



Uttlesford District Council

Chief Executive: Dawn French

Governance Review Working Group

Date: Monday, 4th November, 2019

Time: 6.30 pm

Venue: Committee Room - Council Offices, London Road, Saffron Walden,
Essex CB11 4ER

Chairman: Councillor A Coote

Members: Councillors C Criscione, J Evans, R Freeman, N Gregory, V Isham,
A Khan, P Lees and G Sell

AGENDA

1 Apologies for absence and declarations of interest

To receive any apologies and declarations of interest.

2 Minutes of the previous meeting

5 - 8

To consider the minutes of the previous meeting.

3 Talk and Questions session - Lorraine Browne, Legal and Democratic Services Manager & Monitoring Officer - Chelmsford City Council

To receive a presentation from Lorraine Browne, Legal and Democratic Services Manager & Monitoring Officer - Chelmsford City Council. Lorraine has experience working under both Committee and Cabinet systems, and has undergone the process of changing systems at Basildon District Council. Members will also have the opportunity to ask questions regarding her experience. The session is expected to last an hour.

4 Update on interim research

9 - 10

To receive an update on:

- The research carried out by Members since the previous meeting.
- A synopsis of the conversation held with South Cambs regarding the authority's shift in governance systems.

5 Timetable and evidence gathering

11 - 12

To consider the indicative timetable and discuss potential visits and evidence gathering.

For information about this meeting please contact Democratic Services

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Agenda Item 2

GOVERNANCE REVIEW WORKING GROUP held at COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, ESSEX CB11 4ER, on MONDAY, 23 SEPTEMBER 2019 at 6.30 pm

Present: Councillor A Coote
Councillors C Criscione, J Evans, R Freeman, N Gregory,
A Khan and P Lees

Officers in attendance: L Bell (Solicitor), B Ferguson (Principal Democratic Services Officer) and S Pugh (Assistant Director - Governance and Legal)

1 ELECTION OF VICE-CHAIR

Councillor Lees was elected as Vice-Chair of the Governance Review Working Group.

2 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillor Sell.

3 LOCAL GOVERNMENT LEGAL FRAMEWORK - BACKGROUND AND OVERVIEW

Members received an overview of the legal framework in which the Council made decisions. The Solicitor's briefing highlighted the following:

- The Local Government Act 1972 established the legal framework in which the Council currently operates.
- The Council is a "Creature of Statute" and therefore must operate within its legal remit.
- The Council is a "Body Corporate" in which individual councillors are recognised as a collection of people acting together as a separate legal entity to themselves.
- 'Governance,' in this context, is to be defined as "how the Body Corporate makes decisions" – it is the machinery by which decisions are made by the Council. Regardless of the machinery used, the Council is still bound by its legal remit.
- The governance systems available to local authorities are stated in statute. These provisions are the Committee System, Executive System and Prescribed Arrangements. Modifications can be made to both the Executive and Committee systems. Prescribed arrangements have yet to be implemented by any local authority.
- Professional opinion was that there were pros and cons to both systems, and either system could be modified to resemble the other.
- The ultra vires doctrine – "If a local authority that is created by statute carries out an activity which is not authorised by statute (whether directly or by implication), its actions are said to be [ultra vires](#)"

- There are two strands to the doctrine of ultra vires:
- Whether a local authority has **capacity** to do what it wants to do.
- The manner in which a local authority exercises its **power or duty**.
- Determining "capacity" is a matter of interpreting the wording and scope of the relevant statutory provision and understanding the distinction between "powers" and "duties".
- A power is usually expressed in permissive language. A duty involves mandatory language and relates to the primary functions of a local authority.
- **Challenge** - The actions of local authorities are susceptible to control by the courts. A court may intervene where a local authority has made an error of law in taking a decision.
 - The three main heads of challenge to a decision were set out by Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374:
 - Illegality (ultra vires).
 - Irrationality (Wednesbury unreasonableness).
 - Procedural impropriety (breach of natural justice).

4 **NOTE OF THE WORKSHOP HELD ON 4 SEPTEMBER 2019**

The note of the workshop held on 4 September was received by the working group.

5 **TIMETABLE OF MEETINGS**

Members discussed the future programme of meetings, with particular attention paid to the indicative timetable that had been included with the Council report considered on 30 July 2019. The indicative timetable set out the various milestones and deadlines that needed to be met prior to Annual Council in May 2020, which would be the earliest opportunity to adopt an alternative governance system.

The Solicitor advised members that the timeframe in which they were working was extremely tight, and that if a thorough Governance Review was to take place, including consultation with the public, May 2021 would be a more realistic deadline. She said it was possible that modifications to the existing Cabinet system could be implemented by May 2020.

Councillor Gregory said the direction of travel needed to be clear by May 2020. He said the working group should aspire to implementation by May 2020.

Councillor Khan said incremental change could be achieved by 2020, but if the working group deemed implementation of a Committee System the best way forward, the full change could be implemented in May 2021. Evaluation and review would occur up to May 2020, with May 2021 acting as a fall back date for implementation.

The Chair said a trial period could be adopted in which the Council used both an Executive and Committee system in tandem. This would allow the group to monitor the workings of both systems to show whether value was added to the decision making process. Following evaluation, the best elements of each system could be adopted to create the most suitable governance arrangements.

