicts of interest with members expected to act in the interest of the Trust. It had also proved difficult to obtain annual reports from these organisations, and likewise the annual agreement had proved a cumbersome procedure and had been viewed with concern by some organisations.

The Panel requested that a Working Group should be set up of Panel members to discuss the current list of Outside Bodies of which the Council had representatives and submit their recommendations back to the Panel.

**(xiii)** ...

### ***Case Study: Electronic Delivery of Agenda***

The District Council had introduced its Committee Management (COMS) in April 2005, a database containing information presented via the website and internally, the workflow handled was:

- (a) 268 clerked meetings' agendas and minutes;
- (b) 50 Member's Bulletins; and
- (c) 21 Policy Bulletins

This workflow amounted to 20,000 pages of agenda in 2011-12 a reduction from 294 meetings and 24,000 published pages the previous year. The Panel were asked by the Overview and Scrutiny Committee to investigate the number of agendas sent to all members, the use of technology for agendas and meeting arrangements and the legal advice on the provisions of the Local Government Act 1972 concerning paper

copies of agenda and whether electronic dispatch arrangements compromised the Council's responsibilities.

### **Printing Costs**

All Council agenda printing was carried out by the in-house Print Unit. By April 2005 expenditure on agenda printing had reached £79,000 per annum. In 2011/12 printing expenditure was £33,700 on a budget of £49,900, some £16,000 under budget. The reduction was due to new printing machines, reduction in printed copy circulation, shorter agendas and moving to electronic distribution methods.

All Council meeting rooms were covered by a member WIFI network enabling access to the Internet and Council papers. Members had received training on the use of the Council's Virtual Private Network (VPN) system, giving them access to all meeting papers.

### **Legislative Position**

The Local Government Act 1972, Schedule 12 Paragraph 4 provided that a summons to attend the meeting, specifying the business proposed for transaction shall be left at or sent by post to the usual place of residence of every member of the Council. This must be carried out five days before the relevant meeting, as a physical distribution.

Members requested a legal opinion on the Council's current arrangements complying with the requirements of the Local Government Act 1972. The opinion confirmed that the Council's current procedures were lawful and compliant, wholly electronic notification and service would not be lawful; a Councillor could not lawfully opt out of hard copy deliveries.