

**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*