Members agreed to press ahead with the review, with an aspiration to have implemented changes to the current system by May 2020. At the very least, the evaluation of possible governance arrangements open to the Council was to be completed by May 2020, and a clear way forward mapped out. The Principal Democratic Services Officer was asked to schedule a timetable of meetings for the remainder of the municipal year.

6

GOVERNANCE REVIEW WORKING GROUP: SCOPING REPORT

Members discussed the scope of the review and the principles which needed to be enshrined in the Council's governance arrangements. These included:

- The decision making process had to be **democratic and inclusive**. This would allow the Council to draw on the wide range of expertise that councillors had, and utilise their talents most effectively. Furthermore, each councillor had a mandate and to exclude them from the process would be disrespectful to the electorate.
- **Culture** – the culture surrounding the decision making process was important. It did not matter which system was implemented if individuals behaved in the wrong way. Acting in good faith was central to this. Members wanted to institutionalise cross party collegiate working practices.
- **Checks and balances** were vital as there was a perception that the existing system was too reliant on personality. If a new system was implemented, it needed to work in five years' time and had to work beyond the current administration.
- **Public engagement** - whatever the system, the Council had to listen to the concerns of residents. Again, the point was made that the perception of the Council was one that was out of touch and not listening. Communication was key and there was agreement that consulting the public on the proposed adoption of new governance arrangements was a good idea.
- **Good governance** – the system had to be open, transparent and encourage participation.

The Assistant Director – Governance and Legal said there were ways in which the Cabinet system could be modified to allow greater involvement in the early stages of the decision making process. He said inclusivity and public engagement were mentioned time and again, and said UDC's consultation policy would be brought to the next meeting for consideration.

The Chair said the current system was not working but it was right to keep an open mind to evidence and explore all options. He said the review would be thorough and done properly.

Members discussed the project's methodology and evidence base. The Chair asked members to split into twos and threes and research councils with differing governance systems. He asked members to report back their conclusions at the next meeting.

The meeting ended at 8.30pm

Note of conversation with South Cambridgeshire DC – Lucinda Bell, Oct 2019

A local DC with a change of administration in 2017 from Conservative to Lib Dem majority. There are now 45 councillors: 30 Lib Dem, 11 Conservative, 2 Labour and 2 Independent. Pre-scrutiny introduced in 2018.

New admin modified existing Leader and Cabinet model, which is now considered to be working well. 7 members of Cabinet, including two deputies.

Emphasis on effective pre-scrutiny, introduced in 2018. Large agendas for this committee, but Cabinet meetings are shorter as decision makers are well informed and benefit from input of Overview and Scrutiny Committee (O and SC) input. Decisions tend to be taken collectively by the whole of Cabinet rather than by Lead Cabinet Members, but some decisions are taken outside of meetings by Lead Cabinet Members where there is a delegation.

Resourcing and training has been key. New post created – scrutiny and governance adviser. Democratic services post is separate.

Members have received training from Centre for Public Scrutiny. They also received and benefited from lots of training especially on areas such as planning.

Frequency and timing of meeting cycle: Monthly Cabinet meetings at which decisions are taken. Monthly O and SC meetings. Previously meetings were quarterly.

Role of O and SC: scrutinises reports etc before they go to Cabinet. Makes recommendations where appropriate. Not all decisions go through pre-scrutiny; the scrutiny and governance adviser meets monthly with the O and SC Chairman and Vice Chairman to go through the items scheduled for Cabinet and they will decide which items O and SC should consider in advance of the Cabinet meeting, with the focus being on where they think value can be added by doing so.

Strong chair of scrutiny is essential (opposition party member) and vice chair (Lib Dem). They work in a consensual, non partisan way.

Two advisory committees additionally: climate and environment and grants, which advise Cabinet directly. No overlap with scrutiny for these issues.

The change to more effective scrutiny has been very successful. Feeling that maybe policy and strategy has been neglected a bit as a result of the time and resources taken to bring about the changes to the governance model, but this is being addressed.

I spoke by phone to Victoria Wallace, Scrutiny and Governance Adviser. S Cambs happy to meet our members to discuss.

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Agenda Item 5

Indicative Timetable – presented to Full Council [30 July 2019](#)

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| 30 July 2019 | Council agrees to establish a working group, appoint members and possibly outline terms of reference |
| August 2019 | All member briefing on the principles of the models, pros and cons, different ways of doing it (and possibly the experience of other councils) |
| August – October 2019 | Working group meetings identifying the objectives to be achieved from new/different model, pros and cons, what works what doesn't work currently, consult public about their perception of democratic deficit if time permits – (it will be very tight to design and deliver the consultation and to analyse results to inform recommendations) |
| November 2019 | Report to GAP Committee 21 November on outline principles and proposals for any change. (The deadline for preparation of a report is 8 November.) |
| 21 November 2019 | GAP review the outline principles and proposals for any changes or a modified governance model |
| 3 December 2019 | Council agrees any change or determines in principle to modify governance model |
| Subject to the decision above | |
| 6 February 2020 (or later special meeting in March 2020) | GAP reviews a new draft constitution and detailed proposals for governance arrangements. |
| By early April 2020 | Independent Remuneration Panel members have considered the new governance arrangements and have recommended a revised allowances scheme. |

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|-------------------------|---|
| 22 April 2020 | Council approve revised constitution and resolves to adopt a new governance model from 21 May 2020. |
| 22 April to 21 May 2020 | Deliver training for new ways of working to members and officers |