

CONSTITUTION WORKING GROUP held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 4.00pm on 9 FEBRUARY 2012

Present: Councillors D Morson (Chairman)
Councillors J Davey, A Ketteridge, J Menell, and D Watson

Also present: Councillor J Ketteridge (Leader)

Officers present: J Mitchell (Chief Executive), M Perry (Assistant Chief Executive Legal) and P Snow (Democratic and Electoral Services Manager).

CWG7 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors I Evans, J Rich and L Wells.

CWG8 MINUTES

The Minutes of the meeting held on 7 June 2011 were approved and signed by the Chairman as a correct record.

CWG9 STANDARDS AFTER THE LOCALISM ACT 2011

The Chairman introduced this item for discussion and summarised the recommendation in the report. He said that he was pleased to note the move towards more openness in relation to complaints made about the conduct of members. He then invited the Assistant Chief Executive Legal to present his report.

Mr Perry outlined the principle changes made by the Localism Act. To the surprise of many people there were significant changes between the Bill and the Act. The changes introduced had not been the subject of consultation and seemed in some cases to have unintended consequences. The new arrangements were expected to apply from 1 July 2012.

The Act imposed a duty on local authorities (including parishes) to promote and maintain high standards of conduct and to adopt a Code. This must be consistent with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Standards Committee had now approved the general principles of a Code of Conduct. The Committee would meet again in March to agree a final version of the Code for recommendation to the Council.

The Working Group discussed aspects of the proposed Code and the new provision in legislation for the registration and declaration of pecuniary and non-pecuniary interests. The Assistant Chief Executive also explained the application of the provisions relating to the granting of dispensations.

There was no statutory power to appoint a Standards Committee. However, the Act provided that standards functions could not be performed by the executive and must therefore be functions of Full Council. The Council could appoint a committee to carry out these functions on its behalf but this would need to be politically balanced. In practice, the rules of political balance need not apply in the absence of any dissent upon the appointment of a Standards Committee.

The Committee had therefore invited the Working Group to propose amendments to the Constitution acknowledging the requirement for political balance but drawing attention to the exemption that this could be dispensed with if there were no objections. The intention was that each of the political groups would be invited to submit nominations to fill the six places available, on the basis that each group should have at least one nominee appointed.

After discussion, it was agreed that the necessary changes to the Constitution should be recommended for approval in due course.

On the question of composition of the Standards Committee, it was noted that independent persons may not have a vote but that at least one independent person must be appointed in an advisory capacity. The views of an independent person must be taken into account in deciding whether an allegation of a breach of the Code should be pursued. It was the view of the Standards Committee that more than one independent person should be appointed (three was considered to be the ideal number) and that those independent persons appointed should become non-voting members of the Committee.

Councillor Menell asked whether there was a person specification for the appointment of independent persons. The Assistant Chief Executive Legal confirmed that the relevant criteria for eligibility were included in the legislation itself.

The Working Group was invited to recommend to Council that a committee or task group should be established to manage the appointment of independent persons.

In this connection, it was noted that the effect of the Act was to disqualify existing independent Standards Committee members from continuing to serve under the new arrangements. This effect of the legislation appeared to be unintended but was quite clear. The consequence was that the Council would be asked to put in place arrangements to recruit three independent persons and the Working Group was advised that this process should begin as quickly as possible.

The Working Group decided that a task group would be the most appropriate mechanism to deal with the appointment of independent persons and agreed to recommend accordingly.

The Assistant Chief Executive Legal then explained the proposed revised procedure for dealing with complaints as agreed by the Standards Committee. The Working Group was invited to express a view as to whether the

functions of the officer investigating complaints should be limited to collecting evidence or whether the investigator should continue to reach findings of fact and give an opinion as to whether there had been a breach of the Code.

He said that the view of all other Essex councils was that the investigating officer should offer advice to the Standards Committee as had always been the case. He advised members that this was the best method of continuing to investigate complaints.

The Leader agreed that it would be difficult for the Standards Committee to reach a conclusion without the advice of a professional officer.

Councillor Watson said that he felt uncomfortable with a process whereby the same officer would be both investigating and advising on whether a breach of the Code had taken place.

The Assistant Chief Executive Legal explained the procedure adopted when investigating complaints. The Monitoring Officer would consult with an independent person and decide whether the complaint was capable of amounting to a breach of the Code on the assumption that the facts as alleged were true. Only where a case was accepted for investigation would findings of facts be made.

After investigation a report would be submitted to a sub-committee setting out the agreed facts and any facts disputed and inviting a decision to be made as to whether a breach had occurred. It was at this stage that the Monitoring Officer would, if agreed by the Council, offer an opinion on whether there had been a breach. The sub-committee would have access to advice from a separate legal officer.

Upon consideration of the proposed procedures, the Working Group agreed that the investigating officer should present an opinion as to whether a breach of the Code had taken place following an investigation to establish the facts of the case.

Members then considered the proposed complaints procedure as approved by the Standards Committee. The Chairman was pleased to note that paragraph 3 of the procedure provided for the subject member to be informed both that a complaint had been made and the substance of the complaint unless to do so would prejudice a fair investigation.

The Assistant Chief Executive said that the main change was to remove that part of the existing procedure requiring complaints to be referred to an assessment sub-committee to establish whether a full investigation was warranted. Instead, the Monitoring Officer would consult with an independent person before deciding whether the matter should be investigated.

Councillor A Ketteridge asked whether it was now accepted that complaints could be submitted by email. The Assistant Chief Executive confirmed that this was accepted practice and was part of the existing procedure. He also confirmed that a decision by the Monitoring Officer not to investigate a complaint could be challenged by Judicial Review.

The recommendation to establish a task group to recruit independent persons would be referred to the next meeting of the Council on 23 February. However, the remaining recommendations would be deferred until the April Council meeting to enable the Standards Committee to complete its consideration of the revised standards regime at the scheduled meeting on 12 March.

RECOMMENDED to Full Council that:

- i. a Standards Appointment Task Group be appointed to oversee the recruitment of independent persons to be non-voting members of the Standards Committee and to make recommendations as to their appointment;
- ii. the terms of reference be as set out in the appendix to these Minutes;
- iii. three independent persons be appointed; and
- iv. the life of the task group be limited to the date of the recommendation to Full Council or the period of six months, whichever is the earlier

The following recommendations would be submitted to the Council on 17 April.

RECOMMENDED to Full Council on 17 April 2012 that:

- i. the amendments to the Constitution in respect of the appointment and operation of a Standards Committee from 1 July 2012 be approved, as set out in Appendix A of the report to this meeting;
- ii. the role of the officer investigating complaints against members of the Council should include giving an opinion to the Standards Committee, or any relevant sub-committee of it, as to whether a breach of the Code of Conduct has taken place; and
- iii. the complaints procedure set out at Appendix C of the report to this meeting, as already approved by the Standards Committee, be endorsed

CWG10 **CALL-IN PROCEDURE**

The Chairman said that he had requested a review of the call-in procedure in the light of recent events. He drew attention to the change in the rules relating to call-in since the change to executive arrangements, now requiring three members of the Scrutiny Committee to support a call-in decision before it could take effect, whereas previously any three members could call a decision in for scrutiny. He said that some members considered this rule to be unduly restrictive and wished the rules to be changed to allow for call-in to operate less restrictively.

Although he did not wish to bring political considerations into the argument, he did feel that opposition groups could be disadvantaged by the strict application of the rules, because of the limited number of opposition members serving on the Scrutiny Committee. He asked the Working Group to review the application of the call-in rules.

The general feeling of other members was that the operation of scrutiny and call-in arrangements should be framed in a way that recognised the enhanced role of the Scrutiny Committee and that the application of the call-in rules should be limited to occasions when something had clearly gone seriously wrong with the decision making process. In other words, the call-in rules should not be used lightly but in a way designed to bolster the framework within which decisions were taken.

It was recognised that the rules of political balance applied to the Scrutiny Committee and that members of that Committee were able to be lobbied by other councillors who wished them to consider calling-in a particular decision.

The Chairman agreed that the consensus view of the Working Group did not favour any change and that the existing rules should be allowed more time to settle down before a proper assessment could be made of whether they were operating successfully.

CWG11 THE ROLE OF WORKING GROUPS

The Chairman asked for clarification about whether working groups were required to report to either Council or the Cabinet. A number of concerns had been raised to him in particular about the role of the Local Development Framework Working Group which did not appear to have submitted any recommendations to either Council or Cabinet since July 2011.

The Leader responded that the Minutes of the LDFWG were circulated to all members. The work of the group was continuing and there were unlikely to be any conclusions or recommendations until at least June this year when the next consultation phase was due to take place.

Reference had been made to private meetings. To some extent all working group meetings were private and this allowed councillors to engage in a fundamental exploration of ideas at the pre-decision stage without constraint. It was also the case that all members were entitled to attend working group meetings.

The Leader's views were endorsed by other members and there was overall agreement that working groups were operating in a generally satisfactory manner.

However, the Leader said that he had taken on board the views expressed by the Chairman and would keep the operation of working groups under review.

CWG12 TIMETABLE OF MEETINGS

The Democratic and Electoral Services Manager circulated a draft timetable for consideration. He said the timetable had been carefully constructed to enable pre-scrutiny of executive decisions to be undertaken and to reserve dates for call-in if required. Now that the new system had settled down, the

Cabinet would be meeting on a six weekly timetable rather than monthly as at present. He said that the timetable would be referred to the Council on 23 February for information and asked for any comments to be sent to him as quickly as possible.

The meeting ended at 5.05pm